

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 20, 2015  
**Open Session Minutes**

The meeting was called to order by President Richard Spier at 1:00 p.m. on November 20, 2015. The meeting adjourned at 4:19 p.m. Members present from the Board of Governors were Guy Greco, R. Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramón A. Pagán, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Joshua Ross, Kerry Sharp, Michael Levelle, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Dawn Evans, Kay Pulju, Susan Grabe, Mariann Hyland, Amber Hollister, Dani Edwards, Kateri Walsh, and Judith Baker. Also present was 2016 BOG members John Bachofner, Christine Costantino, Robert Gratchner, Julia Rice, and Kate von Ter Stegge; Carol Bernick, PLF CEO and Tim Martinez, PLF BOD; Karen Clevering, ONLD Chair and Colin Andries, ONLD Chair-elect.

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

**A. Report of the President**

As written. Mr. Spier informed the board of the status of the Uniform Bar Exam, the Selection of the OCLEAB representative, and the new role of OSB Immediate Past-President.

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

Mr. Heysell relayed his enthusiasm for serving as president next year.

**C. Report of the Executive Director**

As written. Ms. Stevens reminded the board about 2016 committee and liaisons assignments.

**D. Director of Regulatory Services**

As written. Ms. Evans reported a recent trend in settling more disciplinary cases before trial.

**E. Director of Diversity & Inclusion**

Ms. Hyland updated the board on the success of this year's first rural opportunities fellowship and highlighted positive feedback about the public honors scholarship recipient placed with Governor Brown's Office.

**F. MBA Liaison Reports**

Mr. Spier reported on the October 27 MBA Board meeting including their discussion of the membership fee increase resolution on the HOD agenda.

**G. Oregon New Lawyers Division Report**

In addition to the written report, Ms. Clevering reported on the ONLD's five major accomplishments this year and introduced incoming chair, Colin Andries.

**2. 2016 President & President-elect Elections**

At the request of Mr. Heysell, the board unanimously confirmed Mr. Levelle as 2016 President-elect.

At the request of Mr. Spier, the board unanimously confirmed Mr. Heysell as 2016 President.

### **3. Professional Liability Fund**

Mr. Martinez provided an overview of the PLF financial statements.

Ms. Bernick presented the PLF Board of Directors' requests that the Board of Governors approve the 2016 PLF Excess Application, PLF Excess Base Rate, and chapter 7 bylaw and policy changes for board approval. **[Exhibit A]**

**Motion:** Mr. Prestwich moved, Ms. Nordyke seconded, and the board voted unanimously to approve the 2016 excess application, base rate, and bylaw changes as presented.

Ms. Bernick presented the PLF Board of Directors' request for the Board of Governors to amend Section 5.100 of the PLF Policies to raise the threshold from \$500 to \$10,000 for checks requiring two signatures. **[Exhibit B]**

**Motion:** Ms. Matsumonji moved, Mr. Levelle seconded, and the board voted unanimously to approve changes to Section 5.100 of the PLF Policies as presented.

### **4. OSB Committees, Sections and Councils**

#### **A. MCLE Committee**

Ms. Pulju reminded the board that during its deliberations about CLE seminars, the board also suggested reviewing the MCLE policies that impact CLE-related revenue. Ms. Hirschbiel then asked the board to consider the MCLE Committee's recommendation to eliminate Regulation 4.350(e) which exempts local bar associations in Oregon from paying the sponsor accreditation application fee. **[Exhibit C]**

**Motion:** Mr. Greco moved, seconded by Ms. Matsumonji, to eliminate Regulation 4.350(e). After discussion Mr. Levelle moved to amend the motion to allow any organization offering a free CLE program to receive the MCLE accreditation fee waiver. Mr. Levelle's motion failed for lack of a second. Returning to the original motion, Mr. Lavelle, Ms. Matsumonji, Ms. Nordyke, Mr. Ramfjord, Mr. Ross, Mr. Williams, and Ms. Zinser voted no; all others voted yes.

#### **B. NLMP Committee**

Ms. Walsh asked the board to consider the request of the New Lawyer Mentoring Program Committee to amend the NLMP rules as proposed. **[Exhibit D]**

**Motion:** Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to forward a request to the Supreme Court to modify the NLMP Rules.

#### **C. Client Security Fund Committee**

Claim 2014-32 ALLEN (Scott)

Ms. Stevens asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim, as presented in her memo. **[Exhibit E]**

**Motion:** Mr. Greco moved, Ms. Matsumonji seconded, and the board voted unanimously to uphold the CSF Committee's denial of the claim.

Claim 2013-24 GOFF (Mantell)

Ms. Stevens asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim, as presented in her memo. **[Exhibit F]**

**Motion:** Mr. Wilhoite moved, Ms. Rastetter seconded, and the board voted unanimously to uphold the CSF Committee's denial of the claim.

Ms. Stevens asked the board to approve the CSF Committee's recommended awards in the following matters: **[Exhibit G]**

a. HALL (Meier-Smith)	\$9,333.92
b. ROLLER (Games)	\$12,252.00
c. DICKEY (Patapoff)	\$25,485.00
d. STEDMAN (Husel)	\$6,500.00
e. CYR (Hallam)	\$20,207.24
f. GERBER (Koepke)	\$13,500.00
g. GERBER (Lawson)	\$10,000.00
h. GERBER (Moore)	\$5,000.00
i. GERBER (Roelle)	\$9,740.00

**Motion:** Ms. Matsumonji moved, Mr. Prestwich seconded, and the board voted unanimously to approve the CSF Committee's recommendations.

**D. Legal Services Committee**

Ms. Baker updated the board on the resignation of the Lane County Legal Aid Services Executive Director and Legal Aid's overall evaluation of their service model.

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

**A. Board Development Committee**

Ms. Matsumonji presented the committee's recommendations for appointments. **[Exhibit H]**

**Motion:** The board voted unanimously to approve the committee motion on the recommended appointments.

**B. Budget and Finance Committee**

Ms. Kohlhoff presented the committee's recommended 2016 OSB Budget for board approval. **[Exhibit I]**

**Motion:** The board voted unanimously to approve the committee motion to adopt the 2016 OSB Budget as presented.

**C. Governance and Strategic Planning Committee**

Mr. Heysell updated the board on plans to create a subcommittee to review the BOG's policy on sponsorship activities.

Mr. Heysell asked the board to consider the committee recommendation to amend ULTA Bylaws Article 27. **[Exhibit J]**

**Motion:** The board voted unanimously to amend the bylaws.

Mr. Heysell asked the board to consider the committee recommendation for a retired member status for members over the age of 65 who are retired from practicing law; they will be exempt from MCLE and IOLTA reporting and will pay fees equivalent to the inactive member fee.

**Motion:** The board voted unanimously to approve the committee's recommendation to create a retired member status.

Mr. Heysell asked the board to consider the committee recommendation to approve up to \$10,000 for the Accelerator Program Feasibility Study on the condition that each Oregon law school provides support for the program.

**Motion:** The board voted unanimously to approve the committee's recommendation.

**D.** Public Affairs Committee

Mr. Prestwich and Ms. Grabe updated the board on the interim legislative session activities.

**E.** OSB Knowledge Base Task Force Report

Ms. Stevens asked the board to accept the task force recommendation with no action requested at this time. **[Exhibit K]**

**F.** Discipline System Review Committee

Mr. Johnson-Roberts introduced the Discipline System Review Committee's report and presented recommendations outlined in the exhibit. He acknowledged opposing viewpoints and indicated minority reports are likely to be sent to the board.

**Motion:** The board accepted the report. Mr. Greco moved, Ms. Zinser seconded to allow until mid-December for acceptance of minority reports before publishing all reports and allowing the membership 60 days to provide comment. Ms. Kohlhoff amended the motion to allow a comment period of 90 days. Mr. Ross moved, Mr. Prestwich seconded the motion and the board unanimously approved a 90 day comment period. **[Exhibit L]**

**6. Other Action Items**

Ms. Pulju updated the board on the section policy discussions.

Ms. Stevens asked the board if it wished to provide comments on the ABA issues paper concerning new categories of legal service providers.

Ms. Stevens reported that the Workers' Compensation Board has requested written input on proposed attorney fee rules to implement statutory changes enacted by the 2015 legislature. .

**Motion:** Ms. Rastetter moved, Ms. Zinser seconded, and the board voted to give Ms. Stevens authority to forward feedback from the Workers' Compensation Section to the Workers' Compensation Board as requested.

Mr. Mansfield presented a request for a \$2,000 donation to the Federal Bar Association to help fund a traveling exhibit depicting the history of school segregation and desegregation. **[Exhibit M]**

**Motion:** Mr. Ross moved that the donation be made, but the motion failed for lack of a second.

Mr. Spier updated the board on the HOD meeting and the Summary of Actions

Ms. Stevens reminded the board that it has Ms. Wright's Legal Opportunities Coordinator's report. The Governance and Strategic Planning Committee will continue to review the report in 2016.

Mr. Levelle asked for approval to send board members to an Implicit Bias CLE sponsored by an OSB member and co-sponsored by a number of specialty bars. Ms. Hyland indicated that the Diversity & Inclusion Department had made a contribution. **[Exhibit N]**

**Motion:** For a lack of a motion the request was denied.

Consent Agenda

**Motion:** Mr. Mansfield moved, seconded by Mr. Greco, and the board voted unanimously to approve the consent agenda of past meeting minutes.

**7. Closed Session (Executive Session pursuant to ORS 192.660(1)(f) and (h)) General Counsel/UPL Report – see CLOSED Minutes**

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

**Oregon State Bar  
Board of Governors Meeting  
November 20, 2015  
Executive Session Minutes**

Exhibit A

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 Litigation

The UPL Committee recommends the Board seek injunctive relief against Mr. Reeves and Mr. Griffen to prevent their continued unlawful practice of law.

**Motion:** Mr. Greco moved, Ms. Kohlhoff seconded, and the board voted unanimously to approve the committee's recommendation to seek injunctive relief.

B. Pending or Threatened Non-Disciplinary Litigation

Ms. Hirschbiel reported on non-action issues.

C. Other Action Items

PERS Issues

Ms. Hirschbiel asked the board to authorize the Executive Director to sign a tolling agreement relating to claims that PLF employees have asserted against the OSB and PLF for alleged losses of PERS retirement account benefits.

**Motion:** Mr. Mansfield moved, Ms. Matsumonji seconded, and the board voted unanimously to sign the tolling agreement.

Youngblood ULTA Claim

Ms. Hirschbiel asked the board to approve Jon K. Youngblood's claim for the return of \$5,461.45.

**Motion:** Mr. Greco moved, Mr. Wilhoite seconded, and the board voted unanimously to approve the claim.

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 3, 2015  
**From:** Carol J. Bernick, PLF CEO   
**Re:** 2016 PLF Excess Coverage Application

---

### Action Recommended

The 2016 PLF Excess Coverage Application is included for your review and approval.

### Background

Very minor changes were made to the application to coincide with the new rating model. These changes are summarized as follows:

- Addition of question A.2 regarding the use of a law firm website;
- Addition of question A.7 regarding the number of non-attorney staff in the law firm;
- Addition of question A.8 regarding the use of a full-time office manager; and
- Addition of two fields in form C.1 (Current Attorney List), regarding CLE credit earned in prior year, and whether the attorney works fewer than 250 hours per year (the addition here necessitated the removal of the specific semi-retired attorney question asked in prior years).

The remainder of the application remains unchanged from 2015. The PLF Board of Directors unanimously approved these changes at its October 16, 2015 board meeting.

Attachment



# PLF Excess Coverage

16037 SW Upper Boones Ferry Road, Suite 300  
Tigard, Oregon 97224

PO Box 231600 | Tigard, Oregon 97281-1600

Phone: 503.639.6911  
Oregon Toll-Free: 800.452.1639  
Email: [excess@osbplf.org](mailto:excess@osbplf.org)  
Website: [www.osbplf.org](http://www.osbplf.org)

## 2016 NEW FIRM APPLICATION

*Please fill out this Application completely and accurately. If you have questions about certain sections, refer to the Application Instructions. You may supplement any answer by attaching additional pages. Please email completed applications to [excess@osbplf.org](mailto:excess@osbplf.org).*

### SECTION A – FIRM INFORMATION

A.1 Firm Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Phone: \_\_\_\_\_

A.2 Does your firm have a website?  Yes  No

Website Address: \_\_\_\_\_

A.3 Application Contact Name: \_\_\_\_\_

Contact Email: \_\_\_\_\_

A.4 Type of Firm:  Sole Practitioner  Partnership  PC  LLC  LLP  Other: \_\_\_\_\_

A.5 Date Firm in A.1 Began Business: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

A.6 Number of Attorneys in Firm (include of counsel): \_\_\_\_\_

A.7 Number of Non-Attorney Staff in Firm: \_\_\_\_\_

A.8 Does your firm employ a full-time office manager?  Yes  No

A.9 Desired Beginning Coverage Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

A.10 **Requested Coverage level:** You may check more than one box to request multiple quotations. Please note: new firms may apply only for the \$700,000 or \$1.7 million coverage levels, unless the attorneys are moving from a firm with higher limits of coverage, or unless sufficient explanation for the higher limits request is provided.

- |  |   |
|--|---|
| <input type="checkbox"/> \$700,000 / \$700,000         | <input type="checkbox"/> \$3.7 million / \$3.7 million  |
| <input type="checkbox"/> \$1.7 million / \$1.7 million | <input type="checkbox"/> \$4.7 million / \$4.7 million  |
| <input type="checkbox"/> \$2.7 million / \$2.7 million | <input type="checkbox"/> \$9.7 million / \$9.7 million* |

\* Higher Coverage Limits Supplement required.

**SECTION B – PREDECESSOR FIRMS**

B.1 A former firm qualifies as a Predecessor Firm if it was a sole proprietorship, partnership, professional corporation, or other entity (a) that is no longer engaged in the practice of law; **and** (b) at least 50% of whose attorneys are affiliated with the Firm listed in A.1.

List **all** of the Predecessor Firms that meet **all parts** of the above definition.

Predecessor Firm	Year Established/Ended	No. of Attorneys	Location
------------------	------------------------	------------------	----------

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

At the PLF's discretion, a former firm that does not meet the definition of a Predecessor Firm may be added by special endorsement. If you would like to request that a former firm(s) be added by special endorsement, please list it below.

Former Firm	Year Established/Ended	No. of Attorneys	Location
-------------	------------------------	------------------	----------

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**SECTION C – FIRM ATTORNEYS AND FORMER ATTORNEYS**

C.1 **Current Attorneys:** Please list the following information for each attorney presently working for the Firm, including of counsel attorneys.

Attorney Name	OSB No.	Year Started with Firm	Role/Status*	3 hours of CLE Credit in Past Year? Yes/No	Part time? Yes/No (less than 250 hours per year)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					

\* SP = Sole Practitioner. P = Partner, S = Shareholder, PC = Professional Corporation. A = Associate, C = Of Counsel. M = Member, O = Other (explain)

C.2 Do all of the attorneys listed in C.1 above carry primary PLF Coverage?

Yes  No If no, please explain. \_\_\_\_\_

\_\_\_\_\_

C.3 **Former Attorneys:** Name of each attorney **not presently** working for the Firm who worked for the Firm, or a qualifying or specially endorsed Predecessor Firm listed in Section B, at any time during the past five years.

Former Attorney's Name	OSB No.	Employment Dates (in years)	Role/Status*
------------------------	---------	-----------------------------	--------------

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

\*SP = Sole Practitioner, P = Partner, S = Shareholder, PC = Professional Corporation, A = Associate, C = Of Counsel, M = Member, O = Other (explain)

C.4 Did all attorneys listed in C.4 carry primary PLF coverage while working for the Firm or a Predecessor Firm?

Yes  No If no, please explain. \_\_\_\_\_

\_\_\_\_\_

C.5 Does your Firm include any **current or former** attorneys who are not Oregon bar members **OR** whose principal office is outside Oregon? If yes, please list the attorneys below and fill out a non-Oregon Attorney Supplement for each attorney.  Yes  No

Non-Oregon Attorney's Name	OSB/ Bar No.	Employment Dates
----------------------------	--------------	------------------

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_

**SECTION D – CLAIMS EXPERIENCE**

D.1 Is any attorney in the Firm aware of any claim(s) against the Firm, a Predecessor Firm, or any attorney who worked for the Firm or a Predecessor Firm that has NOT been reported to the PLF? If yes, please provide details, including the name of the claimant, name of the responsible attorney, and a description of the claim and alleged damages.

Yes  No

- D.2 Is any attorney in the Firm aware of any act, error, or omission or any possible claim, which might reasonably be expected to be the basis of a professional liability claim or suit against him or her, against the Firm or any Predecessor Firm, or against any present or former attorney of the Firm or any Predecessor Firm that has NOT been previously reported to the PLF? If yes, please explain.  Yes  No
- D.3 Has any excess carrier paid any amount above the PLF's primary limit during the past 10 years? If yes, please explain.  Yes  No
- D.4 Has this Application or a Firm Attorney Questionnaire been provided to all current firm attorneys for their verification? (Sole practitioners check "YES".) If no, please explain.  Yes  No

**SECTION E – TYPE OF PRACTICE**

E.1 Please complete the chart below to describe the Firm's practice by indicating the percentage of the Firm's professional time or billings in the private practice of law devoted to each area within the most recent 12-month period for which you have data. **The total must equal 100%. Please round to the nearest whole number.**

Administrative/Regulatory	_____%	Land Use	_____%
Admiralty/Maritime	_____%	Litigation (see below)	
Antitrust/Trade Reg.	_____%	Negligence/Defense	_____%
Bankruptcy	_____%	Negligence/Plaintiff	_____%
Business	_____%	Business Litigation	_____%
Collection/Repossession	_____%	Mediation/Arbitration	_____%
Communications (FCC)	_____%	Municipal	_____%
Construction	_____%	Oil, Gas and Coal	_____%
Criminal	_____%	Patents/Copyright/Trademark	_____%
Domestic Relations	_____%	Public Utilities	_____%
Employment	_____%	Real Estate*	_____%
Entertainment/Sports	_____%	Securities Law*	_____%
ERISA/Employee Benefits	_____%	Taxation (excl. Tax Opinions)*	_____%
Estate/Probate/Wills/Trusts	_____%	Workers' Comp. (see below)	
Financial Institution Law	_____%	Defense/Employer	_____%
Immigration	_____%	Claimant/Employee	_____%
Health	_____%	Other (describe if over 5%)	_____%
Investment Counseling	_____%		
Labor Relations	_____%		

\* See Instructions for specific definitions.

E.2 Has any present or former attorney with the Firm or Predecessor Firm practiced in the last **10 years** in the area of Securities Law (including federal and state securities law)? **See Instructions for definition of Securities Law.** *If yes, please submit a Securities Law Supplement Application.*

Yes  No

E.3 Does one client, case, or group of related clients or cases currently represent more than 30% of the Firm's business (or has represented more than 30% in any year in the past three years)? If yes, please explain.  Yes  No

---



---

E.4 Does your Firm now include anyone, or has it included anyone during the past five years, who is or was registered with the U.S. Patent and Trademark Office? If yes, please complete a Patent Attorney Supplement for each Patent attorney.  Yes  No

**SECTION F – OTHER INFORMATION**

F.1 Does the Firm have excess coverage at the present time?  Yes  No

If yes, please complete the Firm's and all Predecessor Firms' history of prior excess professional liability insurance below for the past five years **AND PLEASE PROVIDE A COPY OF THE DECLARATIONS PAGE** from your current excess policy or policies and copies of any endorsements.

	Policy Period From/To	Insurance Co.	Policy Limits	Name of Firm Issued Coverage
1.			\$	
2.			\$	
3.			\$	
4.			\$	
5.			\$	

F.2 During the past five years, has any insurance carrier declined to issue, cancelled, refused to renew, or agreed to accept only on special terms, professional liability coverage for the Firm, any Predecessor Firm, or any attorney in the Firm or a Predecessor Firm? If yes, please explain.  Yes  No

---



---

F.3 Does your Firm share office space with any other firm, attorney, or organization?  Yes  No

**IF YES:**

(a) Do you share letterhead?  Yes  No

(b) Do you routinely refer or share cases? If yes, please explain.  Yes  No

(c) Names of individuals, firms, or organizations with whom your Firm shares offices:

---



---

*\*Please note that the PLF Excess Plan does not cover liability you may have from office sharing arrangements under the doctrine of apparent partnership, partnership by estoppel, or similar theory.*

F.4 Does the Firm use multiple letterheads? *Include all firm letterhead.*  Yes  No

F.5 In the past five years, has any attorney in your Firm or a Predecessor Firm been refused admission to practice, disbarred, suspended from practice, or formally reprimanded by any bar association or court? If yes, please explain.  Yes  No

---

F.6 In the past five years:

(a) has any current attorney in your Firm or a Predecessor Firm been convicted of a felony or a Class A misdemeanor (or equivalent crime in other states)? If yes, please explain.  Yes  No

---

(b) has any current or former attorney in your Firm or Predecessor Firm engaged in any of the following activities: (1) conduct which is or could be the subject of bar discipline, (2) dishonest conduct or (3) unauthorized borrowing from the Firm or a client? If yes, please explain.  Yes  No

---

F.7 Does your Firm have other office locations? If yes, please attach a list of all such locations, including the street address, city, state, and zip code, and explain whether control and supervision rest with the principal business office.  Yes  No

F.8 Does the Firm maintain any of counsel relationship or share letterhead with any other firm or any attorney not listed as a Firm Attorney in C.1? If yes, please explain.  Yes  No

---

F.9 Does your Firm maintain a joint venture, partnership, or ownership relationship with any other businesses or receive any compensation for referrals to such businesses? If yes, please explain.  Yes  No

---

F.10 Does your Firm use temporary or contract legal services, or retain attorneys as independent contractors, on behalf of clients of the Firm? If yes, please explain the volume and nature of the work performed and contractor relationship with the Firm.  Yes  No

---

F.11 Does the Firm, any Firm Attorney, or any Firm Attorney's spouse or immediate family member possess any beneficial interest in a client business entity? If yes, please attach a list describing the percentage of ownership and the nature of the ownership interest (ex., family business, stock in lieu of fees, etc.).  Yes  No

If you answered "Yes" above, have the proper disclosures and notices required to maintain coverage under the PLF's Claims Made Plans (primary and excess) been made? If no, please explain.  Yes  No

---

## **SECTION G – PRACTICE MANAGEMENT**

*If you answer “NO” to any of the questions in this section, please provide supplemental explanations.*

- G.1 Does the Firm have a way to reliably track client appointments, court dates, hearing dates, or other deadlines so all firm obligations are met?  Yes  No

Name of system used: \_\_\_\_\_

- G.2 Does your Firm put reminders on the calendar prior to key deadline dates, such as the running of a statute of limitations?  Yes  No
- G.3 Does your Firm follow up to verify that deadline-related tasks were actually performed? For example, do you confirm when service of process is completed?  Yes  No
- G.4 Does your system for tracking deadlines capture long-range or future work beyond the current calendar year? For example: yearly reminders to file annual accounting for conservatorships.  Yes  No
- G.5 Does your Firm screen new clients and cases for potential conflicts of interest prior to receiving confidential information?  Yes  No
- G.6 Does your Firm provide written disclosures when there is a potential conflict and obtain written consent from clients to continue representation?  Yes  No
- G.7 Does your Firm use “engagement” letters or fee agreements with all new clients? (These letters can be one agreement or separate agreements.)  Yes  No
- G.8 Does your Firm use “disengagement” letters or, if the client is an ongoing client, a letter at the conclusion of each legal matter that advises the client that the matter is concluded.  Yes  No
- G.9 Does your Firm use “non-engagement” letters with declined clients?  Yes  No
- G.10 When your Firm accepts a new case from an existing client, do you open a separate file for the new matter?  Yes  No
- G.11 When your Firm accepts a new case from an existing client, do you re-confirm the terms of representation?  Yes  No

## **SECTION H – OTHER PROVISIONS**

- H.1 **Representations**: The undersigned represents that the information contained herein is true and correct as of the date this Application is executed, and that it shall be the basis of the Excess Plan and deemed to be incorporated therein if the Professional Liability Fund accepts this Application by issuance of an Excess Plan. It is hereby agreed and understood that this representation constitutes a continuing obligation to report to the Professional Liability Fund as soon as practicable any material change in the circumstances of the applicant's practice of law, including, but not limited to, the size of the Firm and the information contained on each Supplemental Application submitted herewith.
- H.2 **Release of Claim Information**: The undersigned hereby authorizes release of claim information from any prior insurer to the Professional Liability Fund. The undersigned understands that the PLF will use for underwriting purposes internal PLF claims information about the firm attorneys listed in Sections C.1, C.4, and C.6. The undersigned warrants that he or she has authority from the attorneys listed at Section C.1, C.4, and C.6 to receive claim information from the PLF as part of the underwriting process.
- H.3 **Claims Made Excess Plan**: The undersigned understands and accepts that the Excess Plan applied for provides coverage on a "claims made" basis for only those claims that are made against the applicant while the Excess Plan is in force, that defense costs are included within coverage limits, and that all coverage ceases with the termination of the Excess Plan unless the undersigned exercises certain extended reporting coverage options available in accordance with the terms of the Excess Plan.
- H.4 **Failure to Report Claims**: The undersigned agrees that failure to report any claims made against the applicant or any attorney in the applicant's firm under any current or previous coverage or policy of insurance, or failure to reveal known facts that may give rise to a claim against any prior, current, or future coverage or insurers, may result in the absence of coverage for any matter that should have been reported or in the failure of coverage altogether.

**SECTION I – ASSESSABILITY**

I.1 **Supplemental Excess Assessment:** The undersigned acknowledges that the Excess Plan is assessable as provided in Section XI of the Excess Plan. Assessment may be made during the Coverage Period or in future years to cover Excess Program claims and expenses in such fashion as may be provided in the Excess Plan. The undersigned warrants that he or she has authority to sign for and bind the Firm and its partners, shareholders, members, and professional corporations for payment of supplemental assessments in accordance with the terms of the Excess Plan.

It is agreed that completion of this Application does not obligate the Firm to purchase excess coverage from the Professional Liability Fund, nor does it bind the Professional Liability Fund to issue coverage. If coverage is issued, this Application, along with the Declaration Sheets, and any applicable endorsements, will be deemed a part of the Firm's Excess Plan.

It is agreed that any coverage provided by the Professional Liability Fund will be according to the applicable Claims Made Excess Plan, and that any representations made in this Application or in the related instructions and question and answer sheet or any requests made by the Firm in this Application will not expand coverage beyond that stated in the Declarations Sheet, applicable Claims Made Excess Plan, and any Endorsements issued to the Firm.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print/Type Name: \_\_\_\_\_ Capacity: \_\_\_\_\_

***\* This application must be signed by a partner, member, or shareholder of applicant Firm.***

REMINDER – PLEASE INCLUDE COPY OF FIRM'S LETTERHEAD – THANK YOU

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 2, 2015  
**From:** Carol J. Bernick, PLF CEO   
**Re:** 2016 Excess Rates

---

### **Action Recommended**

The PLF Board of Directors (BOD) requests that the Board of Governors approve a base rate of \$1,150 for 2016 excess coverage.

### **Background**

In addition to its primary coverage, the PLF provides optional excess coverage to Oregon attorneys. The excess coverage is completely reinsured. Rates are determined through negotiations between the PLF and the excess reinsurers, usually Lloyds of London syndicates. Each year's rates are based on the ongoing PLF experience and predicted future trends, as well as in-person discussions between representatives of the PLF and reinsurers.

Since the PLF began offering excess coverage, we approached pricing in a way similar to that of the primary program: a single rate. For excess, we did charge a high rate for lawyers practicing in high risk areas (primarily securities and certain types of real estate) or who had a history of claims that met a certain severity threshold (not something we do at primary). We also had two rates for out-of-state attorneys.

As I have been reporting in my updates to the BOG, the PLF completely changed its excess rating system for 2016. We have discontinued the two-rate model in favor of a fully underwritten approach that begins with a base rate. At the October 16, 2015 PLF Board meeting, the Board approved a base rate of \$1150. This rate was developed after extensive modeling provided by our broker in London, Aon, working closely with our largest reinsurer. Our goal in the changed pricing structure is to price excess coverage according to the risk. In general terms, under the old model our pricing was often too high for lower risk firms and too low for higher risk firms. This resulted in poor loss development for our reinsurers which were becoming increasingly unacceptable to them. In short, we risked losing reinsurance from the Class A carriers that the PLF has always used and believe we should use to protect the interests of our covered parties and, ultimately, the public.

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 3, 2015  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2016 PLF Bylaws and Policies Changes

---

### Action Recommended

Proposed changes to the 2016 PLF Bylaws and Policies are included for your review and approval. These changes were unanimously approved by the PLF Board of Directors at its October 16, 2015 board meeting.

### Background

The proposed changes are summarized as follows:

- Section 1.250 – Goal No. 2 and Section 7.100(B) – “Retained Earnings” was replaced with “Net Position” to provide a more accurate description of the objective;
- Section 7 – Various changes were made to this section to clear up language and intent. These changes include: cleaning up cross-references in document, fixing capitalization issues, clarifying the role of the Excess Committee of the BOD, renumbering subsections, etc.;
- Section 7.300(A) – changes were made to Section 7.300 to simplify and clarify criteria to be used in the new rating model. Rather than list out the various criteria in detail, Section 7.300(A) was redrafted to explain the criteria for evaluating law firm applications, while leaving open the possibility that these criteria can change from year to year;
- Section 7.350 was omitted entirely for the same reasons as described above;
- Section 7.300(E) was modified to replace the former section 7.400(A), which described what the Board of Governors approves each year with regard to Excess Coverage. In prior years, the BOG approved the excess rates. Those different rates at specific coverage levels no longer exist. To align the Policies with the new rating model, the language of this section was modified to require BOG approval for the base rate used in the new excess rating model;
- Former Section 7.700(B), describing semi-retired attorneys, was removed. This class of attorneys is still relevant to the rating model, but it is best addressed under section 7.300(A), where it now resides;
- Former Section 7.700(G) was removed. This section required Board approval of application questions addressing former Section 7.300(A)(8) (questions about

- Practice Management). Questions related to this topic remain relevant and a part of the application, but the requirement of Board approval of only those questions was removed. The Board is provided with a complete copy of the upcoming year's Excess application for review each year. Specific review and approval of one section of the application is unnecessary;
- New Section 7.600(I) was edited to remove redundant information. The discretionary continuity credit is described sufficiently in the text of (I)(1) so as to not merit a duplicative chart; and
- Section 7.600(J), regarding Extended Reporting Coverage (ERC), was modified to make clear on which coverage year the cost of ERC will be based.

Attachment

## **1.250 MISSION STATEMENT AND GOALS OF THE PROFESSIONAL LIABILITY FUND**

**STATEMENT OF MISSION:** The mission of the Professional Liability Fund is to provide primary professional liability coverage to Oregon lawyers in the private practice of law. In doing so, the public is served. We also provide additional coverage and services that support our primary coverage program.

**GOAL NO. 1** – To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04)

**GOAL NO. 2 - Full Funding of Claims and ~~Retained Earnings~~Net Position:** To maintain full funding of estimated claim liabilities net of reinsurance. In addition to full funding, ~~retained earnings~~a positive net position may be maintained to stabilize assessments.

(BOD 5/14/04; BOG 6/11/04)

will be provided only with the prior approval of the attorney who is subject of the reports.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 8/27/04; BOG 10/13/04; BOD 12/11/09; BOG 02/19/10)

#### **6.450 SHORT-TERM LOANS FOR TREATMENT**

The Chief Executive Officer may authorize loans to attorneys in an amount not to exceed \$2,500 for the purpose of obtaining immediate treatment for alcohol, chemical dependency, or other problems which impair a lawyer's ability to practice law. The loan will be used only for the purpose of such treatment, and will be evidenced by a promissory note of the attorney.

(BOD 2/21/92, BOG 3/13/92; BOD 4/23/93, BOG 8/13/93; BOD 6/18/99; BOD 8/6/99; BOG 9/16/99)

#### **6.500 MULTIPLE CLAIMS**

It will be the responsibility of the Chief Executive Officer and staff of the PLF to contact any attorney with multiple claims to attempt to mitigate future damages.

(BOD 6/18/99; BOD 8/6/99; BOG 9/16/99)

### **CHAPTER 7 EXCESS COVERAGE PROGRAM**

#### **7.100 EXCESS COVERAGE PROGRAM**

(A) The PLF will offer excess coverage through an excess program within the PLF as authorized under ORS 9.080(2)(a). The Board of Directors of the PLF will be responsible for the excess program (subject to the ultimate control of the Board of Governors as in other matters), but delegates underwriting to the ~~Excess Committee~~ and the Chief Executive Officer.

(B) The excess program may maintain ~~retained earnings~~ a positive net position established from capital contribution, profit commissions, ceding commissions, investment income, and other sources. The purpose of the excess program ~~retained earnings~~ net position is

to provide excess program stability, capital to permit the PLF to retain some risk in its reinsurance agreements, and reserves against the possibility of failure by a reinsurer.

(BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD 5/14/04; BOG 6/11/04)

#### **7.150 MANAGEMENT**

The Professional Liability Fund will manage the excess program in accordance with the policies of the PLF Board of Directors. The excess program will reimburse the Professional Liability Fund for services so that the cost of the excess program is borne by the participants in the excess program through their excess coverage assessments and is not subsidized by the primary fund. All assets, liabilities, revenues and expenses of the excess program will be accounted for as a separate fund.

#### **7.200 EXCESS CLAIMS SETTLEMENT**

(A) The Board of Directors will have settlement authority for all claims in the primary and excess layers. In each case, settlement decisions are to be made by the ~~B~~Board considering only the interest of each respective fund, with due consideration to the duties owed under law by a primary carrier to an excess carrier, and vice versa. In the event of uncertainty or potential conflict as to appropriate trial strategy or settlement of a particular claim between the interests of the primary and excess programs, the Board of Directors may establish one or more advisory committees, seek legal or expert advice, or take such other action as the Board deems appropriate.

(B) All discussions regarding the handling of specific claims covered by the excess program will be conducted in executive sessions for reasons of confidentiality pursuant to ORS 192.660(2) (f) and (h).

(C) Excess claims will be settled according to the procedures stated at Policy 4.400. The member of the Board of Directors designated to review a

claim for settlement purposes under Policy 4.400(A) will have authority over the claim at both the primary and excess layers.

(BOD 8/11/95; BOG 11/12/95; BOD 6/30/97; BOG 7/26/97)

## 7.250 APPLICATION AND UNDERWRITING

(A) The PLF may require firms seeking excess coverage to complete an application form designated by the PLF. The PLF may request additional relevant information at any stage of the underwriting process. Firms will be underwritten based upon this application, such other information as the PLF deems relevant, and the underwriting guidelines established in sections 7.300 ~~and 7.350~~. Because the information requested from firms is personal, sensitive, confidential, and relates to litigation matters, applications and other underwriting materials will be exempt from disclosure under the Public Records Law, ORS 192.410 et seq. Because some meetings of the Excess Committee ~~are~~ may be for the purpose of considering and discussing the information contained in the applications submitted by firms as well as the confidential claims information maintained by the PLF, the meetings of the Excess Committee ~~will~~ may be held in executive session under the Public Meetings Law, ORS 192.610 et seq., pursuant to the provisions of ORS 192.660 (1)(f) and other applicable sections.

(B) No final decisions or action on an application will be made by the Excess Committee. ~~The committee's function is limited to committee may review and discussion of firm applications, and but~~ all final decisions or action on applications will be taken by the Chief Executive Officer or the Chief Executive Officer's designee with a right of appeal to the PLF Board of Directors.

(C) For underwriting purposes the PLF may limit the excess coverage offered to a firm in such areas as, but not limited to, imposition of a retroactive date as to a firm or individual members; imposition of an exclusion as to claims

from particular claimants, transactions, events, or subject matters; imposition of an exclusion as to claims from business entities in which the firm, firm members, or their families have an ownership or management interest or for which they serve as an officer or director; and other coverage limitations. For underwriting purposes the PLF may impose additional requirements as a condition to obtaining coverage including, but not limited to, higher assessment rates, additional surcharges, or a requirement that the firm or firm members undertake specified education or personal and practice management assistance.

(BOD 8/27/04; BOG 10/13/04; BOD 10/9/09; BOG 10/30/09)

(D) In order to ensure the integrity and quality of the underwriting process and to maintain the viability of the excess program, the individual underwriting decisions of the PLF will be final and will not be reviewed by the Board of Governors.

(E) Excess plans are underwritten and issued on an annual basis and are not renewable.

(F) No information from the Oregon Attorney Assistance Program or the PLF's other assistance programs will be obtained or used in the underwriting process unless both the applicant firm and affected firm member(s) request that it be considered. See PLF Policy 6.300.

(BOD 2/18/94; BOG 3/12/94; BOD 6/30/97; BOG 7/26/97; BOD 10/3/97; BOG 11/15/97; BOD as rev. 11/21/97; BOD 8/16/02; BOG 10/3/02; BOD 8/27/04; BOG 10/13/04)

## 7.300 APPLICATIONS ACCEPTABLE FOR UNDERWRITING EXCESS COVERAGE ASSESSMENT

(A) ~~Applications will be accepted~~ submitted for underwriting will be evaluated against a variety of factors, including, but not limited to: prior claims experience, area of practice, CLE history, firm size, amount of excess insurance sought, ratio of attorneys to non-attorneys in firm, and the use and quality of

recommended standard practice management systems if all of the following criteria are met:

~~(1) No claim has been made against any firm member during the prior five calendar years in which the total of expense plus indemnity paid equals or exceeds \$100,000;~~

~~(2) No firm member has any open claim for which the total of PLF expense and indemnity reserves equals or exceeds \$100,000;~~

~~(3) No firm member has any open claim reserved at less than \$100,000 with potential damages which equal or exceed \$100,000;~~

~~(4) No firm member has two or more claims made during the prior five calendar years for which any indemnity was paid;~~

~~(5) No firm member has two or more open claims pending;~~

~~(6) No firm member has any claim made since July 1, 1978 for which the indemnity paid equals or exceeds applicable PLF indemnity limits;~~

~~(7) No present member maintains his or her principal office as defined in ORS 9.080(2)(c) outside the state of Oregon or is not a member of the Oregon State Bar.~~

~~(8) Neither the firm nor any member practices in any Higher Risk Practice Area, and neither the firm nor a predecessor firm, nor any present or former member of the firm or a predecessor firm, has practiced in any Higher Risk Practice Area during the prior three calendar years; and~~

~~(9) Neither the firm nor any firm member provides an answer on the application which is different from answers approved by the PLF Board of Directors as indicating good practices or acceptable levels of risk.~~

~~(10) In the course of underwriting, no information becomes known to the PLF that indicates that the firm presents an unacceptable risk of excess claims.~~

~~(B) As used in these policies, "firm member" includes any partner, associate, professional corporation, professional corporation shareholder, and of counsel attorney of the firm or a predecessor firm for whom excess liability coverage is being sought.~~

~~(C) As used in these policies, Higher Risk Practice Areas include:~~

~~(1) Living Trust Law, which is defined as preparation of living trusts and related documents in connection with mass or general advertising and marketing of the service to the general public.~~

~~(2) Securities Law, which is defined as:~~

~~(a) The preparation of any part of a subscription document, prospectus, offering circular, disclosure statement or tax opinion in connection with the issuance, offer, sale, or transfer of a security.~~

~~(b) Providing services to a seller or underwriter relating to the offer or sale of a security, which is required to be registered under state or federal law.~~

~~(c) Providing services to an issuer or other seller relating to the offer or sale of a security, which is exempt from federal or state registration requirements.~~

~~(d) Providing services relating to the preparation or filing of periodic and special reports (e.g., Form 10-K, 10-Q or 8-K filings) with the Securities and Exchange Commission.~~

~~(e) Advising clients regarding reporting obligations under the securities laws.~~

~~(f) Providing advice to clients under the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Company Act of 1940, or the Investment Advisers Act of 1940.~~

~~(g) Providing advice to clients on broker dealer or investment adviser compliance.~~

~~(h) Advising unregistered broker-dealers (i.e. "finders") on transactions where they receive compensation for assisting with an offering of a security.~~

~~(i) Acting as bond counsel or special counsel in connection with the issuance of a security.~~

~~(j) Involvement in the direct sale to an individual purchaser of any security. (This category is intended to measure potential "seller" liability under state and federal securities laws, such as Section 12 of the Securities Act of 1933 or ORS 59.115 (1)).~~

~~(RCG 10/2/91, BCG 11/8/91, BCG 5/23/92, 10/1/92, BCG 11/13/92, BCG 9/24/93, BCG 11/19/93, BCG 8/15/94, BCG 6/25/94, BCG 10/19/94, BCG 11/15/98, BCG 5/14/02, BCG 10/23/02, BCG 10/19/09, BCG 10/19/09)~~

### 7.350 ADDITIONAL UNDERWRITING BASES FOR ACCEPTANCE

(A) An application that is not accepted for underwriting under the criteria listed in Section 7.300 (A) may nevertheless be accepted for underwriting if the PLF determines that one or more of the following provisions apply as appropriate:

~~(1) Prior claims against a firm member causing a failure under criteria 7.300(A)(1) (6) do not indicate a greater than average likelihood of future claims, either because of the nature of the claims, changes in the firm's or the firm members' practice, or for other reasons;~~

~~(2) Despite a failure under 7.300(A)(8), the firm and its members have adequate skills and ability to engage in Higher Risk Practice Areas without posing an unacceptable risk of excess claims and previous work by the firm, predecessor firm, firm member, or former member in Higher Risk Practice Areas does not pose an unacceptable risk of excess claims;~~

~~(RCG 10/29/99, BCG 10/10/01)~~

~~(3) Notwithstanding a failure of 7.300(A)(9) because any answer on the application is different from answers approved by the Board as indicating good practices or acceptable levels of risk, the firm or firm member has taken adequate steps to eliminate any unacceptable level of risk, the answer on the application has been satisfactorily explained to the PLF so that it no longer indicates an unacceptable level of risk, or refers the firm for personal or practice management assistance that is likely to mitigate any unacceptable level of risk;~~

~~(RCG 8/27/01, BCG 10/11/01)~~

~~(4) Despite a failure of 7.300(A)(7), the excess program is able to offer coverage to the firm based upon the underwriting standards stated in Section 7.300(A) and reinsurance requirements that allow the PLF to extend to any firm member who maintains his or her principal office as defined in ORS 9.080(2) (c) outside the state of Oregon or to a non-Oregon attorney whose principal office is in Oregon; and~~

~~(5) The firm has presented a response to a failure under Section 7.300(A)(10) which, in the opinion of the PLF, indicates that the firm does not present an unacceptable risk of excess claims and no other underwriting criteria prohibits coverage.~~

The PLF may request additional information from the applicant to determine whether or not the additional criteria stated in this section are met.

(B) In addition to the bases for acceptance listed in 7.350(A), the PLF may accept an application that has failed any of the criteria under Section 7.300(A) if the PLF is convinced, after considering all relevant underwriting criteria and information, including any additional information provided by the firm and any assessment rate adjustment, condition or restrictions imposed under Section 7.250(C), that the firm does not present an unacceptable risk of excess claims.

~~(B) 10/29/99; BOG 10/20/04~~

~~(CB)~~ If the PLF determines that an application is unlikely to be accepted for underwriting under the applicable criteria of Sections 7.300 and 7.350, the PLF will notify the applicant of its likely decision and the reasons. The applicant will be offered an opportunity (1) to present additional information to the PLF to demonstrate why its application meets the criteria for acceptance, (2) to withdraw its application, or (3) to have its application rejected by the PLF. If the applicant does not withdraw its application, ~~t~~The PLF will ~~thereafter~~ notify the applicant of its final underwriting decision and the reasons.

(BOD 10/9/09; BOG 10/30/09)

~~(CD)~~ If a firm has not been accepted for underwriting in a given year, the firm will not be considered for underwriting in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

~~(ED)~~ If in a given year the PLF has offered excess coverage to a firm on the basis of any special coverage or practice limitations, restrictions, or conditions, those same limitations, restrictions, or conditions will apply to any offers of excess coverage in the following two years unless there is a showing of an acceptable change in circumstances. It will be the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(BOD 10/2/91, BOG 11/8/91; BOD 9/23/92, BOG 11/13/92; BOD 9/24/93, BOG 11/19/93; BOD 10/3/97, BOG 11/15/97; BOD 8/16/02, BOG 10/2-3/02; BOD 10/28/03; BOG 11/15/03)

#### 7.400 EXCESS COVERAGE ASSESSMENT

(EA) Assessments for excess coverage will be determined through an underwriting formula and rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be approved by the Board of Governors upon recommendation of the PLF Board of Directors.

~~The assessment rates for excess coverage will be established by the Board of Governors upon the recommendation of the PLF Board of Directors.~~ ~~t~~The assessment may include debits or credits for firms based on prior claims, practice specialties, the extension of prior acts coverage (waiver of retroactive date), and other factors.

~~(EB)~~ The Board may establish requirements and procedures concerning the payment of excess coverage assessments including, but not limited to, payment due dates, cancellation for non-payment, and financing of assessments.

~~(GC)~~ The excess program may be assessable against the program participants, including firm members. Supplemental assessments will be made if required according to the terms of the excess coverage plan.

(BOD 12/6/91, BOG 3/13/92; BOD 9/23/92, BOG 11/13/92; BOD 10/9/09; BOG 10/30/09)

#### 7.4050 REINSURANCE

The Professional Liability Fund may obtain such reinsurance for the excess program as it deems appropriate and economically advantageous. ~~The Board of Directors will be PLF will obtain~~ provided a formal reinsurance security report at least annually concerning the reinsurers participating in the excess program.

(BOD 9/24/93, BOG 11/19/93; BOD 6/30/97; BOG 7/26/97)

#### 7.500 REPORTS

On a quarterly basis, the ~~C~~Chief ~~E~~Executive ~~O~~fficer will report to the Board of Directors concerning the status of claims with excess liability potential and will furnish such additional information as the Board of Directors may request.

(BOD 6/30/97; BOG 7/26/97)

#### 7.6700 ADDITIONAL EXCESS PROGRAM RULES

~~(A) Excess Coverage Inquiries: Former firm attorneys may inquiry-inquire in writing regarding~~

their former law firm's excess coverage status. Information provided may include whether the former attorney's firm had or has excess coverage, the coverage period (and applicable coverage limits, if any), and whether the former attorney is listed on the firm's coverage documents.

~~(D) Of Counsel/Part time Attorneys: There is no charge for attorneys who: (1) are over 65 years of age, (2) are in an "Of Counsel" relationship with the firm, (3) who practice no more than 250 hours per year, and (4) do not practice in any Higher Risk Practice Area.~~ <sup>[c.3]</sup>

(B) Coverage Limits and Primary Coverage: A firm which obtains excess coverage from the PLF must obtain the same amount of excess coverage for each member of the firm. Excess coverage will not be extended to any firm which includes any attorney who does not maintain current primary PLF coverage unless the firm obtains coverage for the attorney under the provisions of Section (D) below. Firms will not be offered excess coverage limits over \$1.7 million unless they have maintained excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage. Firms may be offered coverage excess coverage over \$1.7 million without having had excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage if the firm does not present an unacceptable level of risk and the firm can demonstrate that the reason for the limits increase is due solely to client coverage requirements (See Section (M) below regarding coverage limits restrictions at the \$9.7 million level).

(C) Prior Acts Coverage/Retroactive Date:

(1) The retroactive date applicable to claims made under the excess coverage plan will be the same retroactive date that applies under the applicable primary PLF Claims Made Plan or Plans or the

firm's retroactive date, whichever date is more recent.

(2) The PLF may give a credit to firms with recent excess coverage retroactive dates according to the following schedule:

<u>Period between Firm Retroactive Date and Start of Coverage Period</u>	<u>Excess Assessment Credit</u>
0 months to 18 months	50 percent
Over 18 months to 30 months	30 percent
Over 30 months to 42 months	15 percent
Over 42 months	No credit

The PLF may choose not to offer the credit to a firm for the underwriting considerations stated at Policies 7.250 and 7.350.

(D) Non-Oregon Attorneys and Out-of-State Branch Offices:

(1) Firms with non-Oregon attorneys or out-of-state branch offices may be offered coverage subject to the Excess Program underwriting criteria, the restrictions of this section and any other additional underwriting and coverage limitations imposed by the PLF or its reinsurers. For the purposes of PLF Policy 7.700(E), registered patent agents will be treated the same as non-Oregon attorneys. Non-Oregon attorneys whose principal office is in Oregon must be practicing in areas of law that do not require Oregon bar membership.

(a) Excess coverage may be offered to firms which maintain out-of-state branch offices if the attorneys in such branch offices meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and the reinsurers. Coverage will not be offered for branch offices in any state determined by the PLF to represent an unacceptable level of risk.

(b) Excess coverage may be offered to firms with non-Oregon attorneys if the non-Oregon attorneys maintain principal offices in Oregon and if the non-Oregon attorneys meet the underwriting criteria established for Oregon firms and such additional criteria as may be established by the PLF and its reinsurers.

(2) The PLF may establish conditions, terms, and rates for coverage for firms with non-Oregon attorneys and/or out-of-state branches, including additional endorsements and exclusions. The PLF may offer "drop-down" coverage for the firm for any firm members not covered by the PLF primary fund, subject to such deductibles or self-insured retentions as the PLF may establish.

(3) The PLF ~~will~~ may not offer excess coverage to any firm if the total number of out-of-state lawyers in the firm exceeds more than 30% of total firm lawyers at the time of application or at any time during the past five years.

(4) Unless otherwise determined by the PLF, firms will be charged for excess coverage for non-Oregon and out-of-state attorneys at a per-attorney rate equal to the current primary rate plus the rate for excess coverage applicable to other firm attorneys.

(5) Coverage for non-Oregon and out-of-state attorneys will be subject to a deductible of \$5,000 per claim.

(BOD 10/21/05; BOG 11/19/05; BOD 6/27/08; BOG 7/18/08; BOD 10/9/09; BOG 10/30/09)

(EF) Installment Payment Plan:

(1) Firms will have the option of paying the excess coverage assessment on an installment basis as follows:

<u>Payment Due Date</u>	<u>Percent of Total</u>
January 1	40%
May 1	35%

(2) Firms ~~which~~ that choose the installment payment plan will be charged a service charge equal to \$25 plus interest of 7% per annum on the outstanding balance. The service charge must be paid with the first installment and is non-refundable. Installment payments are only available in a given year if the coverage period for a firm begins prior to March 1; if the coverage period for a firm begins on March 1 or later, the firm will be required to pay its annual excess assessment in a single payment.

(3) Firms will have a ten-day grace period for payment of installments. If payments ~~are~~ not received during the grace period, the firm's excess coverage plan will be canceled as provided under the excess coverage plan. The PLF may, but will not be required to, reinstate coverage if payment of an installment is made within ten days after the expiration of a grace period, and may require that the balance of the firm's assessment for the year be paid in full as a condition of reinstatement.

~~(G) Application: The Board of Directors approves the answers shown on the marked copy of the application and supplements attached to these rules as indicating good practices or acceptable levels of risk in accordance with Policy 7.300(A)(8).~~

(FH) Cancellation: If an excess coverage plan is canceled by the PLF, the assessment will be determined on a pro rata basis. If excess coverage is canceled, the firm will still remain liable for supplemental assessment but on a pro rata basis according to the period of coverage during the year.

~~(I) (Reserved)~~

**(G) Predecessor Firm Endorsement:**

(1) A former firm which does not meet the Excess Plan definition of a “predecessor firm” may be added for underwriting reasons as a “predecessor firm” by special endorsement. The following conditions, among others, must ordinarily be met:

(a) The former firm is no longer engaged in the practice of law;

(b) The former firm is not covered by any excess policy, including extended reporting coverage under such policy;

(c) The former firm and the attorneys who worked for the firm do not present an unacceptable level of risk in the view of the PLF; and

(d) At least 50 percent of the firm attorneys who were with the former firm during its last year of operation and who are presently engaged in the private practice of law in Oregon will carry current PLF excess coverage during the year.

The PLF may impose special limitations or conditions, and may impose an additional assessment for underwriting reasons as a condition to granting the endorsement, or may decline to grant the endorsement for underwriting reasons.

(2) No firm may be listed as a predecessor firm (by endorsement or otherwise) for the same or an overlapping period of time on more than one Excess Plan.

**(K) Firm Changes After the Start of the Coverage Period:**

(1) Except as provided in subsection (2), firms are not required to notify the PLF if an attorney joins or leaves the firm after the start of

the Coverage Period, and will neither be charged a prorated excess assessment nor receive a prorated refund for such changes. New attorneys who join after the start of the Coverage Period will be covered for their actions on behalf of the firm during the remainder of the year, but will not be covered for their actions prior to joining the firm. All changes after the start of the Coverage Period must be reported to the PLF on a firm’s renewal application for the next year.

(2) Firms are required to notify the PLF after the start of the Coverage Period if:

(a) The total number of current attorneys in the firm either increases by more than 100 percent or decreases by more than 50 percent from the number of current attorneys at the start of the Coverage Period.

(b) There is a firm merger. A firm merger is defined as the addition of one attorney who practiced as a sole practitioner or the addition of multiple attorneys who practiced together at a different firm (the “merging firm”) immediately before joining the firm with PLF excess coverage (the “current firm”). It is only necessary to report a firm merger to the PLF if the current firm is seeking to add the merging firm as a predecessor firm or specially endorsed predecessor firm to the current firm’s Excess Plan.

(c) There is a firm split. A firm split is defined as the departure of one or more attorneys from a firm with PLF Excess Coverage if one or more of the departing attorneys form a new firm which first seeks PLF Excess Coverage during the same Coverage Period.

(d) An attorney joins or leaves an existing branch office of the firm outside of Oregon.

(e) The firm establishes a new branch office outside of Oregon.

(f) The firm or a current attorney with the firm enters into an "of counsel" relationship with another firm or with an attorney who was not listed as a current attorney at the start of the Coverage Period.

(g) A non-Oregon attorney joins, or leaves the firm.

In each case under this subsection (2), the firm's coverage will again be subject to underwriting, and a prorated adjustment may be made to the firm's excess assessment.

(L) Discretionary Continuity Credit:

(1) Discretionary Continuity Credit: Firms that are offered excess coverage may receive a continuity credit for each year of continuous PLF Excess Coverage (2% for one year, up to a maximum credit of 20% for ten years – see table below) at the underwriters discretion if the firm has no negative claims experience, does not practice in a Higher Risk Practice Area, and meets acceptable practice management criteria. See PLF Policy 7.300(A)&(C). ~~A renewing firm currently receiving a continuity credit may see a reduction in that credit if, at the time of renewal, the firm had a negative claims experience, is practicing in a High Risk Practice Area, or fails to meet acceptable practice management criteria.~~

(BOD 02/14/14, BOG 02/05/14)

Full Years of Continuous PLF Coverage of Applicable Firm  
 Continuity Credit  
 (As Percentage Assessment)

10 or more	20%
9	18%
8	16%
7	14%
6	12%
5	10%
4	8%
3	6%
2	4%
1	2%

~~(2) No firm will be entitled to receive a continuity credit if the firm is receiving a credit for a recent retroactive date under Policy 7.700(D)(2).~~

(BOD 6/20/03; BOG 9/18/03)

(J4) Extended Reporting Coverage:

~~(1) Firms which that purchase excess coverage for two full years will may be offered the following extended reporting coverage (ERC) options at the following prices (stated as a percentage of the firms' annual excess assessment for the last full or partial year of coverage):~~

~~(1)(2)~~

<u>Extended Reporting Coverage Period</u>	<u>ERC Premium</u>
12 months	100%
24 months	160%
36 months	200%
60 months	250%

~~If the last day of a firm's excess coverage is on or after July 1, the ERC premium will be calculated based on the firm's annual excess assessment for the year; if the last day of a firm's excess coverage is prior to July 1, the ERC premium will instead be calculated based on the firm's annual excess assessment for the prior calendar year if the firm carried excess coverage with the PLF during that year.~~

(2) A firm must exercise its right to purchase ERC and must pay for the ERC coverage within 30 days of termination or cancellation of its PLF excess coverage. The Chief Executive Officer may include wording in the Excess Coverage Plan to indicate that ERC options vary from year to year, and that any particular option may be unavailable in a future year.

(K4) Continuous Coverage: The PLF will not offer a renewing firm continuous coverage from January 1 unless the firm's renewal application is received by the PLF in substantially completed

form by January 10 (or the next business day if January 10 is a weekend or holiday). If a renewal application is received after that date and the firm is approved for underwriting, the coverage period offered to the firm will begin on the day the renewal application was approved for underwriting and the assessment will be prorated accordingly. Renewing firms may qualify for the discretionary continuity credits pursuant to subsection (L) so long as the firm renews its coverage no later than January 31. Renewal after January 31 will result in the automatic loss of any accumulated discretionary continuity credit.

(BOD 08/14/14; BOG 09/05/14)

(L) Current and Former Attorneys:

(1) \_\_\_\_\_ (1) — No attorney may be listed as a current attorney for the same or an overlapping period of time on more than one Excess Plan.

(2) \_\_\_\_\_ (2) — No attorney may be listed as a former attorney for the same or an overlapping period of time on more than one Excess Plan.

(M) Higher limits coverage: Firms who meet the additional underwriting criteria and procedures established by the PLF and its reinsurers may be eligible to purchase limits in excess of the \$4.7 million excess limits offered by the PLF's standard excess program. In accordance with reinsurance agreements, firms applying for higher limits coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(1) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms will be charged for higher limits excess coverage at

rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors. These rates are subject to reinsurer adjustment for firms meeting certain underwriting criteria.

(2) Firms will not be offered higher limits coverage above \$4.7 million unless they have maintained excess coverage with limits of at least \$4.7 million with the PLF or some other carrier for the prior two years.

(NQ) Non-Standard Excess Coverage: Firms who do not meet the underwriting criteria established by the PLF and its reinsurers under PLF Policies 7.300 and 7.350, may be eligible to purchase non-standard excess coverage offered by the PLF and its reinsurers. In accordance with reinsurance agreements, firms applying for non-standard excess coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(BOD 10/2/91; BOG 11/8/91; BOD 12/6/91; BOG 3/13/92; BOD 9/23/92; BOG 11/13/92; BOD 9/24/93; BOG 11/19/93; BOD 2/18/94; BOG 3/12/94; BOD 8/12/94; BOG 9/26/94; BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96; BOD 8/15/97; BOG 9/26/97; BOD 10/3/97; BOG 11/15/97; BOD 8/14/98; BOG 9/25/98; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 10/20/00; BOG 11/20/00; BOD 12/7/01; BOG 12/6/01; BOD 12/3/02; BOG 12/16/02; BOD 10/28/03; BOG 11/15/03; BOD 10/22/04; BOG 11/20/04; BOD 6/27/08; BOG 7/18/08)

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 3, 2015  
**From:** Carol J. Bernick, PLF CEO   
**Re:** PLF Policy 5.100

---

### **Action Recommended**

The PLF Board of Directors asks you to approve the attached changes to Section 5.100 of the PLF Policies.

### **Background**

The proposed changes raise the threshold to \$10,000 (from the current \$500) for checks requiring two signatures. This change is in keeping with the Bar's practices and was unanimously approved by the PLF Board on November 2, 2015. The second change vests with the CEO the responsibility to determine who may be a check signer, reporting any changes to the Board when they occur. The current policy requires the Board to approve any new check signer. Determining who should sign checks is an administrative function that is properly vested with the CEO. The Board approved this change in a 5-2 vote (two members were absent) on November 2, 2015. The PLF auditors expressed that both changes were acceptable to them.

Attachment

**CHAPTER 5  
FINANCIAL**

**5.100 BANKING**

(A) The Board of Directors will designate bank depositories under the standard bank resolution forms. Authorized signatories to such bank accounts will be the Chief Executive Officer or Chief Financial Officer or one or more employees ~~recommended-designated~~ by the Chief Executive Officer and reported to the Board of Directors. ~~and authorized by the Board of Directors.~~ One signature will be required on any check under ~~\$2,500~~10,000, with two signatures required on any check of ~~\$2,500~~10,000 or more. At least one signature on any check of \$25,000 or more will be the signature of the Chief Executive Officer or the Chief Financial Officer. In the absence of the CEO and CFO, either one may designate either the Director of Administration, Director of Claims, or Director of Personal and Practice Management.

(B) Any check payable to a Director, the Chief Executive Officer, or the Chief Financial Officer will bear two signatures, not to include the signature of the payee.

(C) The Chief Executive Officer or Chief Financial Officer will review a copy or record of any check not signed by either of them, together with supporting documentation, within ten days of disbursement.

(BOD 12/6/91; BOG 3/13/92; BOD 12/3/93; BOG 3/12/94)

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 19, 2015  
**From:** MCLE Committee  
**Re:** MCLE Sponsor Accreditation Fee Policy

---

### Action Recommended

Consider and approve the MCLE Committee's proposal to eliminate Regulation 4.350(e), which provides an exemption from payment of the sponsor fee by local bar associations in Oregon.

### Background

At its December 2014 meeting, the MCLE Committee began discussion of the Board of Governors' request to recommend a sponsor accreditation fee policy that applies equally (or at least more equitably) to all applicants. The focus of the discussion was on Regulation 4.350(e), which is set forth below.

Reg 4.350 (e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.

A 2005 House of Delegates resolution that expressed concerns about small, rural bar associations that charge low or no member fees and offer a small number of CLE programs as a way to promote networking opportunities for their members resulted in this regulation being approved by the Board of Governors at its November 2005 meeting. The regulation also applies to the larger local bars that offer frequent CLEs and realize significant savings from not having to pay the sponsor accreditation fee.

The Committee has set forth two options for review by the Board of Governors. Option 1, which is favored, is to eliminate the exemption entirely.

Option 1:

~~Reg 4.350 (e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.~~

Reasons why this option is favored:

- It addresses the BOG's concern that the existence of any exemption does not fairly apportion the costs of this regulatory program among CLE providers.
- Even without a specific exemption for local bars, a sponsor could still use the workaround already in the rules (having an OSB member submit an accreditation application as an individual member rather than a sponsor). See Rules 4.3(b) and (f).

Rule 4.3(b) A sponsor or individual active member may apply for accreditation of a CLE activity by filing a written application for

accreditation with the MCLE Administrator. The application shall be made on the form required by the MCLE Administrator for the particular type of CLE activity for which accreditation is being requested and shall demonstrate compliance with the accreditation standards contained in these Rules.

Rule 4.3 (f) Accreditation of a CLE activity obtained by a sponsor or an active member shall apply for all active members participating in the activity.

- The sponsor fee is only \$40 for programs that are four or fewer credit hours, which is the majority of programs offered by local bars. In addition, many of the programs would qualify for the series rate, which is set forth in Regulation 4.350(c):

Reg 4.350(c) Sponsors presenting a CLE activity as a series of presentations may pay one program fee of \$40.00 for all presentations offered within three consecutive calendar months, provided:

(i) The presentations do not exceed a total of three credit hours for the approved series; and

(ii) Any one presentation does not exceed one credit hour.

Please note that the Committee is aware that eliminating this exemption will have a financial impact on all local bar associations but, given the workaround in Rule 4.3, the low cost of the sponsor fee and the series rate available, believes the economic impact will not be significant.

The current regulation applies only to local bar associations in Oregon. It does not apply to specialty bars. Around the same time that the BOG asked the MCLE Committee to recommend a sponsor accreditation fee policy that applies equally (or at least more equitably) to all applicants, the Oregon Women Lawyers ("OWLS") asked the MCLE Committee to exempt it from the sponsor accreditation fee as well.

In order to address these two competing requests, the MCLE Committee also proposes a second option for the BOG to consider.

Option 2:

Reg 4.350 (e) All local and specialty bar associations in Oregon are exempt from payment of the MCLE program sponsor fees if the program is offered at no charge, excluding meal costs, to its members. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.

Committee members agreed that this proposed regulation is more equitable than the current regulation because it also applies to specialty bars. It also limits the exemption only to local and specialty bars that offer the program at no charge to its members. Thus, the Multnomah Bar Association, which is the second largest bar association in the state and currently exempt from payment of the sponsor fee, would be required to pay the sponsor fee unless it is offering free programs to its members.

Because of the stipulations in this option, it may require significant additional software programming, which will result in increased costs for the OSB. It will also require developing a definition

of a “specialty bar.” Such a definition may look something like this:

A specialty bar is an association that represents a particular demographic segment (age, gender, race, ethnicity) of the Oregon State Bar and addresses the issues or concerns of that group.

Many OSB Sections offer free programs to their members and they likely will want to be included in the exemption. It is also possible that other providers that offer free programs, such as the Oregon New Lawyers Division and the Professional Liability Fund, will want to be included in the exemption. Therefore, even if the BOG adopted a narrow definition of “specialty bar” at the outset, it is likely that other providers will ask the MCLE Committee and Board of Governors to apply the exemption to them in the future.

Therefore, although both options are acceptable to the MCLE Committee, because of the reasons set forth above, it recommends the BOG approve Option 1.

## **New Lawyer Mentoring Program Rule**

*(adopted by the Oregon Supreme Court December 6, 2010; revised January 16, 2013)*

- 1. Applicability.** All lawyers admitted to practice in Oregon after January 1, 2011 must complete the requirements of the Oregon State Bar's New Lawyer Mentoring Program (NLMP) except as otherwise provided in this rule.
- 2. Administration of the NLMP; MCLE Credit.**
  - 2.1. The OSB Board of Governors shall develop the NLMP curriculum and requirements in consultation with the Supreme Court and shall be responsible for its administration. The OSB Board of Governors shall appoint a standing committee to advise the BOG regarding the curriculum and administration of the NLMP.
  - 2.2. The OSB Board of Governors may establish a fee to be paid by new lawyers participating in the NLMP.
  - 2.3. The OSB Board of Governors shall establish by regulation the number of Minimum Continuing Legal Education credits that may be earned by new lawyers and mentors for participation in the NLMP.
- 3. New Lawyer's Responsibilities.**
  - 3.1. Unless deferred or exempt under this rule, new lawyers must enroll in the manner prescribed by the OSB.
  - 3.2. The new lawyer shall be responsible for ensuring that all requirements of the NLMP are completed within the requisite period including, without limitation, filing a Completion Certificate executed by the assigned mentor attesting to successful completion of the NLMP.
- 4. Appointment of Mentors.**
  - 4.1 The Supreme Court may appoint mentors recommended by the NLMP Committee. Except as otherwise provided in this rule, ~~To~~ to qualify for appointment, the mentor must be a member of the OSB in good standing, with at least five years of experience in the practice of law, and have a reputation for competence and ethical and professional conduct.
  - 4.2 Attorneys who are not members of the Oregon State Bar, but are qualified to represent clients before the Social Security Administration, the Internal Revenue Service, the United States Patent and Trademark Office, or the United States Citizenship and

Immigrations Services office, are eligible to serve as a mentors, provided they meet the other requirements of Section 4.1 of this rule.

4.3 Attorneys who are not members of the Oregon State Bar may be appointed with the recommendation of the NLMP Administrator.

4.4 Attorneys described in Section 4.2 or Section 4.3 must be licensed to practice law in at least one U.S. state, possession, territory, commonwealth, or the District of Columbia, and shall be subject to the same additional criteria included in section 4.1 of this rule.

## **5. Deferrals.**

5.1. The following new lawyers are eligible for a temporary deferral from the NLMP requirements:

5.1.1. New lawyers on active membership status whose principal office is outside the State of Oregon and for whom the OSB determines that no mentorship can be arranged conveniently; and

5.1.2. New lawyers serving as judicial clerks; and

5.1.3. New lawyers who are not engaged in the practice of law.

5.2. The NLMP administrator may approve deferrals for good cause shown. Such deferrals shall be subject to the continued approval of the administrator.

5.3. A new lawyer who is granted a deferral under section 5.1.1 of this Rule and who, within two years of beginning to practice law in any jurisdiction, establishes a principal office within the State of Oregon, must enroll in the next NLMP session. A new lawyer whose participation in the NLMP was deferred under sections 5.1.2 or 5.1.3 of this rule must enroll in the next NLMP session following the conclusion of the judicial clerkship or the lawyer's entering into the practice of law.

## **6. Exemptions.**

6.1. New lawyers who have practiced law in another jurisdiction for two years or more are exempt from the requirements of the NLMP.

6.2 . The NLMP administrator may grant exemptions for good cause shown.

## **7. Certificate of Completion; Noncompliance.**

- 7.1. Each new lawyer is expected to complete the NLMP ~~within 12 months of the date of enrollment, but in no event later than December 31 of the first full year of admission to the bar by the deadline assigned to them by the OSB,~~ unless the new lawyer has been granted an extension of time ~~by the OSB.~~ The Certificate of Completion must be filed with the bar on or before that date.
- 7.2. A new lawyer who fails to file a Certificate of Completion by ~~December 31 of the first full year of admission the assigned deadline~~ shall be given written notice of noncompliance and shall have 60 days from the date of the notice to cure the noncompliance. Additional time for completion of the NLMP may be granted for good cause shown. If the noncompliance is not cured within the time granted, the OSB Executive Director shall recommend to the Supreme Court that the affected member be suspended ~~from membership in the bar.~~
- 8. Reinstatement.** A new lawyer suspended for failing to timely complete the NLMP may seek reinstatement by filing with the OSB Executive Director a Certificate of Completion and a statement attesting that the applicant did not engage in the practice of law during the period of suspension except where authorized to do so, together with the required fee for the NLMP and a reinstatement fee of \$100. Upon receipt of the foregoing, the Executive Director shall recommend to the Supreme Court that the member be reinstated. The reinstatement is effective upon approval by the Court. Reinstatement under this rule shall have no effect upon the member's status under any proceeding under the Bar Rules of Procedure.

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim No. No. 2014-12 ALLEN (Scott) Request for BOG Review

---

### Action Requested

Consider the claimant's request for BOG review of the Client Security Fund Committee's denial of his claim for reimbursement.

### Discussion

Claimant retained Sara Allen in April 2013 to represent him in obtaining custody of his two children. Shortly after being retained, Allan prepared and filed the initial pleadings and a motion seeking an immediate ex parte grant of custody based on alleged emergency. That motion was denied for lack of evidence of urgency. Communication between Claimant and Allen was sporadic, although the court docket indicates she continued to work on the matter. A limited judgment was entered in early September, and later in the month it appears Allen submitted a second emergency custody motion, which was also denied.

Claimant's last contact with Allen was in October 2013, when she reported having attended a status conference, that a custody evaluator had been agreed upon, and that Claimant's case was set for hearing in February 2014. Despite many attempts to contact Allen by telephone and email, Claimant heard nothing more from Allen. In January 2014 Claimant retained other counsel to complete his matter.

Claimant contends he had to "start over" with the new attorney and seeks an award of the entire \$5,000 he paid to Allen. There was no written fee agreement and the terms are not clear. In his application to the CSF, Claimant describes the fee as "a \$5,000 retainer and with agreement of further billing if necessary." However, in response to DCO's inquiry<sup>1</sup> Claimant said his understanding was that the \$5,000 was a flat fee for the representation.

CSF Rule 2.2 allows a reimbursement only when the loss is caused by the lawyer's dishonest conduct. In the case of the lawyer's refusal to refund the unearned portion of a fee, there must be evidence either that the lawyer (1) made a false promise to provide services in exchange for the fee or (2) failed to maintain the advance payment in trust until earned. A lawyer's failure to complete a legal engagement does not by itself constitute dishonest conduct. (CSF Rule 2.2.2.)

---

<sup>1</sup> Prior to filing his application with the CSF, Claimant had not made a disciplinary complaint to the bar. As is our practice, the CSF application was shared with DCO, who opened a file and began an investigation.

Allen clearly provided some services in exchange for the fees advanced by Claimant; it is not clear whether the fees were properly maintained in trust until earned.

Even if Allen failed to maintain the advance fees in trust CSF Rule 2.2.3 allows reimbursement of a legal fee only if:

- (1) the lawyer provided no legal services to the client in the engagement;
- (2) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or
- (3) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

While the CSF Committee was sympathetic to the difficulty faced by a client who is abandoned by his lawyer in the middle of a case and the consequent additional costs that flow from that, the Committee denied Claimant's application on its conclusion that the services provided by Allen were more than "minimal or insignificant," and on the absence of an independent determination of any refund owed to the Claimant.

In his request for BOG review, Claimant alleges he received no value from Allen's services, because he eventually secured custody of his children through the services of the new lawyer (albeit based on the same information offered by Allen in the temporary custody motions). It does not appear his new lawyer had to refile the pleadings or re-do other work performed by Allen, but merely picked up where she had left off.

Attachments: Application for Reimbursement  
Investigator's Report  
Claimant's Request for Review

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Claim 2013-24 GOFF (Mantell) Request for BOG Review

---

### **Action Requested**

Consider claimant's request for BOG review of the Client Security Fund Committee's denial of his application for reimbursement.

### **Discussion**

#### *Procedural History of Claim*

In March 2013, Elliott Mantell submitted a claim for reimbursement of \$47,609, comprised of \$37,500 for fees paid together with accrued interest at 9%.<sup>1</sup> The CSF Committee considered the claim at its meeting in November 2013 and voted unanimously to deny it on the grounds that there was insufficient evidence of dishonesty, the lawyer provided more than minimal services, and there was no independent determination that Mantell was entitled to a refund.

Upon being informed of the Committee's decision, Goff asked that the BOG review the Committee's decision. Because he claimed to have additional information that the Committee had not seen and wanted to make an oral presentation, he agreed to have the claim returned to the Committee for further evaluation. As it turned out, however, although the Committee waited throughout 2014, Mantell was unable to make any of the Committee's meetings and also did not provide any additional material for the committee to consider. The Committee discussed Mantell's claim again at some length in November 2014, reaching the same conclusion as it had initially.

At its January 2015 meeting, based on Mantell's failure to provide more information, the Committee decided that Mantell's request for review should be submitted to the BOG. When Mantell learned of that decision, he again asked for more time; he eventually appeared at the Committee's July 2015 and September 2015 meetings. At each appearance, he reiterated his belief that Goff had not earned the fees, but was not able to provide any information the CSF Committee had not already considered. After discussion, the Committee again denied Mr. Goff's claim and he made a timely request for BOG review.

---

<sup>1</sup> CSF Rule 2.9 provides that awards shall not include interest on a judgment or any amount in excess of funds actually misappropriated by the lawyer.

### *Goff's Representation*

Mantell hired Eugene attorney Daniel Goff on April 7, 2007 in connection with several pending matters, including defense against a claim for outstanding legal fees and a possible legal malpractice action against his prior attorney. Goff agreed to handle Mantell's several legal matters for a fixed fee of \$50,000. On May 14, Goff sent Mantell a proposed fee agreement requiring payment of the \$50,000 fee in advance, plus an advance of \$5,000 toward costs. Mantell rejected the agreement and over the next few weeks there was an exchange of correspondence about the terms and scope of the representation. Mantell's principal objection was with the "earned upon receipt" language, preferring that Goff earn fees incrementally as work was completed. No fee agreement was ever signed.

Despite the absence of a fee agreement, between April 7 and June 7, 2007 Mantell deposited \$42,500 with Goff (which included a \$5,000 advance for costs), which Goff deposited into his trust account. Between April 10 and July 6, 2007 Goff withdrew most of the funds. Mantell terminated Goff's representation on July 6, complaining that Goff wasn't providing timely representation.

Mantell requested an accounting and a refund of the fees he'd paid. On July 24, Goff provided an accounting for costs of \$3,294.65 and enclosed a check for \$1,705.35, representing the balance of the \$5,000 cost advance. Goff refused to refund any of the \$37,500 allocated to his fees, claiming to have worked more hours than he had been paid for. On July 12 and July 26, Goff withdrew the last of Mantell's funds, totaling \$2,673, from his trust account.

### *Bar Complaint and Civil Proceedings*

In April 2008, Mantell filed a complaint with the Bar. In December 2008 he filed a civil suit against Goff seeking return of the fees he'd paid. In a mediated settlement in which he admitted no liability, Goff agreed to confess judgment for \$37,500 and Mantell agreed not to file the judgment so long as Goff made \$500 monthly payments. Goff made three of the monthly payments, before filing a no-asset Chapter 7 bankruptcy petition in August 2010.

Four disciplinary matters, including Mantell's complaint, were consolidated and tried over five days in late 2010. The trial panel issued an opinion on March 28, 2011 finding that Goff had violated several rules and recommending an 18-month suspension. The opinion was affirmed by the Supreme Court on June 2012. Goff filed a Form B resignation on December 13, 2012.

Among the charges relating to Goff's representation of Mantell were allegations that Goff had charged and collected an excessive fee, and the bar sought restitution for Mantell. Witnesses before the trial panel included Mantell, the adverse attorney during the time Goff represented Mantell, and one of the attorneys who took over Mantell's legal matters after Goff was discharged. Goff was examined and cross-examined at length.

Goff submitted a recap of the time he spent on Mantell's case showing 183.2 hours between April 7 and July 7 (plus another 3.5 between July 8 and July 18, after he had been discharged). Most entries cover periods of 7-10 days each and the first five periods reflect 20, 25, 25, 30 and 33 hours worked, respectively. Because there were no daily contemporaneous records of the time Goff spent, the bar argued the recap was very likely created after-the-fact and had no probative value. At the same time, the record contains numerous exhibits reflecting frequent communications between Goff and Mantell about a myriad of issues during the three months of the representation.

### *Trial Panel and Supreme Court Decisions*

The trial panel found that Goff "was not a credible witness on his own behalf." It also found that Mantell was a difficult, argumentative, demanding and time-consuming client. The excessive fee charge and request for restitution were dismissed with the following explanation:

Whether or not [Goff] performed all of the work he claims cannot be established; but the work he undertook to perform was substantial, time lines were short, and Mr. Mantell was a difficult client who interrupted [Goff] on a nearly daily basis.

The trial panel also found that the bar had not proven by clear and convincing evidence that Goff hadn't earned the fees he withdrew from his trust account and declined to order restitution to Mantell. The Supreme Court affirmed the trial panel opinion in its entirety, including the denial of restitution for Mantell.

## **Committee Decision**

For a claim of unearned fees, CSF Rule 2.2 requires proof of dishonesty as well as evidence that the lawyer provided no or only minimal services to the client:

2.2.1 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" shall include (i) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee or (ii) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.

2.2.2 A lawyer's failure to perform or complete a legal engagement shall not constitute, in itself, evidence of misrepresentation, false promise or dishonest conduct.

2.2.3 Reimbursement of a legal fee will be allowed only if (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee shall exceed the actual fee that the client paid the attorney.

The CSF Committee concluded there was insufficient evidence of dishonesty on Goff's part. It appears he began work immediately on Mantell's matter, so there was no "false

promise to provide legal services.” Additionally, the record shows that Goff deposited all funds received from Mantell into his trust account.

The difficulty in this case was the nature of the fee agreement. Goff seems to have treated the fees initially as earned on receipt and withdrawn from trust without regard to the amount of time he worked. In response to the disciplinary complaint and at trial, however, he relied on a recap of his time spent on Mantell’s matter to justify his fee. Mantell, on the other hand, insists that he and Goff agreed to a fixed fee and disagreed only as to whether it was earned on receipt or in stages as work was completed.

If the fee was a fixed fee, it is undisputed that Goff did not earn all of it, as he did not complete the matters for which he was engaged. However, the Committee concluded that the requirements of Rule 2.2.3 were not met. The Committee found no basis to conclude that Goff’s services were only “minimal or insignificant.” Moreover, there was no independent determination of the amount of refund to which Mantell was entitled.<sup>2</sup> The Committee was strongly influenced by the decision of the trial panel, affirmed by the Supreme Court, that it was impossible to determine the amount of work performed by Goff and the refusal to order restitution in any amount. The Committee gave no weight to the fact that Goff stipulated to a judgment in favor of Mantell for the entire amount of the fees paid.

### **Request for Review**

Mantell has not provided any new information in conjunction with the Committee’s reconsideration of his claim or his request for review, referring only to the volume of material accumulated by DCO in its prosecution of Goff. He also argues that weight should be given to the faith that Disciplinary Counsel’s Office had in his view of Goff’s work. In a series of emails, Mantell expressed his objection to the Committee’s conclusion thusly:

“Mr. Goff did virtually no work. If he billed for more than 7- 8 hours of work it was fraudulent. He lied at the hearing....

Other attorneys who have looked over his billing statement which was 1 single sheet of paper listing 186 hours of work noted to me that it was fraudulent and absurd. They said that if he did do the hours he stated I would have had to be his only client the first 5 weeks he billed for. Also of note it was not an hourly agreement but a fixed fee agreement. The boxes of documents he said he reviewed were clearly never opened....

I hope the Board and committee understood that I had to hire another lawyer Robert Snee and pay him about \$10,000 in my civil suit to get Goff's confession of judgment [sic] as well as hire Margaret Lieberhan [sic] and Matthew McKean and one other attorney at the cost of approximately \$25,000 (note this is from memory at this time) to finish up the work that I had contracted Goff to do....

---

<sup>2</sup> In his deposition, Goff apparently admitted that he should not have withdrawn the last \$3,673 from trust, as he had been discharged and knew that Mantell was disputing Goff’s right to the fees. However, he never returned the funds to trust or reimbursed Mantell, claiming to be waiting for the trial panel to tell him what to do.

Additionally I am now speaking to another attorney on these issues who was of the opinion that perhaps my case came at a difficult time for the CSF in light of the Gruetter and McBride pay outs.”

While this was not a close case for the CSF Committee and it was dubious about the quantum of work performed by Goff, the Committee was not persuaded that Goff was dishonest or provided only minimal services. As indicated, the Committee decision was strongly influenced by the findings and conclusions of the trial panel and the Supreme Court and found no compelling basis to reach a different result.

Attachments:   Mantell Application for Reimbursement  
                  Committee Report  
                  Goff Billing Statement  
                  Trial Panel Opinion

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** CSF Awards Recommended for Payment

---

### Action Requested

Consider the following claims for which the Client Security Fund Committee recommends awards:

HALL (Meier-Smith)	\$ 9,333.92
ROLLER (Games)	12,252.00
DICKEY (Patapoff)	25,485.00
STEDMAN (Husel)	6,500.00
CYR (Hallam)	20,207.24
GERBER (Koepke)	13,500.00
GERBER (Lawson)	10,000.00
GERBER (Moore)	5,000.00
GERBER (Roelle)	9,740.00
<b>TOTAL</b>	<b>\$111,518.16</b>

### Discussion

#### **HALL (Meier-Smith) - \$9,333.92**

Claimant retained C. David Hall in 2009 to pursue claims against two drivers for injuries sustained in a motor vehicle accident. She was unable to provide much detail about the representation, other than it had been a contingent fee case. The investigator developed information by reviewing the court file, contacting opposing counsel, and examining Hall's subpoenaed bank records.

Hall filed suit in 2011 and the case was resolved by a settlement of \$27,000 in mid-2012. Hall deposited the settlement funds into his trust account, then paid himself \$9,510 for his fees and costs, leaving \$17,490 as Claimant's share.

Hall made payments to two of Claimant's medical providers totaling \$7,277.08, leaving a balance of \$10,212.92 owed to claimant. His bank records show one payment to her of \$879, but the remaining \$9333.92 was never delivered or accounted for prior to Hall's suspension on unrelated charged in May 2013. At the time Claimant filed her request for reimbursement with the CSF, Hall's trust account had a balance of \$52.

The CSF Committee concluded that Hall misappropriated his client's funds, entitling Claimant to an award of \$9,333.92. Given that Hall has never sought reinstatement and his whereabouts are unknown, the committee recommends waiving the requirement that she obtain a civil judgment against him.

### **ROLLER (Games) - \$12,252**

Claimant hired Dale Roller in May 2013 to represent him on two felony charges in Curry County. Claimant paid \$17,000 for what Roller's fee agreement characterized as "earned on receipt" and "non-refundable" fee. Claimant also gave Roller \$10,000 for bail. Claimant was subsequently released from custody and Roller received a bail refund of \$7,491.36 (there is no explanation of why the entire bail wasn't refunded).

Games terminated Roller's representation within a few months (and before his criminal case concluded). When Roller refused to refund any of the prepaid fee, Games complained to the bar. The SPRB authorized formal proceedings alleging that Roller had charged an excessive fee and failed to include required language in his fixed fee agreement. The case resulted in a Diversion Agreement that included Roller's stipulation that he would resolve the fee dispute with Claimant through the OSB Fee Arbitration Program and pay any amount found to be unearned.

The fee arbitration panel concluded that Roller was only entitled to \$5,000 of the \$15,000 he had collected for fees and awarded Claimant \$19,491.36 (the excess \$12,000 in fees collected plus the \$7,491.36 bail refund).

Roller disagreed with the fee arbitration award and filed a petition in court to have it vacated. Among other arguments, he disputed the arbitrators' jurisdiction over the bail refund, since it didn't constitute "fees." When asked why he didn't return the bail refund to Claimant, Roller explained that Claimant had refused to accept less than the full \$10,000, but that Roller failed to follow up and determine why the court refunded a lesser sum. He also claimed to be holding the money to avoid being sued. The bail money had been put up by Claimant's sister and Roller feared he'd be sued by her if he returned the money to Claimant or by Claimant if he delivered the bail refund to the sister.

Roller's petition to vacate the arbitration award was unsuccessful and his petition was dismissed.<sup>1</sup> Through negotiation facilitated by the CSF investigator and Claimant's attorney, Roller eventually refunded the bail money to Claimant. However, he continues to fail and refuse to pay the remaining \$12,000 of the arbitration award.

---

<sup>1</sup> Roller's petition was premature. ORS 36.700 allows the prevailing party in arbitration to petition for an order confirming the award. The other party may then petition for vacation or modification of the award. Roller filed his petition before Claimant had a chance to seek confirmation; Claimant's *pro bono* counsel in the matter has cautioned him against doing so now because Roller has made it clear that he will continue to challenge the award.

The CSF doubts that Roller has the ability to pay Claimant. At one point in the representation Roller apparently told Claimant he was “bankrupt and living in a trailer.” While he was on diversion, the bar received more complaints against Roller, including another from Claimant for Roller’s mishandling of the bail refund. In addition to authorizing prosecution on those, the SPRB revoked Roller’s diversion for his failure to refund the unearned fees to Claimant.

The CSF recommends an award to Claimant of \$12,252, which includes the court fee he paid to respond to Roller’s petition to vacate the arbitration award. (CSF Rule 2.9 allows for an award to include a claimant’s costs awarded by the court, but subsequent inquiry establishes that the court did not award Claimant his costs in responding Roller’s petition.)

**DICKEY (Patapoff) - \$25,485**

Claimant hired Jeffrey Dickey in March 2013 to defend him against criminal case and to pursue a forfeiture recovery. Claimant was incarcerated and gave Dickey his power of attorney for the purpose of vacating Claimant’s apartment, selling or storing his personal property, paying his bills and generally acting on Claimant’s behalf while he was incarcerated.

Dickey agreed to handle the forfeiture recovery on a 40% contingency fee. It is not clear on what basis he agreed to handle Claimant’s other legal matters. Claimant has virtually no information of how Dickey disposed of his personal effects; Dickey’s responses are incomplete and he offers no supporting documentation. Claimant values his personal property at nearly \$42,000 and believes Dickey sold it for a fraction of its value; he has seen none of the proceeds and Dickey hasn’t provided an accounting.

The power of attorney gave Dickey access to Claimants account at Wells Fargo, into which Claimant’s monthly Social Security payments were deposited. Dickey’s assistant and domestic partner, Zeke, also had access to the Wells Fargo account. Between March 2013 and September 2014 when Claimant fired Dickey, there were hundreds of cash withdrawals and debit card expenditures from the Wells Fargo account for things other than paying Claimant’s bills. Rather, it appears that Dickey used Claimant’s account for their own use, making withdrawals at bars and casinos, and making purchases for restaurant meals, gas, home improvement, and entertainment. Dickey initially blamed the misuse on Zeke, but Zeke was arrested and jailed in April 2014, and the bank activity continued for another several months.

In response to inquiries from DCO, Dickey said some of the withdrawals were payment for legal and other services provided to Claimant, but despite requests, he has never invoiced Claimant or documented the services he provided. In general, Dickey had no credible explanation for his handling of Claimant’s affairs.

The investigation revealed that during the time Dickey (and Zeke) had access to the Wells Fargo account, a little over \$28,000 was withdrawn. Claimant believes that only about

\$5,500 was for authorized expenditures (car insurance and the like). The investigator's reconciliation indicates that Dickey misappropriated at least \$22,260 from the Wells Fargo account.

On the forfeiture matter, Dickey received \$9,800 from the US Treasury in October 2013. Dickey's 40% share of that was \$3,920, leaving \$5,580 for Claimant. Bank records reflect a \$500 disbursement to Claimant in November. The state of the records makes it impossible to determine what happened to the remaining \$5,080, although there are unaccounted-for deposits as well as withdrawals during the month. Ultimately, the CSF concluded that Dickey misappropriated at least \$3,225 of the forfeiture recovery.

DCO is investigating Claimant's and three other complaints against Dickey, who was suspended on September 24, 2014 for failure to respond to their inquiries. Dickey stipulated to an interim suspension during the pendency of the various disciplinary matters, claiming to be experiencing serious health issues. Dickey did not respond to the formal complaint and a default order was entered August 31, 2015. The bar is seeking disbarment based on the severity of Dickey's misconduct.

The CSF recognizes that the documentation for its findings is confusing, but is satisfied that the losses have been sufficiently established to justify an award of \$24,485 (\$22,260 + \$3,225). Given that Claimant remains incarcerated and Dickey is likely judgement-proof, the Committee also recommends that the requirement for a civil judgment be waived.

### **STEDMAN (Husel) - \$6,500**

Claimant, a resident of Nevada, hired Michael Stedman in January 2012 to represent him in a Jackson County criminal case. Claimant paid an initial \$2,500 retainer. In March 2012 Stedman demanded and Claimant paid a \$4,000 "trial fee." Over the next year, Stedman repeatedly broke telephone appointments. In July 2013, however, Stedman told Claimant he could resolve the criminal charges through a civil compromise if he wired Stedman \$5,000 immediately, which Claimant did.

There was, in fact, no such compromise, and a month later Claimant received a notice to appear, but Stedman told him he could ignore it. In October 2013, Claimant received another notice to appear or be arrested. He called Stedman, who said he was quitting practice to travel the world, but if Claimant would advance \$14,000, Stedman would handle the upcoming trial. Claimant asked for time to think it over, but when he called Stedman two days later, his telephone had been disconnected. Claimant then hired another lawyer, who was quickly able to effect a civil compromise. He was also able to get a refund from Stedman of the \$5,000 Claimant had previously deposited for that purpose.

Other than filing a notice of representation and seeking several continuances, there is no evidence that Stedman did anything on Claimant's case.

Stedman has failed and refused to refund any of the \$6,500 advanced for fees. He has not responded to inquiries from the CSF investigator or to DCO, which is pursuing formal charges on this and other matters. Stedman was suspended in May 2014 for failure to pay his annual fees and to comply with his IOLTA reporting requirement. His current whereabouts are unknown.

**CYR (Hallam) - \$20,207.24**

Claimant retained Steven Cyr in August 2013 to handle the administration of Claimant's sister's estate. According to Claimant, Cyr initially told her the probate would be relatively straightforward and estimated his fees would be in the \$5000-8000 range. Over the course of the representation, however, Cyr billed and Claimant paid \$22,207.24.

Cyr filed a petition to have Claimant appointed personal representative in October 2013. Thereafter, Cyr failed to appear at several scheduled hearings, offered no explanation to the court, and sought no continuances or postponements. In September 2014, Claimant received a letter from the probate court indicating that she and Cyr had missed a hearing and inquiring about the status of the case. The letter also indicated the court was concerned about Cyr's requested fees. Claimant contacted Cyr who claimed he didn't get the court letter, but she shouldn't worry. Despite Claimant's continued prodding, Cyr failed to provide information the court wanted to close the probate. Claimant eventually hired another lawyer to complete the matter.

In the final judgement, the court ordered that

“Reasonable attorney's fees and costs for attorney...Cyr is \$2,500. Any amount which...Cyr receives or has received in regard to services provided in this probate proceeding over and above that amount is unreasonable and excessive.”

Following entry of the judgement, Claimant's new counsel made demand on Cyr for a refund of the fees declared by the court to be excessive, but he has refused.

In response to the CSF investigator's inquiry, Cyr claims his fees were reasonable because the case was complicated by the search for a distant “other beneficiary.” He also claims to have paid an investigator \$5,000 to conduct a search, but the investigator refutes Cyr's claim both as to the amount paid and the complexity of the work she performed. The Probate Court Administrator reported that this was a simple, low asset case and that Cyr's fee petition was “way out of line” with the work required. He also confirmed that Cyr appeared to have done little work on the case and collected fees prior to obtaining court approval in contravention of ORS 125.095.

Shortly before Claimant hired Cyr, he was indicted for tax fraud and in October 2013 he pleaded guilty to those charges. Based on his conviction, the bar began investigating him in October 2013. Cyr was sentenced in June 2014 to 2 years' probation. In August 2014, the SPRB authorized formal prosecution against Cyr; he resigned Form B in June 2015.

The CSF Committee recommends an award to Claimant of \$20,207.24, the difference between what she paid Cyr and what the court determined was a reasonable fee for his services. The committee also recommends against requiring Claimant to obtain a judgment against Cyr.

### **SUSAN GERBER COMMON FACTS**

Beginning sometime in 2010, Susan Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, the in a brief partnership with Vicki Vernon, and by 2013 on her own. She represented clients in post-conviction relief cases and criminal appeals.<sup>2</sup>

In the spring and summer of 2014, the bar received several complaints from Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

In anticipation of her change of status, Gerber into an agreement with Vicki Vernon pursuant to which Vernon would take over 12 of Gerber's pending matters in exchange for \$5,000. The agreement contemplated that Gerber would be reinstated to active practice in 30 days and in the interim would assist Vernon with the transferred cases as a legal assistant or law clerk. If Gerber was not reinstated in 30 days, the agreement provided for an additional \$10,000 payment to be deposited in Vernon's trust account and from which she could withdraw funds at the rate of \$150 hour for her services to the clients whose matters were transferred.

Gerber was not reinstated in 30 days and remains on disability inactive status. She never paid Vernon the promised \$10,000, but Vernon received that amount from the PLF. Three of Gerber's clients declined to be represented by Vernon, but she continues to represent the remainder.

---

<sup>2</sup> Prior to moving to Ontario, Gerber worked for several years for the Department of Justice handling similar types of cases. She had the reputation of being very good at her work.

### **GERBER (Koepke) - \$13,500**

Gerber consulted with Koepke in the fall of 2013 and offered to start right away with his PCR petition. Koepke formally hired Gerber in January 2014; his parents paid her fixed fee of \$15,000. Koepke recalls meeting with Gerber about six times between January and October 2014, but there was no real movement on the case because the appeal of his conviction wasn't final until October 2014. In November 2014, Koepke talked to Gerber about Vernon becoming involved in the case on what he understood was a temporary basis. It was not clear to him until January 2015 that Gerber's inactive status continued and that Vernon was his attorney for the PCR case. His petition was filed in September 2015.

The CSF recommends an award of \$13,500 to Koepke. While Vernon says Gerber did perform some initial work that Vernon was able to use, it is clear that Gerber did not earn the flat fee she collected. Gerber's records indicate she spent 30 hours on the case, but the Committee was unwilling to credit her with more than 10 because most of what she did could not be used by Vernon. The Committee used an hourly rate of \$150/hour to calculate a fee of \$1500 by Gerber, and the remainder of \$13,500 to be awarded to Koepke.

In reaching its decision, the Committee also discussed at length CSF Rule 2.2.4, which provides:

2.2.4 In the event that a client is provided equivalent legal services by another lawyer without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.

Koepke has not been required to pay Vernon anything more for her services, but the Committee believes this situation constitutes "extraordinary circumstances." Vernon is not obliged to provide extended services Koepke without remuneration and the \$10,000 she received from the PLF barely covers her expenses for the nine cases she took. The Committee also wants to avoid giving Koepke a windfall, but didn't want to intercede in the attorney-client relationship or decide, as between Koepke and his parents, what should happen to the money they paid for Gerber's services. The Committee's solution was for Vernon to be made aware when an award is approved and that the claimant be asked where the funds should be directed. That will enable Vernon. If she is so inclined, to request payment for her services in order to continue the representation.<sup>3</sup>

Finally, the Committee recommends waiving the requirement that this and the other claimant pursue civil judgments against Gerber. Not only do these incarcerated claimants lack the resources to do so, the likelihood of a judgment against Gerber being collectible in the foreseeable future is slim. She has no assets that we know of (other than a PERS account that is exempt from execution); she currently lives with her parents in the Chicago area, attending therapy sessions in the mornings and working at Home Depot in the afternoons.

---

<sup>3</sup> The Committee recommends that this approach be used in all four cases.

**GERBER (Lawson) - \$10,000**

Lawson first met with Gerber around June of 2014; there were about three meetings around that time. After the second meeting Lawson decided to retain Gerber and they spent the third meeting discussing fees. However, after Lawson arranged payment of Gerber's \$10,000 fixed fee, he says he never heard from her again.

Lawson says he got a call from Vernon in September 2014 and they discussed his case but he did not agree that she could take over the representation, as he was unsure of Gerber's status. He met with Vernon again in October to discuss additional investigation necessary for his PCR petition. He is unsure of the status of his case, but believes a hearing on the petition is scheduled for some time in November 2015.

Lawson could not provide a fee agreement, nor could Gerber. Her standard agreement, however, provides that the client is entitled to a refund if the representation ends before completion of the agreed work. Gerber claims to have worked on Lawson's case, but there are no records or other indication that her services were anything more than de minimis; moreover, Gerber never mentioned the difficulty she was having or that she was facing disciplinary charges that might prevent her from handling the case. The Committee concluded that her acceptance of the case and failure to refund the unearned fee was dishonest and that he should receive an award of the full \$10,000.

**GERBER (Moore) - \$5,000**

Moore retained Gerber on June 19, 2014. He recalls a couple of telephone calls thereafter, but Gerber never produced any work product relating to his PCR petition. In early 2015, Moore became concerned about the lack of communication from Gerber. When his aunt confronted Gerber and demanded a refund, she explained her inactive status and said Vernon would be handling Moore's case until Gerber became active again. In the meantime, she offered to "help" with Moore's case.

In a letter to the CSF investigator, Gerber admitted providing no meaningful services to Moore and acknowledging that he is entitled to a full refund of the \$5,000 flat fee he advanced. Moore was not included on the case transfer list and is not represented by Vernon; we have no information about the status of his PCR claim.

**GERBER (Roelle) - \$9,740**

Roelle hired Gerber in June 2014 after hearing about her good reputation from other inmates.<sup>4</sup> He paid a flat fee of \$9,740, which he says was for a PCR petition and potential representation at retrial. Roelle met with Gerber the following month and explained his desire

---

<sup>4</sup> Some of you may recall that Roelle submitted a claim to the CSF alleging that his trial attorneys, Des and Shannon Connall, had not properly investigated his case. The committee denied the claim and the denial was upheld by the BOG in July 2013.

to initiate the PCR process as soon as his appeal rights were exhausted, which he estimated to be in December 2014. Roelle provided Gerber with documents relating to his trial, and says he had a few conversations with Gerber over the next few months.

In November or December 2014, Roelle talked to Gerber about whether he should agree to have Vernon take over his case, which he ultimately declined to do, based at least in part on Gerber's assurance that her inactive status would only last a few months. In early 2015, Roelle talked to Gerber about the status of his PCR case, and was apparently assured that it was moving along.

On March 15, one of Roelle's family members requested a status update on his behalf. Gerber replied that she had amended the PCR petition, which she claimed to have filed the week prior. A week or so later Roelle that the court had no record of a PCR petition filed on his behalf, and again contacted Gerber. She reminded him she could not act as his attorney until she returned to active status, but offered to help as a paralegal in the interim. In June 2015, Roelle filed his own PCR petition and moved for appointment of a public defender.

Gerber provided a time log showing that she performed some legal research, reviewed trial transcripts and wrote a couple of letters. The total of her time is less than 10 hours. She did not prepare or file anything on his behalf and the Committee concluded that her services were insignificant and that he should receive a full refund of the fees he paid.

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 10, 2015  
**From:** Audrey Matsumonji, Board Development Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (1 of 2)

---

### Action Recommended

On October 9 the Board Development Committee selected the following members for appointment:

#### **Advisory Committee on Diversity and Inclusion**

Chair: Jacqueline Alarcon  
 Secretary: Daniel Simon  
 Members with terms expiring 12/31/2018:  
 Bryson E Davis  
 Claudia G Groberg  
 Gary W Glisson  
 Jollee Faber Patterson  
 Kyle Kazuo Nakashima  
 Alex Cook, public member

#### **Bar Press Broadcasters Council**

Chair: Lisa Ludwig  
 Members with terms expiring 12/31/2018:  
 Dawn Andrews  
 Kevin Ray McConnell  
 Lisa J Ludwig  
 Rachel Philips  
 Patrick Joseph Ehlers

#### **Client Security Fund Committee**

Chair: Ronald Atwood  
 Secretary: Stephen Raheer  
 Members with terms expiring 12/31/2018:  
 Rick Braun  
 Courtney Dippel  
 Nancy Cooper  
 Carrie Hooten, public member

#### **Judicial Administration Committee**

Chair: Bernadette Bignon  
 Secretary: Jessica Fleming  
 Members with terms expiring 12/31/2018:  
 Adina Matasaru  
 Celia A Howes  
 Jeffrey M Wallace  
 Laura B Rufolo  
 Lauren F Blaesing

#### **Legal Ethics Committee**

Chair: Kristin Asai  
 Secretary: Ankur Doshi  
 Members with terms expiring 12/31/2017:  
 Ankur Doshi  
 Members with terms expiring 12/31/2018:  
 Sarah E. Harlos  
 Kyann C. Kalin  
 John Klor  
 W. Greg Lockwood  
 Justin M. Thorp

#### **Legal Heritage Interest Group**

Chair: Jamie Lynne Dickinson  
 Secretary: Mary Anne Anderson  
 Members with terms expiring 12/31/2018:  
 Alfred Frank Bowen  
 Susan Hogg

#### **Legal Services Committee**

Chair: Kamala Shugar  
 Secretary: Andrea Thompson  
 Members with terms expiring 12/31/2018:  
 Kristin Bremer Moore  
 Andrea H. Thompson  
 Ari Halpern

---

**Loan Repayment Assistance Committee**

Members with terms expiring 12/31/2018:

Micah Maskowitz

Richard Wesenberg

William Penn, Advisory Member

**MCLE Committee**

Chair: Allison Banwarth

Secretary: Katherine Zerkel

Members with terms expiring 12/31/2018:

Douglas Olsen

Eugene Thompson

**New Lawyer Mentoring Program Committee**

Chair: Sarah Petersen

Members with terms expiring 12/31/2018:

Paul Duden

Martin McKeown

Monica Martinez

Lolly Anderson

Kathryn Brown

**Pro Bono Committee**

Chair: Christo de Villiers

Members with terms expiring 12/31/2016:

Meagan Robbins

Members with terms expiring 12/31/2018:

Stephen Galloway

David Goldfried

Melissa Haggerty

Natalie Hedman

Sandra Gustitus

Kuyng Duk Ko

**State Lawyers Assistance Committee**

Chair: Vaden Francisco

Secretary: John Parsons

Members with terms expiring 12/31/2019:

Kevin E. Lucey

Jerilyn Krier

Josh Soper

**Uniform Civil Jury Instructions Committee**

Secretary: Kim Sewell

Members with terms expiring 12/31/2018:

Jeffrey Armistead

Rob Beatty-Walters

Beth Creighton

Shannon Armstrong

Kate Wilkinson

**Uniform Criminal Jury Instructions Committee**

Chair: Andrew Robinson

Secretary: Erik Blumenthal

Members with terms expiring 12/31/2018:

Gregory Rios

Paul Maloney

Ryan O'Connor

Stacey Reding

Graham Fisher

The committee selected the following members to recommend to the Supreme Court for appointment:

**State Professional Responsibility Board**

Chair: E. Bradley Litchfield, term expires 12/31/2016

Members:

Heather Bowman, region 5, term expires 12/31/2019

Carolyn Alexander, region 5, terms expires 12/31/2019

After discussion and thorough review by the committee, Mr. Lavelle motioned and Ms. Nordyke seconded a motion to not make appointments to the Local Professional Responsibility Committee for 2016 members. The motion was unanimously approved by the committee.

---

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 20, 2015  
**From:** Audrey Matsumonji, Board Development Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (2 of 2)

---

### **Action Recommended**

During the November 20 meeting, the Board Development Committee selected the following members to recommend for appointment:

#### **Advisory Committee on Diversity and Inclusion**

Members with terms expiring 12/31/2018:  
Leslie Williams, public member

#### **Loan Repayment Assistance Committee**

Members with terms expiring 12/31/2018:  
Jennifer Geller

#### **Procedure & Practice Committee**

Chair: Chin See Ming  
Secretary: Kristen Roggendorf  
Members with terms expiring 12/31/2018:  
Benjamin Cox  
Erin Galli  
Sarah Mae Kutil  
Samantha D. Malloy  
Amanda C. Thorpe

#### **Pro Bono Committee**

Member with term expiring 12/31/2017  
Davis Smith

#### **Public Service Advisory Committee**

Chair: Debra Cohen  
Secretary: Shayna Rogers  
Members with terms expiring 12/31/2018:  
Keith Leitz  
Ann Lechman-Su  
Diana Winther  
Nena Cook  
Leanne T. L'Hommedieu, public member

#### **Quality of Life Committee**

Chair: Ruben Medina  
Members with terms expiring 12/31/2018:  
Michelle Ryan  
Sally Claycomb  
Andrew Evenson  
Justin Howe  
Bruce Nishioka

#### **State Lawyers Assistance Committee**

Members with terms expiring 12/31/2018:  
Keyunna Baker

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

Chair: Charles Henderson

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

Chair: David Doughman  
Chair-Elect: Erin Fitzgerald  
Secretary: Monica Goracke  
Members with terms expiring 12/31/2019:  
John Marandas  
Andrea K. Malone  
Terry Wright  
Mary Ellen Briede  
Alexander S. Ogurek  
Kevin Ray McConnell  
Morad B. Noury  
Samuel Reese

---

**Oregon Law Foundation Board**

David Rosen, term expires 12/31/2019

Elise Dozono, term expires 12/31/2019

**Commission on Judicial Fitness and Disability**

Jeffrey M. Wallace, term expires 1/28/2020

The committee selected the following members to recommend to the Supreme Court for appointment:

**Disciplinary Board**

State Chair: Robert A. Miller, term expires 12/31/2016

State Chair-Elect: William G. Blair, term expires 12/31/2016

**Region 1:**

Bill Hopp, Chair, term expires 12/31/2016

**Region 2:**

Jet Harris, Chair, term expires 12/31/2016

James K. Walsh, term expires 12/31/2018

George A. McCully, public member, term expires 12/31/2018

**Region 3:**

John E. Davis, Chair, term expires 12/31/2016

Penny Lee Austin, term expires 12/31/2018

Eric Foster, term expires 12/31/2017

**Region 4:**

Kathy Proctor, Chair, term expires 12/31/2016

Marcia Buckley, term expires 12/31/2018

Sim Rapoport, term expires 12/31/2018

**Region 5:**

Ronald Atwood, Chair, term expires 12/31/2016

Bryan D. Beel, term expires 12/31/2018

Anne Talcott, term expires 12/31/2018

Craig Crispin, term expires 12/31/2018

Courtney C. Dippel, term expires 12/31/2018

David Hercher, term expires 12/31/2018

Robert Schulhof, term expires 12/31/2018

Ulanda Watkins, term expires 12/31/2018

Stephen Butler, term expires 12/31/2018

JoAnn Jackson, public member, term expires 12/31/2018

Virginia Symonds, public member, term expires 12/31/2018

Michael Wallis, public member, term expires 12/31/2018

Jim Parker, public member, term expires 12/31/2018

**Region 6:**

James C. Edmonds, Chair, term expires 12/31/2016

John T. Bagg, term expires 12/31/2018

Lorena Reynolds, term expires 12/31/2018

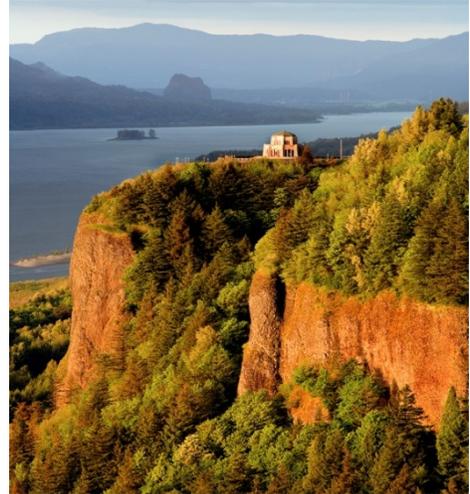
Sylvia Rasko, term expires 12/31/2016

**Region 7:**

Kelly Harpster, Chair, term expires 12/31/2016

Oregon State Bar

# 2016 FINAL BUDGET



November 21, 2015

Report to the Board of Governors

## Summary

At the October 9 meeting, the Board of Governors resolved to increase the 2016 active member fee by \$50.00 and reduce the Client Assessment by \$30.00. The House of Delegates approved the \$50.00 active fee increase.

**The purpose of this report is to identify changes included in this report from the October 9 budget report to attain the final 2016 budget.**

The biggest change is the October 9 report which included a \$30.00 fee increase, but the BOG later approved a \$50.00 increase.

Exhibit A is the Program by Program summary of the budget.

Exhibit B is the 2016 budget with the \$50.00 fee increase and the five-year implications of that increase.

- **The final 2016 Budget includes a \$854,048 Net Operating Revenue.**
- **By vote of the House of Delegates, the General Member Fee is increased by \$50.00.**
- **By BOG action at the October meeting, the Client Security Fund assessment is reduced by \$30.00 to \$15.00.**
- **The total active Member Fee in 2016 will be \$557.00 - a \$20.00 increase over 2015.**

## Changes in Revenue

---

### ❖ Membership Fees Revenue

The \$50.00 active member fee increase (\$47.00 for under 2-year members) generates \$773,600 additional revenue. Of that amount approximately \$733,100 is due to the fee increase and \$40,000 for the increase in the number of members.

### ❖ Other Revenue Changes

With the additional revenue the *investment income* increased \$6,000. This amount assumes the funds have remained in the short-term investment portfolio. *Legal Publications* increased \$7,225 with the addition of another book for sale in 2016.

## Changes in Expenses

---

### ❖ Personnel Costs

The BOG approved the 3% salary pool at the October meeting. That meeting's budget report included the pleasant surprise of lower than expected personnel costs due to lower than initially expected PERS costs and the position vacancies at the end of 2014 and the personnel changes during 2015 filled by lower salaried personnel (and staff participating in the lower cost OPSRP of PERS).

**Even with a 3% salary pool, the 2016 increase in personnel costs from the 2015 budget is 1.1%.**

Since the October 9 report personnel costs have dropped further since the bar received notice that the cost of the UAL bond payment is reduced from 6.7% to 6.0% beginning November 1, 2015. Now personnel costs are even lower than budgeted in October, and are only \$86,500, or 1.1%, more than the 2015 budget.

### ❖ Other Expense Accounts

With updated information non-personnel changes were made to the following accounts (some increased, some decreased): Legal Publications (added a new book), postage, and property and liability insurance. The net increase in expenses was only \$3,138.

## Five-Year Forecast

---

As anticipated with the various forecast scenarios, a \$50.00 fee increase will delay the next fee increase to 2020. Although the forecast includes a \$30.00 fee increase in 2020, the amount would be set on the financial conditions at that time and how long before the next fee increase thereafter. However, in the next four to five year period these are some of the issues that will determine the when and how much of the next increase:

- the implementation and full execution of the new Association Management Software;
- the uncertainty of a number of the non-dues revenue of certain programs, e.g. Admissions, CLE Seminars, Lawyer Referral percentage fees;

- the cost of PERS – will increased rates expected in 2017 and 2019 be offset by fewer Tier 1/2 employees;

## What to Look for in 2016

---

- Although **Member Fee revenue** shows a small growth in 2016 and subsequent years, will this revenue source decline in the near future as members leave or retire at a faster rate than applicants join? One-half of 1% is included in the next years' forecasts, and that amounts to approximately \$40,000 in additional revenue from member fees.
- Admissions revenue** did not decline as much as initially forecast. However, the number of bar exam applicants could be less than projected, and could decline even further for a few years. This means lower Admissions revenue and eventually lower Member Fee revenue.
- The cost of **grading the two bar examinations** is budgeted at \$124,100. This is the cost for the graders' two weeks of grading in Sunriver. Staff recommend that alternative sites be considered and a RFP for a venue issued.
- CLE Seminars** is undergoing new revenue models and relationship with sections. Will the revenue optimism in the 2016 be achieved?
- Revenue from the **percent fees on lawyer referrals** has been a steady climb. At some point will the referrals not generate the level of revenue as the last three years?
- The **rate the bar pays for PERS** has vacillated wildly the past several years. The rate will change again at July 2017. Based on preliminary information from PERS, rates are expected to increase in mid 2017. That rate will be known in late 2016.
- Unknown is the impact of the **AMS software installation** in summer 2016. The system will create greater service to members and new roles, responsibilities, and efficiencies for staff, but probably not until 2017. How much will the efficiencies of the new system improve the bar's budget?
- Since the fee increase generates more revenue than needed in 2016, the Budget & Finance Committee should evaluate with the CFO **the best use of the excess funds**. Options could be: leave it in short-term investments; develop a longer-term investment strategy with the investment managers; or use it to fund the AMS costs without using any reserve funds.

**. . . the Budget & Finance Committee should evaluate the best use of the excess funds**

## Recommendations of the Budget & Finance Committee to the Board of Governors

---

- Approval, with any changes, of the 2016 budget.
- Recommended Changes: \_\_\_\_\_

# OREGON STATE BAR

## 2016 Budget Summary by Program

<i>Department / Program</i>	<i>Revenue</i>	<i>Sal &amp; Benefits</i>	<i>Direct Program</i>	<i>Gen &amp; Admin</i>	<i>Total Expense</i>	<i>Indirect Costs</i>	<i>Net Revenue</i>
Admissions	\$705,985	\$293,280	\$247,768	\$29,565	\$570,613	\$134,115	\$1,257
Bulletin	\$675,306	\$173,400	\$351,818	\$6,725	\$531,943	\$127,839	\$15,524
CLE Seminars	\$1,030,490	\$488,100	\$388,990	\$19,236	\$896,326	\$265,941	(\$131,777)
Client Assistance Office	\$0	\$533,200	\$1,100	\$21,956	\$556,256	\$158,401	(\$714,657)
Communications	\$26,750	\$469,516	\$19,550	\$7,167	\$496,233	\$133,334	(\$602,817)
General Counsel	\$2,500	\$409,400	\$66,300	\$18,321	\$494,021	\$108,112	(\$599,633)
Governance (BOG)	\$0	\$299,500	\$171,850	\$22,133	\$493,483	\$103,017	(\$596,500)
Legal Publications	\$294,520	\$585,500	\$74,199	\$24,625	\$684,324	\$215,972	(\$605,776)
Loan Repayment Assistance Progra	\$152,000	\$0	\$142,400	\$0	\$142,400	\$0	\$9,600
MCLE	\$301,500	\$176,000	\$1,750	\$11,308	\$189,058	\$97,810	\$14,632
Member Services	\$0	\$168,500	\$13,250	\$2,865	\$184,615	\$116,426	(\$301,041)
New Lawyer Mentoring Program	\$20,200	\$248,300	\$9,800	\$6,039	\$264,139	\$77,481	(\$321,420)
New Lawyers Division	\$5,350	\$67,300	\$83,850	\$2,880	\$154,030	\$46,505	(\$195,185)
Public Affairs	\$0	\$456,700	\$20,900	\$32,276	\$509,876	\$111,606	(\$621,482)
Referral & Information Services	\$715,000	\$446,400	\$42,000	\$8,900	\$497,300	\$228,436	(\$10,736)
Regulatory Services	\$87,350	\$1,708,600	\$111,800	\$92,170	\$1,912,570	\$390,797	(\$2,216,017)
Special Projects	\$200,000	\$9,800	\$173,200	\$375	\$183,375	\$0	\$16,625
<b>TOTAL PROGRAMS</b>	<b>\$4,216,951</b>	<b>\$6,533,496</b>	<b>\$1,920,525</b>	<b>\$306,541</b>	<b>\$8,760,561</b>	<b>\$2,315,792</b>	<b>(\$6,859,402)</b>
<b>ALLOCATIONS:</b>							
Finance & Operations	\$7,738,450	\$1,613,164	\$837,029	\$108,992	\$2,559,185	(\$2,319,015)	\$7,498,280
Less: Dept Charges/Offsets			(\$240,170)		(\$240,170)		\$240,170
Oregon State Bar Center						\$0	\$0
Contingency			\$25,000		\$25,000		(\$25,000)
<b>TOTAL OPERATIONS</b>	<b>\$11,955,401</b>	<b>\$8,146,660</b>	<b>\$2,542,384</b>	<b>\$415,533</b>	<b>\$11,104,576</b>	<b>(\$3,223)</b>	<b>\$854,048</b>
Fanno Creek Place	\$841,523	\$122,200	\$1,509,977	\$21,475	\$1,653,652	(\$160,459)	(\$651,670)
<b>TOTAL GENERAL FUND</b>	<b>\$12,796,924</b>	<b>\$8,268,860</b>	<b>\$4,052,361</b>	<b>\$437,008</b>	<b>\$12,758,228</b>	<b>(\$163,682)</b>	<b>\$202,378</b>
<b>DESIGNATED FUNDS:</b>							
Diversity Inclusion	\$719,850	\$323,200	\$243,880	\$35,691	\$602,771	\$102,878	\$14,201
Client Security Fund	\$237,900	\$43,500	\$202,950	\$2,444	\$248,894	\$31,861	(\$42,855)
Legal Services	\$6,155,000	\$111,400	\$6,599,200	\$9,586	\$6,720,186	\$28,943	(\$594,129)
<b>TOTAL ALL FUNDS</b>	<b>\$19,909,674</b>	<b>\$8,746,960</b>	<b>\$11,098,391</b>	<b>\$484,729</b>	<b>\$20,330,079</b>	<b>\$0</b>	<b>(\$420,405)</b>

Exhibit A

2016 Budget

Oregon State Bar

Five-Year Forecast

		Operations	\$50.00 Increase in 2016				
November-15							
Proposed Fee increase for Year →		\$50	\$0	\$0	\$0	\$30	\$0
Operations	BUDGET	BUDGET	F O R E C A S T				
	2015		2016	2017	2018	2019	2020
<b>REVENUE</b>							
<b>MEMBER FEES</b>							
General Fund	\$7,157,000	\$7,197,500	\$7,970,000	\$8,009,900	\$8,049,900	\$8,090,100	\$8,591,800
Active Member Fee Increase		733,100	0	0	0	459,000	0
% of Total Revenue	64.8%	66.3%	66.5%	66.5%	66.4%	63.5%	66.9%
<b>PROGRAM FEES:</b>							
Admissions	716,643	705,985	635,400	635,400	667,200	733,900	733,900
CLE Seminars	953,350	1,030,490	1,030,490	1,051,100	1,051,100	1,051,100	1,051,100
Legal Publications (print sales)	362,597	294,520	280,000	250,000	200,000	200,000	200,000
Lawyer Referral New Model fees	485,900	600,000	588,000	550,000	550,000	550,000	550,000
All Other Programs	1,024,162	1,037,456	1,058,200	1,079,400	1,101,000	1,123,000	1,139,800
Total Program Fees	3,542,652	3,668,451	3,592,090	3,565,900	3,569,300	3,658,000	3,674,800
<b>OTHER INCOME</b>							
PLF Contribution	200,000	200,000	200,000	200,000	200,000	200,000	200,000
Investment & Other Income	145,350	156,350	225,800	260,600	303,800	327,400	372,700
<b>TOTAL REVENUE</b>	<b>11,045,002</b>	<b>11,955,401</b>	<b>11,987,890</b>	<b>12,036,400</b>	<b>12,123,000</b>	<b>12,734,500</b>	<b>12,839,300</b>
<b>EXPENDITURES</b>							
<b>SALARIES TAXES &amp; BENEFITS</b>							
Salaries - Regular	5,888,800	5,985,600	6,097,100	6,210,600	6,326,100	6,443,600	6,563,200
Benefits - Regular	2,155,300	2,147,900	2,383,500	2,446,400	2,570,900	2,699,200	2,815,000
Salaries & Taxes - Temp	16,058	13,160	30,000	20,000	30,000	20,000	30,000
Total Salaries & Benefits	8,060,158	8,146,660	8,510,600	8,677,000	8,927,000	9,162,800	9,408,200
% of Total Revenue	73.0%	68.1%	71.0%	72.1%	73.6%	72.0%	73.3%
<b>DIRECT PROGRAM:</b>							
CLE Seminars	401,225	388,990	392,900	396,800	402,800	406,800	412,900
Legal Publications	113,999	74,199	112,000	100,000	80,000	80,000	80,000
AMS Impact	0	0	88,000	35,000	35,000	35,000	35,000
All Other Programs	1,950,348	2,054,195	2,085,000	2,126,700	2,169,200	2,234,300	2,301,300
Total Direct Program	2,465,572	2,517,384	2,677,900	2,658,500	2,687,000	2,756,100	2,829,200
GENERAL & ADMIN (incl offsets)	402,002	412,309	418,500	426,900	435,400	448,500	462,000
CONTINGENCY	25,000	25,000	25,000	25,000	25,000	25,000	25,000
<b>TOTAL EXPENSES</b>	<b>10,952,732</b>	<b>11,101,353</b>	<b>11,632,000</b>	<b>11,787,400</b>	<b>12,074,400</b>	<b>12,392,400</b>	<b>12,724,400</b>
<b>NET REVENUE/(EXPENSE) - OPERATIONS</b>	<b>\$92,270</b>	<b>\$854,048</b>	<b>\$355,890</b>	<b>\$249,000</b>	<b>\$48,600</b>	<b>\$342,100</b>	<b>\$114,900</b>

Fanno Creek Place

Fanno Creek Place	BUDGET	BUDGET	F O R E C A S T				
	2015	2016	2017	2018	2019	2020	2021
<b>REVENUE</b>							
RENTAL INCOME							
PLF	\$520,065	\$527,865	\$535,783	\$543,820	\$551,977	\$560,257	\$568,661
First Floor Tenant - Suite 175 - Zip Realty	44,966	46,315	47,704	49,136	50,610	39,096	53,692
First Floor Tenant - Suite 150 - Joffe	132,580	100,550	138,089	142,231	146,498	150,893	155,420
First Floor Tenant - Suite 100 - Simpson Prop	24,191	24,917	25,700	26,500	27,300	28,119	28,963
First Floor Tenant - Suite 110 - Prof Prop Gp	28,808	29,672	30,562	31,479	31,479	32,423	32,423
First Floor Tenant - Suite 165 - ALA	22,638	47,378	48,799	50,263	51,771	53,324	26,662
OLF	30,264	31,176	32,100	33,100	34,100	35,100	36,200
Meeting Rooms	30,000	32,000	30,000	25,000	24,000	24,000	24,000
Operating Expense Pass-through	0	0	3,000	3,100	3,200	3,300	3,400
INTEREST	1,890	1,650	2,000	2,200	2,500	2,800	3,000
<b>TOTAL REVENUE</b>	<b>835,402</b>	<b>841,523</b>	<b>893,738</b>	<b>906,829</b>	<b>923,435</b>	<b>929,313</b>	<b>932,420</b>
<b>EXPENDITURES</b>							
OPERATING EXPENSE							
Salaries & Benefits	119,600	122,200	124,600	128,300	132,100	136,100	140,200
Operations	336,340	323,909	330,400	340,300	350,500	361,000	371,800
Depreciation	506,100	512,600	512,600	517,600	517,600	527,600	527,600
Other	19,500	16,059	16,100	16,100	16,100	16,100	16,100
DEBT SERVICE							
Interest	693,700	678,884	663,158	646,462	628,739	609,924	589,951
<b>TOTAL OPERATING EXPENSES</b>	<b>1,675,240</b>	<b>1,653,652</b>	<b>1,646,858</b>	<b>1,648,762</b>	<b>1,645,039</b>	<b>1,650,724</b>	<b>1,645,651</b>
ICA to Operations	(160,459)	(160,459)	(165,300)	(165,300)	(165,300)	(165,300)	(169,400)
<b>NET EXPENSES</b>	<b>1,514,781</b>	<b>1,493,193</b>	<b>1,481,558</b>	<b>1,483,462</b>	<b>1,479,739</b>	<b>1,485,424</b>	<b>1,476,251</b>
<b>NET REVENUE/(EXPENSE) - FC Place</b>	<b>(\$679,379)</b>	<b>(\$651,670)</b>	<b>(\$587,820)</b>	<b>(\$576,633)</b>	<b>(\$556,304)</b>	<b>(\$556,111)</b>	<b>(\$543,831)</b>
<b>ACCRUAL TO CASH ADJUSTMENT</b>							
SOURCES OF FUNDS							
Depreciation Expense	506,100	512,600	512,600	517,600	517,600	527,600	527,600
Landlord Contingency Fund	51,000	30,000				200,000	
Loan Proceeds							
USES OF FUNDS							
Assign PLF Subtenants' Leases (Net)							
TI's - First Floor Tenants	(51,000)	(30,000)					
Principal Pmts - Mortgage	(240,608)	(255,424)	(271,150)	(287,846)	(305,569)	(324,384)	(344,357)
<b>NET CASH FLOW - FC Place</b>	<b>(\$413,887)</b>	<b>(\$394,494)</b>	<b>(\$346,370)</b>	<b>(\$346,879)</b>	<b>(\$344,273)</b>	<b>(\$152,895)</b>	<b>(\$360,588)</b>

Funds Available/Reserve Requirement

	BUDGET		F O R E C A S T				
	2015	2016	2017	2018	2019	2020	2021
<b>FUNDS AVAILABLE</b>							
Funds Available - Beginning of Year	\$ 1,844,000	\$1,144,683	\$1,226,437	\$1,435,457	\$1,673,277	\$1,391,404	\$1,281,609
<b>SOURCES OF FUNDS</b>							
Net Revenue/(Expense) from operations	92,270	854,048	355,890	249,000	48,600	342,100	114,900
Depreciation Expense	114,100	92,200	94,000	95,900	97,800	98,800	99,800
Provision for Bad Debts	36,300	49,000	40,000	40,000	40,000	40,000	40,000
Increase in Investment Portfolio MV	53,000	53,000	59,000	65,000	0	85,000	102,000
Allocation of PERS Reserve	64,440		108,500	217,000	108,500		
<b>Projected HIGHER Net Operating Revenue</b>	<b>50,000</b>						
<b>USES OF FUNDS</b>							
Capital Expenditures	(62,150)	(73,350)	(70,000)	(80,000)	(80,000)	(120,000)	(80,000)
Capital Expenditures - Building	(15,000)	0	(30,000)		(50,000)		(50,000)
Capital Reserve - AMS Software	(552,000)	(497,000)					
Capital Reserve Expenditures - Building						(200,000)	
Landlord Contingency Interest	(1,890)	(1,650)	(2,000)	(2,200)	(2,500)	(2,800)	(3,000)
Net Cash Flow - Fanno Creek Place	(413,887)	(394,494)	(346,370)	(346,879)	(344,273)	(152,895)	(360,588)
Addition to PERS Reserve	(64,500)				(100,000)	(200,000)	(100,000)
Projected LOWER Net Operating Revenue	0						
<b>CHANGE IN FUNDS AVAILABLE</b>	<b>(699,317)</b>	<b>81,754</b>	<b>209,020</b>	<b>237,821</b>	<b>(281,873)</b>	<b>(109,796)</b>	<b>(236,888)</b>
<b>Funds Available - End of Year</b>	<b>\$1,144,683</b>	<b>\$1,226,437</b>	<b>\$1,435,457</b>	<b>\$1,673,277</b>	<b>\$1,391,404</b>	<b>\$1,281,609</b>	<b>\$1,044,721</b>
<b>RESERVE REQUIREMENT</b>							
Operating Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
Capital Reserve	500,000	500,000	500,000	500,000	500,000	500,000	500,000
<b>Total - Reserve Requirement</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>	<b>\$1,000,000</b>
<b>RESERVE VARIANCE</b>							
Over/(Under) Reserve Requirement	\$144,683	\$226,437	\$435,457	\$673,277	\$391,404	\$281,609	\$44,721
<b>RECONCILIATION</b>							
<b>CASH to ACCRUAL</b>							
	<b>BUDGET</b>	<b>BUDGET</b>	<b>F O R E C A S T</b>				
	<b>2015</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>
<b>NET REVENUE/(EXPENSE) - Operations</b>	92,270	854,048	355,890	249,000	48,600	342,100	114,900
<b>NET REVENUE/(EXPENSE) - FC Place</b>	(679,379)	(651,670)	(587,820)	(576,633)	(556,304)	(556,111)	(543,831)
<b>NET REVENUE/(EXPENSE) - OSB</b>	(\$587,109)	\$202,378	(\$231,930)	(\$327,633)	(\$507,704)	(\$214,012)	(\$428,931)



	A	B	C	D	E	F
1	<b>Reserves vs Funds Available</b>					
2	12/31/					
3						
4	<b>Fund Balances</b>					
5	CSF	50,801				
6	AAP	32,816				
7	Legal Services	20,434			\$20,434	
8	Sections	706,568			\$706,568	
9	Total		\$ 810,619			
10						
11	<b>Contingencies</b>					
12	Legal Fees	187,825			\$187,825	\$0
13	PERS	240,500			\$240,500	
14	Landlord	361,059			361,059	(\$30,000)
15	LRAP	48,460				
16	Total		837,844			
17						
18	<b>Reserves</b>					
19	Operating	500,000			\$500,000	
20	Capital	500,000			\$500,000	\$0
21	Total		1,000,000		\$2,516,386	(\$30,000)
22						
23	Total - All Reserves		\$ 2,648,463		Net	\$2,486,386
24						
25						
26	<b>Funds Available</b>					
27	Wash Trust Bank	2,250,044				
28	Becker Capital	2,633,533				
29		4,883,577				
30	Short-Term	-				
31	Total - Funds Available		\$ 4,883,577			
32						
33	Excess Reserve		<u>\$2,235,114</u>			
34						
35						
36	<b>Five Year Forecast</b>					
37	Operating	500,000				
38	Capital	500,000				
39	Reduction of Capital Reserve in 2011	(150,000)				
40	Total		850,000			
41			2,235,114			
42	Add: Capital Reserve Reduction to Funds					
43	Available		150,000			
44	Funds Available - Five Year Forecast		<u>3,235,114</u>			
45						
46	ROUNDED TO - Beginning 2011		<u>\$ 3,235,100</u>			
47						
48						
49						
50	21-Jul-11					
51						
52						
53						

Funds Available to MV Change Applicable to General Funds	\$20,434	
	\$706,568	
	\$187,825	\$0
	\$240,500	
	361,059	(\$30,000)
	\$500,000	
	\$500,000	\$0
	\$2,516,386	(\$30,000)
Net	\$2,486,386	
"Net" is total on Line 160 in Five-Year Forecast.		

---

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**From:** Governance and Strategic Planning Committee  
**Re:** Unclaimed Lawyer Trust Account Funds

---

### Action Recommended

The Board of Governors should adopt the proposed amendments to Article 27 of the OSB Bylaws relating to Unclaimed Lawyer Trust Account Funds.

### Background

In 2010, the Legislature amended Oregon's unclaimed property laws to require that abandoned funds in lawyer trust accounts be delivered to the Oregon State Bar. Pursuant to ORS 98.392(2), the board adopted rules for the administration of claims to the abandoned funds, which are found in Article 27 of the OSB Bylaws.

Although the OSB receives unclaimed funds from lawyer trust accounts, the Oregon Department of State Lands ("DSL") continues to maintain records of abandoned property and provide the online portal for individuals to submit claims for abandoned property. In order to ensure that DSL records are accurate, the OSB provides DSL with a listing of claims it resolves. Under OSB Bylaw 27.103(j), the bar is required to provide DSL with a listing on a monthly basis. Because the number of claims the bar receives is relatively small, OSB staff has discussed with DSL whether we can change the bar's reporting to quarterly, rather than monthly. DSL has agreed to this change.

The Governance and Strategic Planning Committee recommends that OSB Bylaw 27.103(j) be amended as follows:

(j) On a ~~monthly~~ quarterly basis, the Executive Director or designee shall provide a listing of the claims resolved to the Department of State Lands. The Executive Director shall also provide an annual report of the claims resolved to the Board.

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**Memo Date:** November 4, 2015  
**From:** Sylvia Stevens, Emilee Preble, Anna Zanolli  
**Re:** Staff Response to Knowledge Base Task Force Report

---

### Action Recommended

No action recommended at this time.

### Background

The Knowledge Base Task Force (KBTF) was established by the Board of Governors in response to a resolution passed at the 2012 House of Delegates meeting. The task force was given the following assignment:

- Identify written materials that could be included in the Knowledge Base,
- Explore the feasibility of a single database for searching the materials,
- Develop a “business plan” for creating and implementing the database that includes the direct and indirect costs and anticipated time line for completion, and
- Recommend to the BOG whether the project should go forward.

The KBTF report recommends that the bar create a single online comprehensive search engine and include all new OSB materials and as much archived OSB material as possible. The report recognizes that the bar’s current efforts to implement a new association management software platform will provide the basis for accessing available OSB content, while technological, financial and political considerations will serve as guidelines for determining what content can be included in a comprehensive knowledge base.

While not mentioned in the KBTF report, the PLF’s recent development of a new website provides a contemporary interface for access to the PLF content and a new OSB interface is in development along with the bar’s new AMS platform. Both the PLF and OSB will continue to look for opportunities to find information that can be shared by both entities—e.g., select PLF publications have been integrated into the BarBooks library.

Merging all content from the OSB, PLF, OSB sections and other bar groups into a single database with a shared search engine is not a practical solution. Rather, focusing attention and resources on the optimization of the respective data sources—so each can be easily searched by current industry standard search engines, such as Google—and increasing clarity and communication to OSB members about where different resource materials and information are located, are current and ongoing efforts within both the bar and the PLF.

We also have concerns about the KBTF’s recommendation for creation of a searchable archive for “selected list serve messages.” The objective is to make available to all OSB

members the wisdom and expertise of section members. While we agree that many section list serves are a source of valuable practical help, the scope of the proposal is daunting. First, many sections believe that their list serves are a valuable benefit of section membership and should be available only to their section members. Second, and perhaps most important, the KBTF does not suggest who would curate the list serves to determine which messages are worth archiving.

In conclusion, it is staff's view that existing and planned enhancements to our software already do or soon will provide sufficient access (and search functionality) to bar and PLF written materials, and that the marginal benefit to members that would result from implementing the KBTF recommendations does not justify that significant investment of additional time and resources that would be required.

# OREGON STATE BAR

## Knowledge Base Task Force Report

---

**Date:** September 21, 2015  
**From:** James Oberholtzer  
**Re:** Report to the Board of Governors

---

### Introduction

**Opportunity.** The OSB and its affiliate organization, the PLF, generate a wide variety of written materials useful (and some essential) in the practice of law in the state of Oregon. Wider dissemination of curated information in a standardized format that can be accessed easily by OSB members would improve the quality of service provided to the public. The advent of digital communication, particularly widespread use of the internet, has dramatically increased the participation of OSB members on the internet and lowered the cost of the distribution through digital delivery.

Quick, convenient access to the knowledge in these materials can raise the quality of practice of law across the state. Large law firms often have internal digital knowledge bases that serve this purpose for them. These recommendations present the opportunity for solos, disabled, members of small law firms, in small towns and outlying areas to have access to OSB materials around the clock regardless of distance or other barriers to access.

**Current Situation.** The bar currently provides a body of knowledge on its website and provides access to this information through navigation tools and search engines. The task force recommends expanding the curated data sources on the bar's website and increasing the capabilities of the search engine to increase the bar's support of our members in their practice of law.

**OSB Published Materials.** Currently the bar publishes the following areas of information on its website:

#### **For Lawyers:**

- Online directory of members that is updated daily with current contact information
- BarBooks™
- Bulletin Archive
- Career Center
- Fastcase™
- Judicial Vacancies
- Legal Ethics Opinions
- OSB Group Listings
- OSB Rules & Regulations
- SLAC Info
- Surveys and Reports
- Volunteer Opportunities
- CLE Seminars

**Bar Programs:**

Diversity & Inclusion, Fee Arbitration/Mediation, Legal Services Program, Legislative/Public Affairs, Loan Repayment Assistance Program, Oregon Law Foundation, Pro Bono.

**Member Groups:**

Board of Governors, Committees, House of Delegates, Local Bars, Oregon New Lawyers Division, OSB Sections (including links to individual section websites), Professionalism Committee, Volunteer Opportunities.

**About The Bar:**

Bar mission, functions and values, ADA Notice, Contact Info, Copyright Notice, Directions to the Bar, Meeting Room Rentals, OSB Job Opportunities, Privacy Policy, Staff Directory, Terms of use.

**Licensing/Compliance:**

Admissions; Client Assistance Office; Client Security Fund; IOLTA Certification; Lawyer Discipline; MCLE; Member Fee FAQ; New Lawyer Mentoring Program; Professional Liability Fund; Status Changes; Unlawful Practice of Law.

**The member portion of the website** provides a dashboard with links and information customized to the logged in member:

Regulatory notifications with links to fee payment; IOLTA certification; MCLE reporting; member profile and demographic information; communication preferences; PLF exemptions; fee payments; proof of coverage. Access to section rosters, newsletter archives, and list serves are also provided in the member portion of the website.

**The balance of the website contains information for the public:**

Lawyer Referral Service; Legal Information Topical Index; Juror Handbook; Finding The Right Lawyer; Hiring A Lawyer; Lawyers Fees; Client Assistance Office; Public Records Request; Unlawful Practice of Law; Fee Arbitration/Mediation; Client Security Fund; Volunteer Opportunities for the Public.

In addition, valuable information is often shared on Section list-serves. The PLF publishes a variety of materials and practice aids on its website ([www.osbplf.org](http://www.osbplf.org)).

Additional resources are found on Fastcase™ and the Career Center, two third-party providers accessible through the bar's website.

The OSB has a large archive of past publications in a variety of digital formats. Until recently, written materials were published in digital formats optimized for paper distribution. Most archived materials are in these formats. For the last fifteen years, most OSB materials, produced by the bar, have been created in digital formats that are optimized for digital publication for viewing over the internet. But, not in many cases for searching in a database.

**Access.** Currently, access is available in hard copy, through a variety of unconnected search engines, and as downloadable pdfs.

OSB members receive a hard copy of the monthly *Bar Bulletin*. It is also published in OSB website and searchable by the OSB website engine. BarBooks™ is searchable by all members on the website by its own BarBooks engine. Section newsletters are often available on Section websites; some are searchable by native engines on each Section website. The bar maintains a searchable archive of many section newsletters on the main site, behind the member login using the OSB search engine.

CLE presentations are available to members who attend the CLE either in person, concurrently over the internet or at a later date through the website. CLE materials are available in hard copy or digital copy. The bar will be adding new CLE materials to the main website where they can be searched using the OSB search engine. List-serve messages are exchanged by email to Section members.

A general archive of list-serve messages is not maintained so it is not possible to search for list-serve messages. PLF materials are searchable on the PLF website by its engine.

A Google search engine is used for retrieving access to most areas of information on the OSB website. A proprietary search engine was built to retrieve information in the BarBooks™ and Ethics Opinions, and section newsletter areas of the site. Both the Google and proprietary search engines deliver both web pages and other document formats, with the section newsletter library limited to the pdfs of available issues. Section list serve messages are not archived, curated or included in the website database.

The current OSB website search function operates with basic search parameters:

1. Search terms. The search terms must be a simple word or phrase.
2. Search function. The search matches the search terms with the content of the database records. The user cannot limit the search to a subset of the database; for example, date range, designated materials or other subsets of data. The search does not allow for gaps between words (e.g., search term #1 within 25 words of search term #2).
3. Returns.
  - a. The search returns a series of return message composed of 4 to 5 lines of information:
    - i. A title for the document returned
    - ii. The file format of the document
    - iii. An excerpt from the document showing the search terms in bold
    - iv. A link to the document on the OSB website
  - b. The messages are ordered in terms of relevance (frequency that the search term appears in a document).
  - c. The user cannot search the found set to find a subset of the records.

Some Section websites are also searchable by native search engines (within the Section website) limited to the Section website. In addition, some Sections have made their materials searchable by a general Google internet search. Other Section materials are not searchable.

CLE materials and list serve messages are not searchable. PLF materials do not appear in online Google searches.

### **Recommendations**

**Key Recommendations.** The Task Force recommends that the OSB take the following actions:

1. Create by July 1, 2016 a single online comprehensive search engine for all current and selected archived OSB and PLF materials (excluding list serve messages).
2. Create by July 1, 2016 a message archive for selected list serve messages and make it searchable in by the comprehensive search engine.

### **Specific Recommendations.**

1. Establish a standard comprehensive search engine software capable of maintenance and upgrades. Avoid custom designed software.
2. Solicit participation of Sections to make their materials available in the comprehensive search engine.
3. Include new and archived CLE materials in the comprehensive search engine.
4. Establish parameters for the search terms for comprehensive search engine, including:
  - a. Filters for search terms to limit searches (establish advance search parameters and filters)
5. Establish parameters for the returns from a search:
  - a. sufficient information to evaluate document
  - b. Ranking by users of utility of a document
  - c. Reviews by users of utility of a document
  - d. Suggestions of related documents that users who found the initial documents also used.

### **Challenges to Implementing Recommendations.**

A comprehensive search engine that delivers information from the OSB, PLF and Sections will be a challenge to achieve while these materials are located on multiple systems and servers. Steps can be taken to identify bodies of information that should be curated and added to the bar's website and desired improvements for the Google search engine currently used to deliver the data on the bar's website can be priced and compared to other options.

Most importantly, the OSB is in the process of acquiring an association management software system that will provide a centralized database of bar information. The systems under consideration contain modern search engines that will enhance the ability to make the available information accessible to our membership. These systems could be concurrently evaluated on how they could assist or impede the effort to open up OSB material to the members using the internet.

**Specific Issues:**

1. Technological.
  - a. Legacy records from each digital era are in a variety of formats with varying degrees of difficulty in using with modern search software.
  - b. The legacy search software programs have some limitations on converting records to new search software.
  - c. Integration of existing billing, member demographic and other OSB databases with new search software.
2. Financial.
  - a. Costs of conversion of existing legacy records from various eras.
  - b. Cost of new search software.
  - c. Installation and integration of new search software into existing systems including website and
3. Political.
  - a. Section Newsletters. Some Sections do not want to share their Section materials to non-Section members. One key objection is that Section members have paid a fee to join the Section and have access to the materials.
  - b. Section List serves. Section list serves contain a wide variety of messages. The current rule (and expectation) is that the messages are distributed only to the members of the section list serves. This closed list feature is valued by many list serve users. In order to preserve this feature, the author of a list serve comment should have the election to authorize the republication of a list serve message to a wider audience (possibly in the form of an OSB Blog open to members).

**Conclusion**

In the digital world there are two things: content and access. OSB already does the difficult thing: it produces high quality content. It only needs to add access. It has already started this process. It should broaden its efforts to produce a single online comprehensive search engine and include all new OSB materials and as much archived OSB material as possible. The benefits to its members and the public can be enormous.

Respectfully submitted,

James Oberholtzer  
Chair of the OSB Knowledge Base Task Force

Members of the Committee:

John Gear  
Amy Hill  
Joseph Kraus

Colin Lebens  
Charles Starkey

Staff Liaisons: Sylvia Stevens, Emilee Preble, Anna Zanolli

---

# OREGON STATE BAR

## Board of Governors Agenda

---

**Meeting Date:** November 20, 2015  
**From:** Sylvia E. Stevens, Executive Director  
**Re:** Discipline System Review Committee Report Implementation

---

### **Action Requested**

None at this time; this is for the Board's information only.

### **Discussion**

On November 5, Rich Spier, Ray Heysell, Helen Hierschbiel and I discussed the DSRC Report with the Chief Justice and his staff counsel, Lisa Norris-Lampe. After we reviewed some of the Committee's more significant recommendations, our discussion turned to identifying the best approach for eliciting member comment and presenting the report to the Supreme Court.

After discussion, the Chief Justice expressed a preference for deferring submission of the report to the Court until after members have had time to comment and the BOG has decided which of the Committee's recommendations it wishes to forward to the Court. The DSRC Report (and any minority reports) can be published on the OSB web site by the end of November and the comment period can run to the end of January.

The BOG can then use its February meeting to review the DSRC Report and any member comments received, and determine what DSRC recommendations it wishes to recommend to the Supreme Court. The Court will have a special public meeting (probably in March) to review the DSRC Report, member comment, and the BOG's recommendations. The Court will then advise which recommendations it favors.

Staff will then proceed to draft amendments to the BRs to implement the favored recommendations. A realistic goal for presentation of the rule amendments to the BOG is the August 2016 meeting. Presumably the Court would act on the proposed rules promptly, adopting them with an effective date of January 1, 2017.

**Proposal to the Oregon State Bar**  
Board of Governors Meeting – November 20, 2015

Funding Request: \$2000

Thank you all for considering our request for funds to help us host “**A Class Action: The Grassroots Struggle for School Desegregation.**” This traveling exhibit, created by the Museum of Teaching and Learning (MOTAL) and the Ninth Judicial Circuit Historical Society, depicts the history of school segregation and desegregation, particularly with respect to Mexican American students. It focuses on the Ninth Circuit’s decision in Mendez v. Westminster School District, which was, in all respects, the precursor to Brown v. Board of Education. The exhibit consists of five large panels, three rectangular towers, and three smaller cases containing artifacts related to the case.

At present, the Mendez exhibit has been hosted at various courthouses throughout California, including the Ninth Circuit’s James R. Browning Courthouse in San Francisco and the Edward J. Schwartz Courthouse in the Southern District of California (San Diego). It is a traveling exhibit, and MOTAL’s goal is to provide more opportunities throughout the Ninth Circuit for bar and community members to explore the case, learn about its origins, and engage in discussions about how its legacy has inspired change in recent years.

The Oregon Chapter of the Federal Bar Association would like to host the Mendez exhibit at the Mark O. Hatfield U.S. Courthouse here in Portland. The cost is such that we intend to partner with a number of local bar associations to make that happen. Below is a ballpark summary of costs associated with travel, community outreach, and events associated with the exhibit:

Travel:	\$10,800
Community Outreach:	\$200
Welcome Reception	\$3000
Total:	\$14,000

**Timing:**

We anticipate hosting the exhibit this spring, starting in early April. The exhibit would stay in the Hatfield Courthouse for 10 weeks.

**Curriculum Materials and Community Outreach:**

We are currently working with MOTAL to develop curriculum materials that we can make available to local schools and community organizations. With those materials and some community outreach by our members, we hope that the exhibit will provide opportunities for local students to visit the courthouse, learn about the case and its origins, and better understand the importance of our judicial system in initiating change.

**Welcome Reception:**

We plan to host a reception welcoming the exhibit to Portland and members of the community into our courthouse. We anticipate that the Honorable Mary H. Murguia, Circuit Judge on the U.S. Court of Appeals for the Ninth Circuit, will be our featured speaker. We are also considering inviting family members of the school children involved in the case to speak at that reception.

**Funding Request:**

The Federal Bar Association plans to contribute \$2500 toward the total event cost, and the District of Oregon, by way of the Attorney Admissions Fund, has agreed to contribute \$1500. **We hope that the Oregon State Bar will consider contributing \$2000 to the total cost of the event.** We would also like to involve members of the Board of Governors and OSB staff in the welcome reception and in any other events related to the exhibit. Of course, should you agree to help sponsor the event, we will include the OSB on all marketing materials, pamphlets, and online advertising associated with the exhibit.

# IMPLICIT BIAS **CLE** *January 22, 2016*

*In the* PORTLAND U *of* O WHITE STAG BUILDING

## SCHEDULE

<p><b>8:30-9:00 AM</b> <b>REGISTRATION AND BAGEL BREAKFAST</b>  <i>Art Exhibition: <b>The Black Portlanders</b>, Intisar Abioto</i></p>	<p><b>11:30-12:00</b> <b>BEST PRACTICES PANEL I: HIRING, MENTORING AND RETENTION OF ATTORNEYS OF COLOR</b>  <i>Hon. Darleen Ortega, Oregon Court of Appeals                  Clarence Belnavis, Fisher &amp; Philips, LLP                  Banafsheh Violet Nazari, Nazari Law                  Pro. Erik J. Girvan, University of Oregon Law</i></p>	<p><b>2:30-3:30</b> <b>ZOOM IN: MICROAGGRESSIONS AND DISABILITY</b>  <i>Documentary Film and Discussion                  Barbara J. Diamond, Diamond Law</i></p>
<p><b>9:00-9:15</b> <b>WELCOMING REMARKS</b>  <i>Prof. Henry H. Drummonds, Lewis &amp; Clark Law School</i></p>	<p><b>12:30-1:30 PM</b> <b>CATERED LUNCH</b>  <b>Luncheon Speaker:</b>  <i>Hon. Adrienne Nelson, Multnomah County Circuit Court</i></p>	<p><b>3:30-4:30</b> <b>Best Practices Panel II: HIRING, MENTORING AND RETENTION OF LGBTQ AND DISABLED ATTORNEYS</b>  <i>Dana L. Sullivan, Buchanan, Angeli, Altschul &amp; Sullivan, LLP                  Lin Hendler, Attorney at Law                  Talia Stoessel, Bennett, Hartman, Morris &amp; Kaplan LLC.                  Prof. Erik J. Girvan, University of Oregon Law School</i></p>
<p><b>9:15-10:30</b> <b>THE SCIENCE OF BIAS</b>  <i>Prof. Erik J. Girvan, University of Oregon Law School</i></p>	<p><b>1:30-2:30</b> <b>WHAT ARE YOU? MICROAGGRESSIONS &amp; LGBTQ</b>  <i>Documentary Film and Discussion                  Jess Guerriero, MSW                  Barbara J. Diamond, Diamond Law</i></p>	<p><b>4:30-5:30</b> <b>EVALUATIONS VIDEO TESTIMONIALS SOCIAL HOUR</b></p>
<p><b>10:30-11:30</b> <b>REVEAL MOMENTS: MICROAGGRESSIONS AND RACE &amp; ETHNICITY</b>  <i>Professor Roberta Hunte, Portland State University                  Kenya Budd, Consultant                  Documentary Film and Discussion</i></p>		

**Cost: \$150 PER PERSON / 6 CLE CREDITS**

Please contact us at least 14 days in advance to make arrangements to make this event accessible to you. We welcome attendance by everyone!



# IMPLICIT BIAS



# Registration Form

JANUARY 22, 2016 8:30 TO 5:30 PM | UO WHITE STAG BUILDING, 70 NW COUCH ST, PORTLAND, OR 97209

NAME	OSB NO.
STREET ADDRESS	CITY/STATE/ZIP
PHONE	EMAIL

### CURRENT TABLE HOSTS:

CATHY HIGHET,  
 FRANCIE NEVILL,  
 ARUNA MASIH,  
 TED HEID,  
 JIM YOCOM,  
 MARK JOHNSON ROBERTS,  
 LIANI REEVES,  
 STEVE GOLDBERG,  
 HON. JOHN ACOSTA,  
 HON. MARTHA WALTERS,  
 HON. ROBERT DURHAM,  
 MARIANN HYLAND,  
 HON. SUZANNE CHANTI,  
 HON. DAVID SCHUMAN,  
 DERILY BECHTHOLD,  
 EMILY TEMPLIN FOX,  
 MOLLY JO MULLEN,  
 SUSAN COURNOYER,  
 EMILEE S. PREBLE,  
 LOUISE HANSEN, TIFFANY RAY,  
 HON. ANGEL LOPEZ  
 JON PATTERSON  
 ERIOUS JOHNSON  
 DUANE BOSWORTH  
 HON. DAVID SCHUMAN

**COST:** \$150 PER PERSON. *LOW INCOME AND STUDENT RATES AVAILABLE. FOR MORE INFORMATION CONTACT BARBARA@DIAMONDLAW.ORG*

### MEAL OPTIONS (SELECT ONE)

- VEGAN
- VEGETARIAN
- CHICKEN
- BEEF
- PORK
- FISH



### ACCOMMODATION REQUESTS?

- SIGN LANGUAGE INTERPRETER
- AUDIO DESCRIPTION FOR FILMS
- EVENT PROGRAM INFORMATION IN ALTERNATE FORMAT
- SPECIAL SEATING LOCATION
- ALLERGIES/SPECIAL FOOD NEEDS
- OTHER ACCOMMODATIONS (PLEASE SPECIFY)

### RETURN THIS FORM WITH PAYMENT TO:

DIAMOND LAW, 1500 NE IRVING, SUITE 575, PORTLAND, OR 97232. MAKE CHECKS OUT TO DIAMOND LAW.  
MATERIALS WILL BE MAILED TO YOU IN PDF FORMAT



**HAVE QUESTIONS?** LENA@DIAMONDLAW.ORG 503 229-0400 (EXTENSION #2)

**CANCELLATION:** TUITION FOR CANCELLATIONS PRIOR TO JANUARY 1, 2016 WILL BE REFUNDED MINUS A \$25 CANCELLATION FEE.

