

**Oregon State Bar**  
**Meeting of the Board of Governors**  
September 9, 2016  
**Open Session Minutes**

President Ray Heysell called the meeting to order at 12:30 p.m. on September 9, 2016. The meeting adjourned at 3:34 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Rob Gratchner, Guy Greco, Michael Levelle, John Mansfield, Vanessa Nordyke, Per Ramfjord, Kathleen Rastetter, Julia Rice, Kerry Sharp, Richard Spier, Kate von Ter Stegge, Tim Williams, and Elisabeth Zinser. Not present were Josh Ross and Charles Wilhoite. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Kateri Walsh, Dani Edwards, Judith Baker, Charles Schulz, Catherine Petrecca, and Camille Greene. Also present was Carol Bernick, PLF CEO.

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

The board accepted the agenda, as presented, by consensus.

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

**A. Awards Special Committee**

Mr. Heysell asked the board to approve the list of award recipients recommended by the committee. **[Exhibit A]**

**Motion:** The board voted unanimously in favor of the committee motion to approve the list of OSB Award Recipients. The motion passed.

**B. Policy and Governance Committee**

Mr. Levelle presented the committee motion to adopt a Sponsorship Policy to guide the ED/CEO's award of sponsorships as outlined in the committee memo. **[Exhibit B]**

**Motion:** The board voted unanimously in favor of the committee motion to adopt a Sponsorship Policy. The motion passed.

Mr. Levelle presented the committee motion for the Oregon State Bar to participate in a detailed pro bono survey, conducted and analyzed by the ABA. **[Exhibit C]**

**Motion:** The board voted unanimously in favor of the committee motion to participate in the ABA pro bono survey. The motion passed.

Mr. Levelle presented the committee motion to approve the creation of the Innovations Committee and the Regulatory Committee as subsets of the Futures Task Force with the charges set forth in **[Exhibit D]**. Mr. Heysell will appoint members of the task force committees, not to exceed twelve in number. Mr. Levelle also presented the committee motion to join with the court and legal aid organizations to submit a *Justice for All* grant proposal to the National Center for State Courts.

**Motion:** The board voted unanimously in favor of the committee motion to approve the creation of the Futures Task Force committees, and to approve Mr. Heysell signing a letter of commitment to the grant proposal. The motion passed.

Mr. Levelle presented the committee motion to approve the creation of a new section. Through a petition signed by 102 active bar members, the BOG is asked to consider the creation of a Cannabis Law Section. **[Exhibit E]** The committee agreed that this section would duplicate areas of practice covered by existing sections at a time when the board has asked staff to reduce the number of sections. There was considerable discussion about the uniqueness of this area of law that does not exist in other established sections. However, the committee recommended the board approve creation of this section rather than make this section request wait until the board reaches a decision about reducing the number of sections.

**Motion:** The board voted in favor of the committee motion to approve the creation of the Cannabis Law Section. The motion passed 10-4. In favor: Ms. von Ter Stegge, Mr. Bachofner, Mr. Mansfield, Ms. Rice, Mr. Levelle, Ms. Nordyke, Mr. Chaney, Mr. Williams, Ms. Costantino, Mr. Gratchner. Opposed: Mr. Ramfjord, Mr. Sharp, Ms. Zinser, and Ms. Rastetter.

Mr. Levelle presented the committee motion to create a Fee Mediation Task Force as set forth in Amber Hollister's memo. **[Exhibit F]**

**Motion:** The board voted unanimously in favor of the committee motion to form the Fee Mediation Task Force. The motion passed.

Mr. Levelle presented the committee motion that the Board amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. If the Board does so, the committee recommends that the Board waive the one meeting notice requirement. **[Exhibit G]**

**Motion:** Mr. Ramfjord moved, Mr. Levelle seconded, and the board voted unanimously to waive the one-meeting notice for bylaw changes presented.

**Motion:** The board voted unanimously in favor of the committee motion to amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. The motion passed.

**C. Board Development Committee**

Ms. Nordyke asked the board to ratify the Board Development Committee's input on Board of Bar Examiners (BBX) appointments: Hon. Frank R. Alley III, Stephanie Eames, Kendra M. Matthews, Joanna T. Perini-Abbott, Hon. Thomas M. Ryan, Michael J. Slauson, and Kate Anne Wilkinson. Mr. Levelle encourages the BBX to diversify their pool of co-graders. **[Exhibit H]**

**Motion:** The board voted in favor to ratify the committee's input. The motion passed. Mr. Levelle was opposed.

Ms. Nordyke presented the committee's recommendations for Public Member appointment to OSB Board of Governors, Traci Rossi, but asked the board for input on their alternate recommendation, Michael Rondeau. **[Exhi]**

**Motion:** The board voted in favor to accept the committee recommendation, Traci Rossi. The motion passed. Mr. Levelle abstained.

Ms. Nordyke presented the committee's recommendations for Professional Liability Fund appointments to PLF Board of Directors: Megan Livermore and Holly Mitchell. **[Exhibit J]**

**Motion:** The board voted in favor of accepting the committee recommendations. The motion passed. Mr. Bachofner abstained.

Ms. Nordyke presented the committee's recommendations for appointments to OSB House of Delegates. Public Members: Douglas Primmer, Nathaline Frener, Bryan Penn, and Thomas Feely. Lawyer Members: Amber Labrecque, Hans Huggler, Holly Puckett, and Jeffrey Young. **[Exhibit K]**

**Motion:** The board voted unanimously in favor to accept the committee recommendation. The motion passed.

**D. Budget and Finance Committee**

Mr. Mansfield presented the committee's motion to eliminate the second increase in the membership for those members not paying by the deadline; the only additional fee after the deadline is \$100.00 per active member and \$50.00 per inactive member. Ms. Bernick stated this change was the same as the PLF changes approved by the BOG at its June 2016 meeting. **[Exhibit L]**

**Motion:** The board voted unanimously in favor of the committee motion to approve the proposed changes to the fees. The motion passed.

**E. Public Affairs Committee**

Ms. Grabe gave a general update on legislative activity. The package of OSB law improvement proposals are mostly drafted and moving forward in the legislative process.

**3. Professional Liability Fund**

Ms. Bernick gave an update on the PLF financials and the revised financial audit. She notified the board of Steve Carpenter's sudden death this summer. Mr. Carpenter was a beloved PLF claims attorney.

Ms. Bernick asked the board to approve the 2017 PLF Assessment which will remain at \$3,500 (unchanged since 2010). **[Exhibit M]**

**Motion:** Mr. Williams moved, Mr. Ramfjord seconded, and the board voted to approve the 2017 Assessment. Mr. Bachofner and Mr. Chaney abstained.

Ms. Bernick asked the board to approve the proposed 2017 PLF Claims Made Primary Plan and 2017 Excess Plan **[Exhibit N]**. There are wholesale changes to both plans.

**Motion:** Mr. Mansfield moved, Ms. Rastetter seconded, and the board voted unanimously to approve the plans as presented. Mr. Bachofner and Mr. Chaney abstained.

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

**A. Discipline System Review Committee**

Ms. Hirschbiel gave the board an update on the rule changes which she estimates will be ready by the November 2016 board meeting. She discussed the creation of a professional

adjudicator position and asked the board to review the options presented for engaging a disciplinary system adjudicator and determine whether to create the position. **[Exhibit O]**

**Option 1. Adjudicator appointed by Court/Chief Justice but employed/retained by OSB;**  
**Option 2. Panel of independent contractor adjudicators appointed by the Court/Chief Justice;**  
**Option 3. Abandon the DSRC proposal to create the position.**

Ms. Hollister described the options to the board and the challenges presented by an independent contractor who is not an employee.

Mr. Greco summarized his interactions with other members who back up his support of Option 2. Mr. Bachofner suggested the position be an employee of the judicial department. Mr. Heysell reminded the board that the Chief Justice did not agree to that scenario for the reasons discussed at the June meeting.

Mr. Ramfjord said the OSB, as a self-regulating bar, should pay for this position regardless of whether it is an employee or an independent contractor. Mr. Chaney agreed but supports only Option 2 since that would make scheduling easier. Ms. Nordyke said Option 1 would offer the streamlining of the process that members wanted. Ms. Rastetter recalls that this was a close vote back in March 2016 (to create the position) and she is still not convinced that doing so would improve efficiency, consistency or quality of decisions. She favors Option 3. Ms. von Ter Stegge favors Option 1 to retain the most qualified applicant.

Mr. Sharp favors Option 3 until it can be established that it would serve the purposes for which it would be created.

**Motion:** Mr. Bachofner moved, Mr. Levelle seconded, to hold off on the discussion until it can be further resolved. In favor: John Bachofner, Rob Gratchner, Michael Levelle, Kathleen Rastetter, Julia Rice, Kerry Sharp. Opposed: Mr. Ramfjord, Mr. Mansfield, Ms. Zinser, Ms. Nordyke, Mr. Chaney, Mr. Williams, Ms. Costantino, and Ms. von Ter Stegge. Motion failed.

**Motion:** Mr. Ramfjord moved to adopt Option 1. Mr. Mansfield seconded. In favor: Mr. Ramfjord, Ms. von Ter Stegge, Mr. Mansfield, Ms. Rice, Ms. Zinser, Ms. Nordyke, Mr. Chaney, Ms. Costantino, Mr. Williams. Opposed: Mr. Bachofner, Ms. Rastetter, Mr. Gratchner, Mr. Sharp, and Mr. Greco. Abstain: Mr. Levelle. The motion passed.

**B. Oregon New Lawyers Division Report**

As written.

**C. Legal Services Program**

Ms. Baker gave an update on the Legal Services Program and its review of the Lane County Legal Aid and Advocacy Center.

**D. Client Security Fund Committee**

Claim 2016-02 KRULL (Cisneros)

Ms. Hirschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$7,500 to Guillermo Pahua Cisneros for his loss resulting from the conduct of attorney Julie Krull. **[Exhibit P]**

**Motion:** Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously to approve the committee's recommendation for reimbursement.

Claim 2016-21 MILSTEIN (Colvin)

Ms. Hirschbiel asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee’s partial payment the claim and instead pay it in full, as presented in her memo. **[Exhibit Q]**

**Motion:** Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously to uphold the committee's decision to make partial payment of the claim.

Claim 2016-05 BOCCI (Tait)

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

**Motion:** Mr. Ramfjord moved, Mr. Bachofner seconded, and the board voted unanimously to uphold the committee's denial of the claim.

Ms. Hirschbiel presented the committee’s financials and claim status for information purposes.

**E. Legal Ethics Committee**

Ms. Hirschbiel presented the committee’s request that the Board of Governors decide whether to adopt the proposed formal ethics opinion 2016-XXX regarding electronic-only or paperless client documents and files. **[Exhibit S]**

**Motion:** Mr. Mansfield moved, Ms. Nordyke seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

Ms. Hirschbiel presented the committee’s request that the board consider the recommendation of the Legal Ethics Committee (“LEC”) to amend Oregon RPC 7.2(b). **[Exhibit T]**

**Motion:** Ms. Rastetter moved, Ms. Rice seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

Ms. Hirschbiel presented the committee’s request that the Board of Governors consider the Legal Ethics Committee recommendation to amend Oregon RPC 7.2(c) and RPC 7.3(c). **[Exhibit U]**

**Motion:** Mr. Bachofner moved, Mr. Mansfield seconded, and the board voted unanimously to approve the amendments as recommended by the committee.

**F. Other**

Ms. Hirschbiel presented section feedback on BOG requirement of co-sponsorship for informational purposes. **[Exhibit V]**

**5. Consent Agenda**

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

Mr. Heysell reported on the President-elect Nominating Committee's meeting today. They received one application, from Ms. Nordyke. The committee will interview Ms. Nordyke and make a recommendation to the board at the October 2016 meeting.

Report of the President-elect  
None.

Report of the Executive Director  
In addition to the written report, Ms. Hirschbiel gave them board an update on the implementation of the new association management software system rollout beginning in mid-October.

Director of Regulatory Services  
As written.

MBA Liaison Report  
None.

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

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

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

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

None.

**Oregon State Bar  
Board of Governors Meeting  
September 9, 2016  
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

B. Threatened Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 22, 2016  
**From:** Kay Pulju, Communications & Public Services Director  
**Re:** Award recommendations for 2016

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### Action Recommended

Approve the following slate of nominees:

President's Membership Service Award

Hon. Stacie Beckerman  
Hon. Valeri Love

President's Public Service Award

Brent Barton  
Edwin A. Harnden  
Hon. Douglas Tookey

President's Diversity & Inclusion Award

Derily Bechthold  
Megan Livermore

President's Public Leadership Award

Jennifer Dalglish

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

Hon. John A. Wittmayer

OSB Award of Merit

Sandra Hansberger

### Background

The ad hoc Awards Committee met by conference call on August 16 to review nomination materials and develop the recommendations detailed above. Members present were: Ray Heysell (Chair), Guy Greco, Vanessa Nordyke, Per Ramfjord and Timothy Williams.

The annual Awards Luncheon will take place on Thursday, December 8, at the Sentinel Hotel in Portland.

# OREGON STATE BAR

## Board of Governance Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 1, 2016  
**From:** Policy and Governance Committee  
**Re:** Sponsorship Policy

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### **Action Recommended**

Adopt a Sponsorship Policy to guide the ED/CEO's award of sponsorships.

### **Background**

At the February 12, 2016 meeting, the BOG adopted revised OSB Bylaw 7.203 Sponsorship, which provides:

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The bar's annual budget shall include an amount dedicated to providing such financial support, although that amount may change from year to year based upon the overall financial needs of the bar. This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

When adopting the revised bylaw, the BOG asked the Policy and Governance Committee to develop a Sponsorship Policy to aid the CEO/Executive Director in making sponsorship decisions.

The Policy and Governance Committee discussed a proposed policy at its July 2016 meeting and recommends that the Board adopt the Sponsorship Policy presented below.

### **Proposed Sponsorship Policy**

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. OSB Bylaw 7.203.

As a general matter, the Oregon State Bar supports events that are germane to the Bar's purpose and mission though the purchase of event tickets and attendance of Bar leadership or staff at events of specialty bars, sections and other legal and non-legal organizations.

In limited circumstances, the Bar may participate as a sponsor of an event or program. Except in extraordinary circumstances, the Bar's sponsorship will only exceed \$5,000 if an expenditure is specifically budgeted.

When considering sponsorship requests, the following guidelines will be applied:

1. The Bar's participation as a financial sponsor of an event or program in the amount of \$2,500 or more requires advance approval by the Board of Governors. The Bar's participation as a financial sponsor of an event or program in an amount less than \$2,500 requires approval by the CEO/Executive Director. Such expenditures may only be approved if:
  - a. The sponsorship is consistent with OSB Bylaw 12.1.
  - b. The Board or CEO/Executive Director determines the sponsorship advances one of the Bar's strategic functions; and
  - c. The proposed expenditure has been either specifically budgeted or does not exceed funds allotted for sponsorships.

Recipients must include sponsorship recognition in brochures, programs, or other event materials distributed.

Recipients must utilize awarded funds for the event or program requested. If the recipient is unable to utilize the funds for the awarded purpose, a request must be submitted to the Bar for approval of the alternative proposed use of the funds. If the "alternative use" approval is denied, then the recipient agrees the funds must be returned to the Bar.

Recipients must submit a report to the Board within 30 days of the event or program. The report should summarize how funds have been spent in furthering the strategic functions of the Bar, include copies or photographs of event materials recognizing the Bar as a sponsor, and documents that demonstrate the event or program is consistent with OSB Bylaw 12.1.

A recipient's failure to utilize funds for approved events and/or failure to submit a report will impact the recipient's ability to receive future funds.

The CEO/Executive Director will include information about sponsorships in her regular report to the Board.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Participation in ABA Pro Bono Survey

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### **Issue**

The Oregon State Bar has the option to participate in a detailed pro bono survey, conducted and analyzed by the ABA.

### **Options**

The BOG can choose for the OSB members to participate or not participate in this survey.

### **Discussion**

The ABA is conducting a first-ever, detailed nationwide pro bono public survey, with surveys sent to every Bar member of every state that chooses to participate. The ABA will draft the questions and analyze both the nationwide data and each individual state's data, forwarding the information to each state that participates. The purpose of the survey is to develop a deeper understanding of the reasons why attorneys do, and do not, engage in pro bono work, how organizations who serve low-income clients can best appeal to attorneys to do pro bono work, and how a pro bono practice fits in to different types of practices.

Currently, the Oregon New Lawyers Division conducts a voluntary Pro Bono Challenge, and this is the only pro bono data we can analyze. Typically, just over 9% of Oregon's attorneys report any pro bono hours. These hours are reported, in conjunction with the Pro Bono Challenge, by firms and individuals. Additionally, the OSB Certified Pro Bono Programs are required to report the hours of their volunteers. The OSB Economic Survey often asks a few questions about pro bono work, but cannot do so in any detailed sense.

The OSB often uses the limited data it has to provide information to the legislature when seeking to ensure that legal services funding continues. Having more detailed information will allow the Public Affairs Department to better inform the legislature of the pro bono work provided by Oregon attorneys.

Information provided by the survey responses can be shared with the OSB Certified Pro Bono Programs to help those programs in their attorney recruitment. Further, the data provided by the ABA will help Bar staff better communicate with attorneys about pro bono work.

The survey will take place in January/February, and requires very little from the participating states. Technically, the ABA wants a “leadership team” to raise awareness and raise funds for incentives to participate in the survey. Kay Pulju, Director of Communications believes that incentives are unnecessary in Oregon as Oregon attorneys respond well to well-drafted surveys. She believes that the ABA survey will be helpful and appropriate. The OSB Pro Bono Committee can constitute the leadership team.

Staff may ask the Bar President and the Chief Justice to sign the initial request for attorneys to respond to the survey.

More information about the survey may be found at the ABA’s website, here: [http://www.americanbar.org/groups/probono\\_public\\_service/research\\_pro\\_bono/pro-bono-surveys.html](http://www.americanbar.org/groups/probono_public_service/research_pro_bono/pro-bono-surveys.html)

**Project Process and Timeline, as set forth on the ABA link:**

*June – August, 2016:* determine interest among your state’s stakeholders in distributing a survey to your attorney population, confirm interest by **August 31. [The ABA has been informed that confirmation of Oregon’s participation will not happen until the BOG approves the survey.]**

*August – December, 2016:* develop a leadership team (judiciary, bar association representatives, legal services provider and others); raise or identify funds to be used as an incentive for attorneys to complete the survey. **[Staff has determined that no funds will be necessary to provide an incentive.]**

*September – December, 2016:* raise awareness among your attorney population by posting announcements in newsletters, on listservs and other social media.

*January, 2017:* surveys to be distributed by email to all attorneys in your state.

*February – March, 2017:* distribute reminders and encourage responses

*April, 2017 – May 2017:* data analyzed by ABA staff

*June, 2017:* receive analyzed data report and raw data for your state

*June – August, 2017:* the ABA will facilitate conference calls for your state’s stakeholders to discuss findings and come up with policy and program recommendations.

*Summer 2017:* the ABA will publish one report summarizing the findings for all of the states that participated.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy & Governance Committee  
**Re:** Proposed Futures Task Force Committees and Charges

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### **Action Requested**

The Board of Governors should approve the creation of the Innovations Committee and the Regulatory Committee as subsets of the Futures Task Force with the charges set forth below.

In addition, the Board of Governors should commit to participation with the court and legal aid organizations to submit an Access to Justice for All grant proposal.

### **Discussion**

At its April 24, 2016 meeting the Board of Governors approved the creation of a Futures Task Force with the following overarching charge:

Examine how the Oregon State Bar can best serve its members by supporting all aspects of their continuing development and better serve and protect the public in the face of a rapidly evolving profession facing potential changes in the delivery of legal services. Those changes include the influence of technology, the blurring of traditional jurisdictional borders, new models for regulating legal services and educating legal professionals, public expectations about how to seek and obtain affordable legal services, and innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

Since then, bar staff and the BOG have been faced with several issues relevant to this overarching charge.

- At its June 24 meeting, the Board received a report from Don Friedman regarding incubator law firms. The Board decided to assign further study of the potential viability of such a program in Oregon to the Futures Task Force.
- Leaders from the Oregon Paralegal Association have approached the OSB president Ray Heysell and CEO/Executive Director Helen Hirschbiel about the possibility of the bar licensing paralegals.
- Some BOG members have asked the Board to consider reopening the discussion of LLLTs. We have received a HOD resolution on this topic as well.
- Recently, OSB General Counsel's Office issued an informal advisory opinion, stating that lawyers who participate in AVVO's Legal Services online marketplace risk professional

discipline under Oregon Rules of Professional Conduct 5.4 (fee sharing) and 7.2 (accepting payments for recommendations). Since then, staff has met with AVVO's general counsel to better understand their position and with the Legal Services Committee to determine whether any changes should be made to the rules of professional conduct.

- The *Justice for All Project*, in coordination with the National Center for State Courts, has issued a request for proposals from state access to justice commissions or their counterparts. Grants will be awarded to conduct a state assessment/inventory that will identify the relevant available resources and design a strategic action plan to achieve access to justice for all. In order to qualify for a grant, the state bar, courts and legal aid organizations must all be committed to working together to overcome fragmentation and create an integrated approach.

In order to address these issues in a more strategic and manageable fashion, the Board should consider dividing the task force into two committees with more discrete charges specific to each.

#### Legal Innovations Committee

First, the Board should approve the creation of a Legal Innovations Committee with the following charge:

Study and evaluate how the OSB might be involved in and contribute to new or existing programs or initiatives that serve the following goals:

- Help lawyers establish, maintain, and grow sustainable practices that respond to demonstrated low and moderate income community legal needs;
- Encourage exploration and use of innovative service delivery models that leverage technology, unbundling and alternative fee structures in order to provide more affordable legal services; and
- Develop lawyer business management, technology, and other practice skills.

As part of its work, the Committee should consider the viability of an incubator program for new lawyers in Oregon, by:

- Identifying stakeholders, what role they would play in terms of funding and implementation, and their commitment to the project;
- Identifying the legal needs of low and moderate income Oregonians that could be served by an incubator program; and
- Assessing likely structure, costs, benefits and sustainability of an incubator program in Oregon.

The Committee should be asked to provide a written report to the Board of Governors before the summer of 2017 with recommendations for the Board regarding whether and how to proceed with establishing an incubator program in Oregon and whether and how to proceed with alternative projects or initiatives that serve the goals identified above.

### Regulatory Committee

Second, the Board should approve creation of a Regulatory Committee charged with examining new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and making recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models. The Committee should be asked to provide a written report to the Board of Governors before the summer of 2017 with the following information:

- A summary of what exists at present, both in terms of existing legal service delivery models and regulatory structures for those models;
- A discussion of the consumer protection and access to justice implications presented by these models and regulatory structures;
- An analysis of the stakeholders involved, including (1) the vendors that have an interest in exploring innovative ways to deliver legal services to consumers, (2) the lawyers who are interested in utilizing these innovative service delivery models, and (3) the regulatory entities that are responsible for ensuring adequate protection for consumers in this quickly evolving legal services market;
- Specific recommendations for proactive steps the OSB should take to address these new models (e.g. should the OSB propose amendments to the rules of professional conduct, the bar rules of procedure, or state law);
- A proposed strategic response in the face of unexpected action at the legislature or elsewhere.

### Access to Justice Issues

Rather than create a third committee that relates to access to justice issues at this time, the Board should first partner with the courts and legal aid to attempt to secure funding from the *Access to Justice for All* project to design a state-wide strategic action plan to achieve access to justice. The deadline for grant proposals is October 1, 2016. A letter of commitment from each of these entities, and from the state bar president must be included in the grant application. The Oregon Supreme Court, the Oregon Law Center and Legal Aid Services of Oregon are all interested in partnering on this project. The Board of Governors should approve the president providing a letter of commitment.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Formation of an OSB Cannabis Law Section

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### Action Recommended

Consider a request to form an OSB Cannabis Law Section with 2017 membership dues set at \$20.00.

### Options

1. Approve the creation of a new Cannabis Law Section.
2. Do not approve the creation of a new Cannabis Law Section.
3. Table the decision until after staff has reported back to the BOG regarding alternative section models.

### Background

OSB Bylaw 15.2 states that the Board will consider creating a section upon the petition of 100 bar members who commit to joining the section. In the last 10 years three new sections have been created including Animal Law in 2007, currently with 66 members; Nonprofit Organizations Law in 2011, with 146 members; and Military and Veterans Law in 2013, with 98 members.

Currently with 42 sections, the OSB is considered to have a very high number of sections compared to other states including Washington with 27, Arizona with 28, and California with only 16. Administrative time and expense increases with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and operate as though separate from the bar. Thus, as part of its program review process, the BOG requested that staff explore alternatives to the section model and gather feedback from executive committee leaders about their thoughts on how to meet the professional development and networking needs of members with similar practice areas. We expect to bring this information to the BOG early next year.

Through a petition signed by 102 active bar members, the BOG is asked to consider the creation of a Cannabis Law Section. Dues are proposed at \$20.00 and would be collected in conjunction with the 2017 membership fee process.

The request for formation of a Cannabis Law Section is due to the exponential growth in this area of law and would provide useful application for practitioners in many areas including agricultural, business, criminal, labor & employment, real estate & land use, and tax law.

### Cannabis Law Section Goals

- Creation of a Cannabis Law Section website;

- Hosting at least two Cannabis Law CLE's per year;
- Administering a Cannabis Law Section list serve for members to facilitate the sharing of templates and collaboration to solve issues which will continue to arise as we transition from prohibition to legalization;
- Publication and distribution to Cannabis Law Section Members of at least quarterly email newsletters covering latest regulations, and developments in Cannabis law as well as articles from practitioners, academics, and other members in the industry to provide a spectrum of information regarding relevant issues.

#### Cannabis Law Section Executive Committee

##### Officers:

Chair: Leland R. Berger of Oregon CannaBusiness in Portland

Chair-Elect: John A. Magliana Jr. from Lake Oswego

Treasurer: Aleece Burgio of Green Light Law Group LLC in Portland

Secretary: Andrew C. DeWeese of Andrew C. DeWeese PA in Portland

##### Members at large:

Courtney N. Moran of EARTH Law LLC in Portland

Michael R. Hughes of Hughes Law in Bend

Paul T. Loney of Loney Law Group in Portland

Edgar Diaz, Certified Law Student at Willamette University School of Law

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Fee Mediation Task Force

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### **Action Recommended**

Create Fee Mediation Task Force, charged to consider and recommend amendments to OSB Fee Dispute Resolution Rules and forms pertaining to mediation. Appoint members and chair of Task Force.

### **Background**

In early 2016, the Board adopted the OSB Fee Dispute Resolution Rules. The new rules made the Fee Mediation Pilot Program a permanent program offering to Oregon lawyers and clients. Since its inception, the fee mediation program has been a popular option for program participants.

Recently, General Counsel was approached by an experienced mediator who expressed concerns about the rules as drafted. The concerns pertained to exceptions to confidentiality contained in the present rules, the ability of mediation participants to determine the scope of the mediation, and possible inconsistencies between the current rules and widely accepted tenets of mediation (e.g., principles of self-determination). While normally staff would advise waiting until the program has been in effect for some time before revisiting the rules, the issues raised may warrant a more timely review.

In order to seek input from a broad range of stakeholders, staff recommends the formation of a Fee Mediation Task Force, based on the model of the 2009 Fee Arbitration Task Force.

The proposed charge is as follows:

The Fee Mediation Task Force is charged to evaluate the current fee mediation rules and make proposals for changes to the Board of Governors where appropriate. The Fee Mediation Task Force shall also make recommendations to General Counsel regarding fee mediation training and fee mediation forms.

Staff recommends the appointment of the following members to the Task Force:

- Rich Spier, Immediate Past President of the Board of Governors
- The Honorable Kristena LaMar, Past Chair of Fee Arbitration Task Force
- Mark Friel, Immediate Past Chair of ADR Section, Stoll Berne
- Sam Imperati, ICMresolutions Inc.
- Two representatives selected by the Alternative Dispute Resolution Section from the Section Executive Committee, who specialize in mediation

- Three representatives from the Fee Dispute Advisory Committee, selected by General Counsel
- A representative of Disciplinary Counsel's Office, selected by Disciplinary Counsel
- A representative of the Professional Liability Fund, selected by the PLF CEO
- Two public members from the Fee Dispute Resolution Panel, selected by General Counsel

Staff recommends that Rich Spier be appointed as Chair of the Task Force. The Task Force would be staffed by General Counsel and Fee Dispute Resolution Administrator Cassandra Dyke.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Policy and Governance Committee  
**Re:** Retired Member Status Implementation

---

### **Action Recommended**

Recommend that Board amend OSB Bylaw Subsection 6.102(d) regarding transfer from retired member status to active membership status. If the Board does so, recommend that Board waive the one meeting notice requirement.

### **Background**

At its meeting on June 24, 2016, the Board voted to amend the bylaws to implement the new retired status. As part of that change, staff anticipated seeking an amendment to Bar Rule of Procedure 8.14, to reference the new status. Presently, BR 8.14 only references transfer from Active Pro Bono Status, and there is no reference to Retired Status in the Rules.

Staff anticipates that the Bar Rules of Procedure will be amended to reference to Retired Status at the same time the disciplinary review rule changes are implemented.

To avoid member confusion in the interim, staff recommends amending Subsection 6.102(d) to reference additional provisions of the Rules that pertain to transferring from Inactive Status.

Waiving the one meeting notice requirement will allow the bylaws to be updated immediately, and will provide a clear path to members who wish to transfer from Retired to Active status.

### **Recommendation**

Adopt the bylaw amendment outlined below and waive the one meeting notice requirement.

## OSB Bylaws

### Subsection 6.102 Retired Status

(a) Purpose

The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.

(b) Eligibility for Retired Status

A member of the Bar who is at least 65 years old and who is retired from the practice of law (as defined in paragraph 6.100(b)) may be enrolled as a Retired member.

(c) Membership Fees

Retired members are assessed a fee that is equivalent to the inactive membership fee.

(d) Transfer of Membership

Retired members wishing to resume regular active membership status must comply with ~~BR 8.14~~. **BR 8.1 or 8.2, whichever is applicable. Retired members wishing to transfer to Active Pro Bono status must comply with BR 8.14.**

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 24, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Board of Bar Examiner recommendations

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### Action Recommended

Ratify the Board Development Committee's input on Board of Bar Examiners (BBX) appointments.

### Background

As provided in OSB bylaw 28.2, the Board of Governors has an opportunity to provide input to the BBX as they select candidates to serve as board members and co-graders. Last September the BOG had its first opportunity to provide comment on BBX appointments. Acknowledging new member appointees are traditionally drawn from the pool of existing co-graders, the BOG encouraged the BBX to take steps to increase the diversity of members serving as co-graders. Specifically the BOG suggested considering more lawyers from private practice, from medium or large firms, and from locations outside the Portland and Salem metropolitan areas. The BOG also highlighted the importance of considering candidates with diversity of practice experience and demographic backgrounds.

The Board Development Committee (BDC), and the BOG, considered each of these factors when providing input on co-grader appointments in February of this year. During the July BDC meeting after careful consideration of the applicants and the BOG's earlier encouragement for increased diversity, the following seven members were identified as being well-qualified for service on the BBX:

Hon. Frank R. Alley III

Stephanie Eames

Kendra M. Matthews

Joanna T. Perini-Abbott

Hon. Thomas M. Ryan

Michael J. Slauson

Kate Anne Wilkinson

Based on the BBX's deadline for recommending new member appointments to the Supreme Court, the BDC offered its initial comments to the BBX in the attached July 27, 2016, letter to Stephanie J. Tuttle. This request is to ratify the recommendations the BDC made or to direct the BDC to communicate any additional comments the BOG wishes to provide to the BBX.

Included for reference is a memorandum from Charles Schulz, Oregon State Bar Admissions Director, identifying the candidates the BOG should provide input on for this year's BBX appointments. After submitting its ratification recommendations to BBX, BDC learned that BBX will make its appointment decisions before the BOG meeting. BDC will work with BBX for the next round of appointments to ensure that the BOG's ratification decision precedes BBX appointments.

## M E M O R A N D U M

To: BOG Appointments Committee

From: Charles Schulz, Oregon State Bar Admissions Director

Date: July 20, 2016

Re: 2017 Board of Bar Examiners Appointments

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Pursuant to Oregon State Bar bylaw 28.2, please accept this memo as the Board of Bar Examiners' request for input from the OSB Board of Governors (BOG) regarding potential candidates for appointment to the Board of Bar Examiners (BBX). The Oregon Supreme Court appoints four attorney members to three year terms, and two public members to one year terms on the board. All terms will begin on October 1, 2016.

Current co-graders were selected by the BBX after receiving input from the BOG earlier this year. Co-graders assist the BBX in developing and grading bar exam questions. The participation of co-graders on the July bar examination allows the BBX to vet them as potential board members.

In addition to preparing and grading the bar exam, BBX duties also include the review of applicant files, conducting interviews, making accommodation decisions based on the ADA, recommending rule changes to the Court, and serving on hearing panels to determine whether to recommend applicants for admission, based on their moral character and fitness to practice law. Because there is a significant learning curve for new BBX members, and because hearings and other BBX business can extend beyond the current term, the BBX often retains members, especially public members, over multiple terms. Experienced BBX members also promote continuity and serve as mentors to newer BBX members.

The BBX seeks to obtain a diverse group of individuals to serve on the board. Diversity includes a lawyer's practice area, firm size, geographic area, admission type, gender identity, and racial/ethnic diversity. In addition, the BBX prefers members who have been attorneys in any jurisdiction for a minimum of five years, who can work as a team, and whose areas of practice relate to bar exam subject matter or common character and fitness and ADA issues.

This year, 15 attorneys were identified by the BOG and their names were forwarded to the BBX for consideration as potential 2016 co-graders. From that list, as well as through direct communication with OSB members expressing interest, the BBX selected 11 Oregon attorneys to serve as co-graders in 2016. The summer grading session is scheduled for August 22-26, 2016.

The Board of Bar Examiners has compiled a list of names for consideration of appointment to the BBX, including current and former co-graders, current BBX members seeking an additional term, and attorneys recommended by the BOG Development Committee who were not used as co-graders this year.

The Board of Bar Examiners must recommend the appointment of four attorney members and two public members to the Oregon Supreme Court. The Board looks forward to receiving input from the Board of Governors to assist it in making its recommendations.

**Identified Attorney Members:**

Todd E Bofferding – Current and first-time co-grader; BOG recommended.  
Hon. Thomas M Ryan – Current BBX member (third year).  
Kate Wilkinson – Former BBX member; current co-grader.  
Ernest (Ernie) Warren – Current co-grader.  
Rosa Chavez – Current co-grader.  
Stephanie Eames – Current co-grader.  
Kendra Matthews – Current co-grader.  
Mandi Philpott – Current co-grader.  
Jo Perini-Abbott – Current co-grader.  
Lissa Kaufman – Current co-grader.  
Michael Slauson – Current co-grader.  
Michael Casper – Current co-grader.  
Hon. Frank R Alley – BOG recommended.  
John R. Huttl – BOG recommended.  
Karen A Moore – BOG recommended.  
Marisha Childs – BOG recommended.  
Patrick Gregg – BOG recommended.

**Identified Public (non-attorney) Members:**

It is common practice for public members to serve for more than a single one-year term. The BBX would like to reappoint each of its two current public members to additional one-year terms. The public members are:

Dr. Randall (Randy) Green, Ph.D.  
Mid-Valley Counseling Center  
Salem, Oregon

Dr. Green is a psychologist in private practice. He has served on the BBX for the past eleven years. Dr. Green’s experience and insight are vital to the BBX. Dr. Green spent much of the 2015-2016 term transferring knowledge to the board’s second public member, who is in his first year. Dr. Green is currently involved in multiple, current, contested admissions cases and has expressed his willingness to serve an additional year to complete those cases while also allowing the newest public member to gain experience.

Dr. Richard M Kolbell, Ph. D.  
Private Practice  
Portland

Dr. Kolbell is currently serving in his first year on the BBX. Dr. Kolbell’s extensive experience in Administrative and Civil Forensic Psychology has already proven to be very useful to the BBX, both on character and fitness matters and on ADA evaluations. Dr. Kolbell is currently active on a contested admission case and the BBX would like to reappoint him so he can continue to develop as a public member of the BBX.



July 27, 2016

**Board of Governors**

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R. Ray Heysell, Medford

*President-elect*

Michael D. Levelle, Portland

*Region 1*

Timothy L. Williams, Bend

*Region 2*

James C. Chaney, Eugene

*Region 3*

R. Ray Heysell, Medford

*Region 4*

Guy B. Greco, Newport

Ramón A. Pagán, Hillsboro

*Region 5*

Christine Costantino, Portland

Michael D. Levelle, Portland

Johnathan E. Mansfield, Portland

Per A. Ramfjord, Portland

Joshua L. Ross, Portland

Katharine von Ter Stegge Portland

*Region 6*

Vanessa A. Nordyke, Salem

Julia C. Rice, Salem

*Region 7*

Kathleen J. Rastetter, Oregon City

*Region 8*

John R. Bachofner, Vancouver, WA

*Public Members*

Robert Gratchner, Gresham

Kerry L. Sharp, Lake Oswego

Charles A. Wilhoite, Portland

Elisabeth Zinser, Ashland

*Immediate Past President*

Richard G. Spier

**Chief Executive Officer/  
Executive Director**

Helen Hirschbiel, Tigard

Stephanie J. Tuttle  
DOJ Criminal Justice Division  
2250 McGilchrist St SE Ste 100  
Salem, OR 97302

Re: Board of Bar Examiners appointments

Dear Ms. Tuttle:

The Board Development Committee (BDC) of the Board of Governors (BOG) welcomes the opportunity to provide input on the recommendations being made by the Board of Bar Examiners (BBX) to the Supreme Court regarding lawyer and public member appointments to the BBX.

Fully recognizing the critical role the BBX plays in the future of the legal profession in Oregon, we agree that developing an expertise in evaluating the character and fitness of applicants and administering all aspects of the bar examination requires experience. For this reason the BDC supports the reappointment of Dr. Randall Green, Ph.D. and Dr. Richard M. Kolbell, Ph.D. as public members to the BBX.

After a thorough review of the 17 lawyer candidates the BBX will consider for appointment, the BDC identified 7 members whom we believe to be well-qualified:

Hon. Frank R. Alley III  
Stephanie Eames  
Kendra M. Matthews  
Joanna T. Perini-Abbott  
Hon. Thomas M. Ryan  
Michael J. Slauson  
Kate Anne Wilkinson

We arrived at this list of candidates after careful consideration of the applicants, and in furtherance of our commitment to providing greater diversity of backgrounds and perspectives to all volunteer boards and committees.

Letter to Stephanie J. Tuttle  
July 27, 2016

Page 2 of 2

The aforementioned candidates recommended by the BDC will be reviewed by the BOG during its September 9 meeting. Any additional input you wish to have the BOG consider during its deliberation must be received by August 29.

In closing I want to thank the BBX for its commitment to the important work it performs. We look forward to future opportunities to work collaboratively on volunteer selection. I would also like to extend my personal thanks to Charles Schulz, for attending our recent meeting, and offering his input and insight into this important process.

Sincerely,



Vanessa Nordyke  
Chair, BOG Board Development Committee

cc: Ray Heysell, Oregon State Bar President  
Richard G. Spier, Oregon State Bar Immediate Past-President

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 9, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Board of Governors Public Member Recommendation

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### **Action Recommended**

Approve the Board Development Committee's recommendation to appoint one of three candidates interviewed for the Board of Governors Public Member position beginning January 1, 2017.

### **Background**

During the July meeting the Board Development Committee reviewed applications for all six candidates interested in serving on the Board of Governors as a public member. Of those who applied, three were selected to move forward in the selection process.

On September 9 the committee conducted interviews which lasted 30-minutes and included eight questions. The candidates included:

**Michael Rondeau**, CEO of Cow Creek Band of Umpqua Tribe of Indians in Roseburg

**Traci Rossi**, Executive Director of Innovative Changes in Portland

**Gregson Parker**, Owner, Forensic Accounting Services

After the interviews and a lengthy discussion of the candidates, the committee unanimously voted to recommend the appointment of Traci Rossi to the 2017 public member position. The Committee further approved a recommendation of Michael Rondeau as the alternate candidate for public member appointment.

Candidate applications and comments from each candidate's references are provided for consideration.

#3



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Tuesday, May 31, 2016 3:10:12 PM  
**Last Modified:** Tuesday, May 31, 2016 4:47:23 PM  
**Time Spent:** 01:37:10  
**IP Address:** 75.142.150.254

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**PAGE 1: Welcome**

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**Q1: Contact information**

Full Name:	Michael Joseph Rondeau
Address:	38 North River Drive
City:	Roseburg
Zip Code:	97470
County:	Douglas
Email Address:	mrondeau@cowcreek.cow
Phone Number:	541-580-5540

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**Q2: Business Contact Information (if any)**

Company:	Cow Creek Band of Umpqua Tribe of Indians
Job Title:	CEO
Address:	2371 NE Stephens Street
City:	Roseburg
Zip Code:	97470
County:	Douglas
Phone Number:	541-677-5540

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**PAGE 2**

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**Q3: Undergraduate Education:**

Name of School:	Umpqua Community College
Location:	Roseburg, Oregon
Dates Attended:	9/84 - 6/86
Degrees Earned:	General studies

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**Q4: Postgraduate Education:**

*Respondent skipped this question*

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## Oregon State Bar Public Member Volunteer Application

### Q5: Most Recent Employment:

Employer: Cow Creek Band of Umpqua Tribe of Indians  
Job Title: CEO  
Location: Roseburg, OR  
Start and End Date: 3/1986 - Current

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### Q6: Previous Employment (if any):

Employer: Volume Shoesource  
Job Title: Assistant Manager  
Location: Roseburg, OR  
Start and End Date: 2/87 - 7/88

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### Q7: Previous Employment (if any):

Employer: EDCO Equipment  
Job Title: Maintenance  
Location: Glide, Oregon  
Start and End Date: 3/1983 - 9/1984

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### Q8: Volunteer Service:

Organization: Phoenix Charter School  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: 9/2011 - Current

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### Q9: Additional Volunteer Service:

Organization: Mercy Foundation  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: April 2002 - April 2010

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### Q10: Additional Volunteer Service:

Organization: Roseburg Area Chamber of Commerce  
Position Held: Board Member  
Location: Roseburg, Oregon  
Start and End Date: January 2001 - January 2006

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Oregon State Bar Public Member Volunteer Application

**Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.**

I am a very community oriented person. I have volunteered for many organizations and enjoy the interaction with others.

I have enjoyed serving as Chairman of the Cow Creek Gaming Commission for 22 years and have been involved in the development and implementation of many dozens of minimum internal controls. A major portion of the responsibilities of a Commissioner is to research issues, evaluate and make conclusions as to adherence to policy. This experience has sparked my interest in other similar volunteering opportunities.

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PAGE 6

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**Q12: Reference 1:**

Full Name:	Allyn Ford
Email Address:	allynf@rfpco.com
Phone Number:	541 679 2754

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**Q13: Reference 2:**

Full Name:	Sue Kupillas
Email Address:	ASK@opusnet.com
Phone Number:	541 282 4155

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**Q14: Reference 3:**

Full Name:	Josh Kardon
Email Address:	jkardon@capitolcouncil.com
Phone Number:	202 365 9408

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<b>Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?</b>	No
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<b>Q16: Have you ever been convicted or have you pleaded guilty to any crime?</b>	No
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<b>Q17: Have you been involved in a lawsuit or litigation in the last 10 years?</b>	No
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<b>Q18: If you answered Yes to any of these questions, please explain in the comment box below.</b>	<i>Respondent skipped this question</i>
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Oregon State Bar Public Member Volunteer Application

**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .** Board of Governors

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**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?**  
Ray Heysell, an attorney at Hornecker Cowling in Medford inquired about my interest in serving.

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**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.** American Indian or Alaskan Native

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**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?** No

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**Q23: Sexual Orientation:** *Respondent skipped this question*

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**Q24: Gender Identity:** Male

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**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.** Michael Joseph Rondeau

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# **Michael Joseph Rondeau**

## Candidate Reference Comments

### **Sue Kupillas, Brisbee & Stockton LLC:**

The Tribe served on the board of the non-profit for which I was executive director. I have known Michael for 15 years.

Michael is collaborative, intelligent, reasoned and energetic. He studies the issues. He is honest, direct, positive and has the highest integrity. Michael has the perspective from status as a sovereign nation and of a US Citizen.

He is very active in his community as well as all of Sothern Oregon. You would certainly find Michael an asset to any endeavor he chooses. He is also very politically connected locally, statewide and on the federal level.

#16



**COMPLETE**

**Collector:** Web Link 1 ([Web Link](#))  
**Started:** Wednesday, July 20, 2016 9:45:38 AM  
**Last Modified:** Wednesday, July 20, 2016 10:11:03 AM  
**Time Spent:** 00:25:24  
**IP Address:** 74.92.164.158

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**PAGE 1: Welcome**

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**Q1: Contact information**

Full Name:	Traci Rossi
Address:	7 NE Floral Place
City:	Portland
Zip Code:	97232
County:	Oregon
Email Address:	trossi@innovativechanges.org
Phone Number:	5033584318

---

**Q2: Business Contact Information (if any)**

Company:	Innovative Changes
Job Title:	Executive Director
Address:	2027 Lloyd Center
City:	Portland
Zip Code:	97232
County:	Oregon
Phone Number:	5033584318

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**PAGE 2**

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**Q3: Undergraduate Education:**

Name of School:	Catholic University of America
Location:	620 Michigan Ave NE, Washington, DC 20064
Dates Attended:	1990-1993
Degrees Earned:	BA English Literature

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**Q4: Postgraduate Education:**

*Respondent skipped this question*

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**PAGE 3**

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Oregon State Bar Public Member Volunteer Application

**Q5: Most Recent Employment:**

Employer: Innovative Changes  
Job Title: Executive Director  
Location: 2027 Lloyd Center, Portland, OR 97232  
Start and End Date: 06/16 - Current

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**Q6: Previous Employment (if any):**

Employer: "I Have a Dream" - Oregon  
Job Title: Vice President for Programs  
Location: 2916 NE Alberta, Portland, OR 97211  
Start and End Date: 08/10 - 06/16

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**Q7: Previous Employment (if any):**

Employer: Catlin Gabel School  
Job Title: Director of Admission and Financial Aid  
Location: 8825 SW Barnes Road, Portland, OR 97225  
Start and End Date: 08/03 - 08/10

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**Q8: Volunteer Service:**

Organization: Women's Foundation of Oregon  
Position Held: Founding Board Member  
Location: 221 NW 2nd Ave., Portland, OR  
Start and End Date: 05/15 -current

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**Q9: Additional Volunteer Service:**

Organization: Catlin Gabel Alumni Board  
Position Held: Board Member  
Location: 8825 SW Barnes Road  
Start and End Date: 05/16 - current

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**Q10: Additional Volunteer Service:**

Organization: George Washington University  
Position Held: Parent Advisory Council Committee Member  
Location: 2121 I street, NW Washington, DC 20052  
Start and End Date: 09/15 - current

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Oregon State Bar Public Member Volunteer Application

**Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.**

I have worked in the non-profit sector for most of my career and have a passion for serving children and families, and in particular underserved people from low income communities. Serving as a leader in the non-profit sector, I have a unique ability to not only represent the public, non-attorney perspective, but I would bring additional insight from communities who lack the resources, connections and time, quite frankly to bring their perspective to the table for themselves. I have a tremendous amount of experience in both the private and public education sector, but have most recently moved into the financial sector at a community development financial institution. Our major focus is to provide financial capabilities and education to people with low incomes, communities of color and women. Again, I think that having such a close working relationship with these often marginalized communities, would bring an interesting perspective to the Board. I am also a deep believer in collaboration and in that sense, believe that I would benefit from the multiple perspectives on the BOG to better inform the work that I do.

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**Q12: Reference 1:**

Full Name: Mark Langseth,  
Email Address: marklangseth07@gmail.com  
Phone Number: 503-975-4583

**Q13: Reference 2:**

Full Name: Carolyn Walker  
Email Address: carolyn.walker@stoel.com  
Phone Number: 503.294.9358

**Q14: Reference 3:**

Full Name: Emily Becker  
Email Address: emily.becker@smapdx.org  
Phone Number: 503-720-1050

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PAGE 7

**Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?** No

**Q16: Have you ever been convicted or have you pleaded guilty to any crime?** No

**Q17: Have you been involved in a lawsuit or litigation in the last 10 years?** No

**Q18: If you answered Yes to any of these questions, please explain in the comment box below.** *Respondent skipped this question*

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Oregon State Bar Public Member Volunteer Application

**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .**

Board of Governors

**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?**

Josh Ross

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**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.**

Black or African American

**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?**

No

**Q23: Sexual Orientation:**

Heterosexual

**Q24: Gender Identity:**

Female

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**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.**

Traci Rossi

# Traci Rossi

## Candidate Reference Comments

### **Emily Becker:**

I have known Traci for over 10 years. She served on the board of trustees at Catlin Gabel School when I was an employee, she was then my colleague at Catlin Gabel, we became close friends, served as colleagues again at "I Have a Dream" Foundation-Oregon and have remained close friends.

Traci is a remarkable board member. She's bright, collegial, thoughtful and collaborative. She brings intelligence, levity and delight to whatever group she encounters.

Traci has utmost integrity. She is loyal, genuine, trustworthy, hard-working, honest and humble. She has an even temper, she takes care to listen when important and speak when she has something meaningful to contribute. She's a leader in every sense of the word.

I believe Traci would serve the Bar very well as a volunteer. You'd be more than lucky to get her. She has a deep sense of commitment and would only put her name forth if she felt she had something to contribute and would take that commitment seriously.

I hold Traci in the highest esteem. She is truly one of the most amazing people I know.

### **Mark Langseth:**

I have known Traci for 7 years. She ran our program operations while I was president and CEO of "I Have a Dream" Oregon. She is excellent in group settings and on boards. Traci's combination of IQ and EQ and CQ (Cultural IQ) is unsurpassed in any colleague, mentor, or direct report with whom I have worked.

Her character, integrity, personality, and temperament are unsurpassed. Seriously, unsurpassed.

Traci is very selective about volunteer opportunities, because she devotes herself fully when she commits. The bar would be extremely well served by Traci as a member of your board of governors.

### **Carolyn Walker, Stoel Rives LLP:**

Traci Rossi has been a personal friend for almost 19 years. We met through a mutual friend and formed a book club together. The group still exists. I also have seen Traci function in her (former) role at I Have a Dream Portland, and can attest to her professionalism and her reputation.

I would say Traci is an excellent contributor to groups and boards. I've known Traci through many of her professional roles, and because of her reputation on boards and her involvement in organizations that have members in common with those on which I am a member, I have heard nothing but praise for Traci when people find out that I know her. I have tried to get Traci to join other boards on which I serve and I know of other people who have tried to do the same. Because of her reputation, she is most sought after.

Traci's character is impeccable. She is extremely kind, thoughtful, candid and will take that tough positions even when they are not popular if it's the right thing to do. Her personality is magnetic and

she brings a very joyous spirit to the work that she does. When she does agree to take on a position/role, she takes it very seriously and is dedicated to whatever she has committed herself to. She is even-keeled, yet also passionate about issues that affect the world and the community.

I highly recommend Traci, and as a member of the Oregon State Bar myself, would be honored for Traci to serve on the Board of Governors. Oregon's legal community would be lucky to have a person like Traci helping to maintain the integrity of the profession.

#5



**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Friday, July 08, 2016 1:50:23 PM  
**Last Modified:** Friday, July 08, 2016 4:05:40 PM  
**Time Spent:** 02:15:16  
**IP Address:** 73.96.17.2

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**PAGE 1: Welcome**

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**Q1: Contact information**

Full Name:	Gregson Parker CPA, CFE
Address:	1500 SW First Ave #1080
City:	Portland
Zip Code:	97201
County:	OR
Email Address:	Gregson@CPA4n6.com
Phone Number:	5032242400

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**Q2: Business Contact Information (if any)**

Company:	Forensic Accounting Services
Job Title:	Owner
Address:	1500 SW First Ave #1080
City:	Portland
Zip Code:	97201
County:	OR
Phone Number:	5032242400

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**PAGE 2**

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**Q3: Undergraduate Education:**

Name of School:	Portland State Univ
Location:	Portland
Dates Attended:	1976-1978
Degrees Earned:	BA in Business Admin

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**Q4: Postgraduate Education:**

*Respondent skipped this question*

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## Oregon State Bar Public Member Volunteer Application

### Q5: Most Recent Employment:

Employer: Forensic Accounting Services  
Job Title: Owner  
Location: Portland  
Start and End Date: 1989 - current

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### Q6: Previous Employment (if any):

*Respondent skipped this question*

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### Q7: Previous Employment (if any):

*Respondent skipped this question*

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### Q8: Volunteer Service:

Organization: OR Board of Accountancy  
Position Held: Consumer Complaints Committee  
Location: Salem  
Start and End Date: 2010-12

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### Q9: Additional Volunteer Service:

Organization: OR Chapter, Assn of Certified Fraud Examiners  
Position Held: President  
Location: state-wide, meetings held in Ptld  
Start and End Date: 1994-5

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### Q10: Additional Volunteer Service:

Organization: OR Society of CPAs  
Position Held: Treasurer and 2 Board terms  
Location: state-wide, based in Beaverton  
Start and End Date: 1989-93

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### Q11: Describe why you are interested in serving as a public member of the Oregon State Bar. Include information not already mentioned about yourself and your experiences and background that supports your interests.

Having worked with, for, and against thousands of attorneys for more than 30 years, I have had extensive interaction and experience with the legal profession in Oregon (and in many other states as well). My perspective will provide the Board of Governors with a unique mix of retained professional, co-worker, client, and adversarial viewpoints. I've greatly enjoyed my many working relationships with Oregon lawyers, and want to make a meaningful contribution to the profession by serving on the Board

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Oregon State Bar Public Member Volunteer Application

**Q12: Reference 1:**

Full Name: Tom Kranovich  
Email Address: Tom@TKatLaw.com  
Phone Number: 503 992-6680

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**Q13: Reference 2:**

Full Name: Tom D'Amore  
Email Address: Tom@DAmoreLaw.com  
Phone Number: 503 222-6333

---

**Q14: Reference 3:**

Full Name: Larry Brisbee  
Email Address: LAB@BrisbeeandStockton.com  
Phone Number: 503 648-6677

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**Q15: Have you ever been the subject of any professional disciplinary proceeding or had any professional license or permit revoked, suspended, or restricted?** No

---

**Q16: Have you ever been convicted or have you pleaded guilty to any crime?** No

---

**Q17: Have you been involved in a lawsuit or litigation in the last 10 years?** Yes

---

**Q18: If you answered Yes to any of these questions, please explain in the comment box below.**

Not as a party to any lawsuit, but hundreds of involvements as a retained consultant or testifying expert.

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**Q19: If you have a particular interest in a committee or board, please indicate your preference. A brief description of OSB public member opportunities is available by clicking here .** Board of Governors

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**Q20: Where did you learn about the public member opportunities available at the Oregon State Bar?** *Respondent skipped this question*

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**Q21: Race/Ethnicity: Please check all that apply, including multiple categories for two or more race/ethnicity.** White or Caucasian

---

Oregon State Bar Public Member Volunteer Application

**Q22: Disability: do you have a disability (physical or mental) that substantially limits one or more major life activity?**

No

---

**Q23: Sexual Orientation:**

Heterosexual

---

**Q24: Gender Identity:**

Male

---

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**Q25: Please type your full name in the box below. By doing so, you affirm the information contained in this application is complete and accurate.**

Gregson Parker

---

# Gregson Parker

## Candidate Reference Comments

### **Larry Brisbee, Brisbee & Stockton LLC:**

I have known Mr. Parker for more than 20 years and worked with him often. As a CPA and one being skilled in doing forensic work, his help on litigation matters as a consultant and as a witness was invaluable. My practice has slowed somewhat going toward retirement, so our work on common projects has diminished of late. The significance of his role in litigation was the fact that the opposition invariably held him in high regard as well, although in disagreement with his conclusions.

In my experience, Mr. Parker has always been a team player. He is not timid about expressing his views, but listens well and is very adept in building a consensus.

Mr. Parker's character, integrity, personality and temperament are above reproach. From my experience, he invariably "stuck to his guns" in advancing truth in his work. He is not one to show anger or demonstrate abstinence when his views are not accepted. However, his professionalism is always on display.

If selected, Mr. Parker would bring his own set of professional skills and experiences in dealing with matters coming before the Bar. He will also bring a unique experience in dealing with lawyers in a variety of different circumstances. This comes from his forensic work for which he has developed a very positive reputation. In this regard, I have managed several cases for the PLF representing lawyers where Mr. Parker has been retained to assist in their defense. He knows lawyers and what they do, so would be well acquainted with many of the matters in which the Bar is interested.

It is good news that he is willing to volunteer in helping the Bar. I am convinced that, if selected, he would be a valuable resource.

### **Tom D'Amore, D'Amore Law Group:**

I have used Gregson Parker as an expert witness as a forensic accountant. I have used Gregson for approximately 6-8 years.

He does great. And, as a financial expert he would be unmatched. Gregson is very thorough in all he does. His character is above reproach.

Although Gregson is not an attorney, he cares deeply about our justice system. He works in the civil arena for both plaintiffs and defendants. And, he works in the criminal system as an expert witness. As a non-attorney, Gregson has dedicated his career to working in our legal system.

### **Tom Kranovich, Kranovich & Lucero LLC:**

I have known Gregson for going on 27 or 28 years. Gregson is a forensic accountant whom I started using as an expert witness during the first few years I was in-house counsel for SAFECO Insurance Co. He has testified for me on numerous occasions and has been my economic expert on many more cases that ultimately settled. Socially we have had lunch together a few times a year and we played golf together at various bar functions for years (though not since I went on the board in 2011 – I have not held a club since my tenure with the board).

I believe Gregson would function well in a group or on a board. He is smart, articulate and a good listener. He likes to gather information before rendering an opinion. When he does have something to say it is well thought out. He is not afraid to ask questions or to raise tough issues. While he is not shy, he is very courteous and has a great sense of humor. I have had cases where there were multiple defendants who mutually retained Gregson's services. He worked well in a team setting with all attorneys.

In my experience Gregson has great character and the highest of integrity. I believe Gregson would serve the board and the bar well. When he commits to a project he dedicates himself to the project. Gregson has worked with a lot of attorneys from large, medium and small firms. He understands the perspective of all three. He understands the pressure that comes with being a small businessman with a successful practice. He understands our legal ethics and our legal culture. He has worked with attorneys of varied levels of experience. He has lived in New Mexico and is aware of and supportive of the bar's diversity efforts.

I think Gregson would serve the bar well. He has no agenda other than to serve and I know he has been interested in serving as a public member for some time. His knowledge of the legal field and his accounting expertise make for a natural fit. His dedication and his desire to serve speak volumes. I think his time has come. If appointed I know that the board will not be disappointed.



# Professional Liability Fund

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

PO Box 231600 | Tigard, Oregon 97281-1600

CAROL J. BERNICK  
CHIEF EXECUTIVE OFFICER

*Board of Directors  
and Officers*

August 22, 2016

ROBERT D. NEWELL  
CHAIR  
Portland

To: OSB Board Development Committee

TERESA A. STATLER  
VICE-CHAIR  
Portland

From: Carol J. Bernick, PLF Chief Executive Officer 

TIM MARTINEZ  
SECRETARY-TREASURER  
(PUBLIC MEMBER)  
Salem

Re: 2017 PLF Board Appointments

JULIA I. MANELA  
Eugene

The Board of Directors of the Professional Liability Fund met on August 12, 2016 to consider potential applicants for the 2017-2021 Board terms. The BOD is required to send a list of nominees equal to or greater than the number of available positions to the OSB BOG.

DENNIS H. BLACK  
Medford

Article 3.4 provides that:

SAVILLE W. EASLEY  
Portland

By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. **These may include, but are not limited to, consideration of gender, minority status, ability, experience, type of law practice, and region.**

ROBERT S. RASCHIO  
Canyon City

MOLLY JO MULLEN  
Portland

TOM NEWHOUSE  
(PUBLIC MEMBER)  
Portland

This year, 18 attorneys expressed interest in serving on the PLF Board. (Attorneys express their interest in two ways; either through the OSB Volunteer Preference Form or through direct communication with the PLF in response to a blast e-mail, articles or notices in *In Brief* or the OSB *Bulletin*.)

This year, there are two attorney board positions to fill. The terms of Bob Newell and Julia Manela expire December 31, 2016. Their departure leaves the Board with:

- One member from Medford;
- One member from Canyon City;
- One public member from Salem; and
- Four members from Portland.

In terms of firm size, the Board (minus the two departing directors and not counting the public members) has:

- One member from a large firm (over 25);
- One member from a medium firm (10-24);
- One member from a small firm (2-9); and
- Two solo practitioners.

The substantive expertise includes immigration, domestic relations, litigation (plaintiff), litigation (defense)/mediation, and criminal.

### **Attorney Appointments**

The BOD chose three candidates from a list of eight candidates presented by our nominations committee. Those three candidates are presented in order of preference (resumes attached).

**Megan Livermore.** OSB #054789, Eugene.

Megan is a native Oregonian. She graduated from Willamette University with her JD in 2005 and is a 1994 graduate of Oregon State. Her practice focuses on representing small businesses, including start-ups, particularly in the high tech and cannabis industries. She does business formation and wind down as well as intellectual property and real estate and litigation at Hutchinson Cox, a 10-person firm. In the 8 years between college and law school she helped launch Digimarc, a high tech company that develops advance data hiding. She was involved in the company's successful \$80 million IPO before leaving for law school. She is actively involved in Lane County Legal Aid and has served on the board of both the Oregon Women Lawyers and the Lane County Bar Association.

**Holly Mitchell.** OSB #943044, Portland.

Holly is a 1984 graduate of Lewis & Clark law school. She has been with Duffy Kekel, an 18-person business and estate planning firm, since 2001. Before that she worked at a

Memo to OSB Board Development Committee  
August 22, 2016  
Page 3

handful of Portland firms, including Davis Wright Tremaine in the early 1990's. She currently serves on the Executive Committee of the OSB Estate Planning Section and is a frequent speaker and writer on various estate planning topics. We have wanted an estate planning lawyer on our Board for a number of years and believe the need will continue to grow.

**Lisanne Butterfield.** OSB #913683, Lake Oswego.

Lisanne is a named partner in the three person Carr Butterfield firm. Their practice is limited to representing financial services professionals, investment advisors and insurance agencies in state and federal courts, FINRA arbitrations and SEC matters. Lisanne started the firm in 2006. Her first 15 years of practice was spent doing mostly insurance defense work (save for a four year "tour" at a firm in Guam while her husband was stationed there). Lisanne most recently served on the Client Security Fund and has served in a number of other volunteer roles for both the Oregon State and the MBA. Lisanne is a 1991 graduate of Willamette University College of Law and has a BA in Economics and Political Science from University of Denver.

**Attachments:**

Resumes of the three candidates listed above  
List of all applicants



**Megan I. Livermore**  
Of Counsel

Telephone: 541/686-9160  
mlivermore@eugenelaw.com

**Education**

J.D., Willamette University College of Law, 2005  
Willamette Law Review, Symposium Editor  
B.S. cum laude Oregon State University, 1994

**Law Practice**

Megan is an experienced attorney and litigator with a strong record of professional excellence and a unique background in business and law. She is guided by her entrepreneurial experience, having helped launch a successful high tech start-up, and her decade as an attorney. Megan represents business and individuals and works diligently with clients toward finding practical solutions to their issues.

Megan especially enjoys working with entrepreneurs and emerging businesses from start-up to wind-up, and everything in between. She offers a full-service approach to helping clients create successful businesses through advising on entity formation, intellectual property strategy, navigating customer and vendor relationships, creditor's rights and litigating business disputes, when they arise. Recognizing the clear value of new and emerging markets, Megan also represents clients in the medical marijuana industry and those working toward the implementation of Measure 91 on all aspects of their business.

In addition to her business practice, Megan has a thriving real estate practice. She represents clients in commercial and residential real estate transactions, real estate development, and litigation of real estate related matters.

Before starting law school Megan helped launch Digimarc, a high tech company based in Portland that develops advanced data hiding technology used in a number of consumer, commercial, and document security applications. Megan assisted Digimarc in all aspects of the start up phase of the business and played a central role in the company's highly successful \$80 million initial public offering. After law school, and prior to private practice, she also served as a law clerk to the Honorable Darryl Larson of the Lane County Circuit Court.

Megan is passionate about serving her community, including the legal community, as demonstrated by her time spent volunteering. She is an active participant in the Lane County Legal Aid Tuesday Night clinic, a board member of the HIV Alliance and is past-president of both Oregon Women Lawyers and the Lane County Bar Association. In addition, she instructs high school students about the careful use of credit through the Federal Bankruptcy Court's Credit Abuse Resistance Education (CARE) Program.

**Practice areas**

- Business Law
- Business Acquisitions/Sales
- Cannabis Law
- Corporations
- Litigation
- Creditors' Rights
- Real Estate Law
- Trademark and Copyright Law

**Presentations**

- Introduction to Marijuana law and Recent Developments for the Non-Cannabis Practitioner Representing Clients in the Cannabis Industry
- Trademark Basics
- Ethical Issues: Representing Marijuana-Related Businesses
- Fundamentals of Landlord Tenant Law—Collections: How to Enforce Your Judgment
- Oregon Professional Liability Fund, Learning the Ropes CLE
- Panel Speaker, Success Tips from Partners and Associates
- Lane County Women Lawyers, Fourth Annual CLE
  - Moderator, Panel Discussion, Ethics In Mediation
  - Moderator, Panel Discussion, “Whether to Settle or Litigate—Zealous Representation”

**Professional Memberships**

- Oregon State Bar, admitted 2005
- United State District Court, District of Oregon, admitted 2007
- Oregon Women Lawyers, Past-President (2012-13)
- Lane County Bar Association, Past-President (2013-14)
- Oregon State Bar Diversity Section Executive Committee
- OGALLA The LGBT Bar Association of Oregon, Member
- Oregon State Bar Leadership College Fellow, 2009
- Member, Oregon State Bar Sustainability Task Force, 2009
- Oregon State Bar Debtor/Creditor Section, Local Bankruptcy Rules and Forms Committee

**Awards/Honors**

- Super Lawyers Oregon Rising Stars, 2011 through present
- Oregon State Bar Convocation on Equality Diversity Champion, 2011
- Daily Journal of Commerce Up & Coming Lawyers honoree, 2010

**Community Activities**

- Credit Abuse Resistance Education (CARE) Program volunteer
- Lane County Legal Aid & Advocacy Center, Tuesday Night Clinic
- HIV Alliance, President-elect
- Leadership Eugene-Springfield, Class of 2010-11
- Oregon Association of Rowers, Board Member, 2009-2011

**Background and Interests**

Megan was born and raised in Eugene and enjoys practicing law in her hometown. In her free time, she enjoys spending time with her partner and dogs, hiking the Pacific Northwest, and exploring the vast beauty Oregon has to offer.



Holly N. Mitchell  
111 SW 5th Ave, Suite 1500  
Portland OR 97204  
Direct: (971) 244-1829  
Main: (503)226-1371  
hmittell@duffykekel.com

### **Practice**

Holly began practicing in Portland in the areas of estate planning, trust administration, probate, and charitable giving in 1984. Holly joined Duffy Kekel LLP in 2001.

### **Education**

Northwestern School of Law of Lewis & Clark College, J.D.

Lewis & Clark College, B.A.

### **Professional Associations and Activities**

- 2011- Oregon State Bar, Estate Planning and Administration Section, Executive Committee.
- 2008-2013 Oregon State Bar, Estate Planning and Administration Section, CLE Committee; chair 2010-2013.
- 2008- Estate Planning Council of Portland, member.
- 2006- Washington State Bar Association. Member of:  
Real Property, Probate and Trust Law Section.
- 2004 Admitted to Practice before the United States Supreme Court.
- 1984- Oregon State Bar. Member of:  
Estate Planning and Administration Section.  
Taxation Section.

## **Presentations**

- 2012 Oregon State Bar CLE “Administering Oregon Estates” Seminar.  
Topic: Preadministration Procedures and Special Considerations.
- 2010 Oregon Society of Certified Public Accountants, Seminar.  
Topic: Estate Planning in Oregon.
- 2010 Oregon State Bar CLE “Basic Estate Planning and Administration” Seminar.  
Topic: Fiduciary Duties and Risks.
- 2009 Oregon State Bar CLE “Administering the Taxable Estate” Seminar.  
Topic: The Oregon Inheritance Tax.
- 2009 Multnomah Bar Association CLE Seminar.  
Topic: The Oregon Inheritance Tax.

## **Publications**

- 2012 “Preadministration Procedures,” Oregon State Bar, Advising Oregon Estates.
- 2010 “A Divided Second Circuit Fractionalizes Section 2036 in Estate of Stewart,”  
Journal of Taxation, October 2010, Vol. 113 No. 4. Co-author.
- 2010 “Tax Procedure Issues for Estates and Trusts,” Oregon State Bar Estate Planning  
and Administration Section Newsletter, July 2010.
- 2009 “Calculating Bequests Under Formula Clauses,” Oregon State Bar Estate  
Planning and Administration Section Newsletter, October 2009. Co-author.
- 2009 “Adjusted Taxable Gifts and the Oregon Inheritance Tax,” Oregon State Bar  
Estate Planning and Administration Section Newsletter, October 2009.
- 2008 “Inheritance Tax Credit for Farming, Forestry, and Commercial Fishing  
Property,” Oregon State Bar, Oregon Legislation Highlights.



**Carr Butterfield, LLC**  
ATTORNEYS AT LAW

**LISANNE M. BUTTERFIELD**

**5285 Meadows Road, Suite 199**

**Lake Oswego, OR 97035**

**Telephone: (503) 635-5244 Fax: (503) 635-2955**

*lbutterfield@carbutterfield.com*

**PROFESSIONAL EXPERIENCE**

**Carr Butterfield, LLC**

**Lake Oswego, Oregon**

Aug. 2006 – present

*Shareholder and Senior Litigator*

Representation of financial services professionals, registered representatives, investment advisors, insurance agencies and other licensed professionals in state and federal courts, FINRA arbitrations, and investigations initiated by the SEC, and state regulatory/licensing agencies. Advise licensed professionals regarding professional liability, regulatory, ethics and employment law matters.

**Gordon & Polsker, LLC**

**Portland, Oregon**

December 1999 – July 2005

*Senior litigation attorney and Human Resource/Hiring Attorney*

Insurance defense practice with primary focus on construction defect and coverage issues related to breach of contract, product liability, and professional liability.

**Sussman Shank LLP**

**Portland, Oregon**

July 1997 – August 1999

*Associate*

Complex business litigation and PLF defense cases, including trials, mediation and arbitration.

**Carlsmith Ball Wichman Case & Ichiki**

**Agana, Guam**

September 1993 – July 1997

*Associate*

Trial attorney for commercial litigation, employment disputes, and insurance defense matters. Cases included complex tax litigation, construction defect, foreclosure proceedings, consumer fraud, maritime/admiralty matters, administrative adverse action claims and employment law.

**Hoffman Hart & Wagner**

**Portland, Oregon**

August 1992 – August 1993

*Associate*

Insurance defense cases, with emphasis on medical malpractice claims and municipal liability.

**State of Oregon, Multnomah County Circuit Court**

**Portland, Oregon**

May 1991 – August 1992

*Judicial Law Clerk to the Honorable Stephen B. Herrell*

Assisted trial court judge in criminal and domestic relations trials.

## **EDUCATION**

Willamette University College of Law (J.D., 1991)  
Editor, International Law Journal (1989-91)  
University of Denver (B.A., Economics & Political Science, 1987)

## **PROFESSIONAL MEMBERSHIPS, ACTIVITIES, COMMUNITY SERVICE**

American Bar Association (Labor & Employment Law and Litigation Sections)(2010-present)  
Clackamas County Court Mock Trial Judge (2011)  
Guam State Bar, Legal Ethics Committee (1995-1997)  
Lewis & Clark College of Law, Moot Court Judge (2011-2013)  
Multnomah County Bar Association CLE Committee, Member (1999-2001)  
Multnomah County Bar Association, Judicial Selection Committee (2010-2013)  
New York State Bar, *pending*  
Oregon State Bar, Commission on Professionalism,  
Willamette University College of Law, Orientation Program Facilitator (2012-2014)  
Oregon State Bar, Disciplinary Board (Panel Judge 2006-2015)  
Oregon State Bar, House of Delegates (2013-2015)  
Oregon State Bar, Client Security Fund (2014-present)  
Oregon State Bar, Legal Ethics Committee (1999-2002)  
Oregon State Bar, Member (1991-present)  
Oregon State Bar, Securities Section (2011-present)  
Oregon Women Lawyers, Member (2009-present)  
Superior Court, Territory of Guam, Indigent Defense Committee (1994-1997)  
United States District Court of Guam, Indigent Defense Panel (1995-1997)  
United States District Court, Admitted (1992-present)

## **SCHOOL COMMUNITY INVOLVEMENT**

French American International School  
Board of Trustees (2013-2016)  
Budget Committee (2011-2014)  
Site Committee / Legal Liaison for Middle School Expansion Project (2014-present)  
Parent Volunteer for field trips and Outdoor Science School (2008-present)

Lincoln High School, Portland, OR  
Parent Teacher Organization (legal advisor) (2012-2014)  
Alpine Ski Race Team, parent volunteer (2012-2016)  
Lincoln High School Boys Lacrosse Team, team parent/chaperone (2013-2014)  
Lincoln High School Boys Soccer Team, parent volunteer (2012-2016)

Multnomah Athletic Club, Portland, OR  
Freestyle Youth Ski Team, parent volunteer (2015-present)



Carr Butterfield, LLC  
ATTORNEYS AT LAW

## REPRESENTATIVE CLIENTS

American Guarantee Insurance  
Berkley Specialty Underwriting Management  
C.N.A. Insurance  
Chartis  
Chubb & Son  
CIGNA  
Davis-Frost, Inc.  
Efficient Market Advisors, LLC  
Evergreen Prosthetics & Orthotics  
Fairview Fittings and Manufacturing Ltd.  
Farmers Insurance  
Federal Express, Inc.  
Fireman's Fund  
Focus Point Solutions, LLC  
Golsan Scruggs Insurance & Risk Management, LLC  
Gulf Insurance  
Hanover Insurance Group  
Liberty Mutual  
Lloyds of London  
One Beacon Insurance  
Oregon Insurance Guaranty Association (OIGA)  
Pacific Capital Resources Group, LLC  
Pepsi Bottling Group, Inc.  
Reliance Insurance  
Riverstone Group  
Smith Barney  
Sowles Construction Co.  
Spantec Constructors, Inc.  
St. Paul/Travelers Insurance  
Sterling Capital  
TenBridge Partners, LLC  
The H Group, LLC  
The Harver Company  
TIG Insurance  
Timberline Investment Management, LLC  
VergePointe, LLP  
Victory Builders, Inc.  
Western Guaranty Insurance Services (WGIS)  
Zing Toys, Inc.

**PLF Board of Directors – Applications  
Term Beginning January 1, 2017**

Applicant Name	Email Acknowledgment	Call/Meeting to discuss BOD role	Notes/Recommendation	Decline Letter Sent
<b>Bilyeu, Amy</b> Bar #011651 <i>Amy withdrew her application</i>			Active Member. No disciplinary sanctions. <b>1 PLF Claim &amp; 3 Suspense Files</b>	
<b>Butterfield, Lisanne M.</b> Bar #913683			Active Member. No disciplinary sanctions. <b>4 PLF Claims</b>	
<b>Fisher, Ann L.</b> Bar #840459 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions. <b>1 PLF Claim &amp; 1 Suspense File</b>	
<b>Gear, John</b> Bar #073810			Active Member. No disciplinary sanctions. <b>4 PLF Claims &amp; 4 Suspense Files</b>	
<b>Goodwin, Jeffrey D.</b> Bar #123269			Active Member. No disciplinary sanctions.	
<b>Hendry, James W.</b> Bar #832350			Active Member. No disciplinary sanctions. <b>7 PLF Claims &amp; 2 Suspense Files</b>	
<b>Howard, Dan Webb</b> Bar #060041 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions.	
<b>Livermore, Megan</b> Bar #054789			Active Member. No disciplinary sanctions.	
<b>Mansfield, William A.</b> Bar #530710			Active Member. No disciplinary sanctions. <b>8 PLF Claims &amp; 2 Suspense Files</b>	
<b>McGrath, Michael T.</b> Bar #013445 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions. <b>4 PLF Claims &amp; 1 Suspense File</b>	

**PLF Board of Directors – Applications  
Term Beginning January 1, 2017**

Applicant Name	Email Acknowledgment	Call/Meeting to discuss BOD role	Notes/Recommendation	Decline Letter Sent
<b>Meadows, Christine M.</b> Bar #963603 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions. <b>1 Suspense File</b>	
<b>Mitchell, Holly N.</b> Bar #843044			Active Member. No disciplinary sanctions.	
<b>O’Neil, Shawn M.</b> Bar #913880			Active Member. No disciplinary sanctions. <b>2 PLF Claims &amp; 2 Suspense Files</b>	
<b>Robinson, David J.</b> Bar #094887			Active Member. No disciplinary sanctions.	
<b>Sayles, Sara A.H.</b> Bar #110584 <i>Applied via OSB</i>			Active Member. No disciplinary sanctions.	
<b>Welsh, Robert J.</b> Bar #115493			Active Member. No disciplinary sanctions.	
<b>Werner, Peter</b> Bar #091722			Active Member. No disciplinary sanctions. <b>1 PLF Claim &amp; 1 Suspense File</b>	
<b>Wilkinson, Kate A.</b> Bar #001705			Active Member. No disciplinary sanctions. <b>1 PLF Claim</b>	
<b>18 Applicants</b>				

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 9, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** House of Delegates Appointments

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### Action Recommended

Approve the Board Development Committee's recommendation to appoint lawyer and non-lawyer delegates to the OSB House of Delegates.

### Background

The House of Delegates has four public member and four lawyer seats open for appointment. The Board Development Committee unanimously offers the following recommendations:

#### Public Members

**Douglas Primmer**, Region 1, term expires 4/15/2019

Mr. Primmer has a strong background as a state employee and serves as a City of Hermiston Councilman.

**Nathaline Frener**, Region 2, term expires 4/15/2019

Ms. Frener has experience as an OSB volunteer having served two years on the SPRB and three years on the HOD. She recently became the manager of Lane County Youth Services after more than five years as a program manager of Lane County Family Mediation.

**Bryan Penn**, Region 4, term expires 4/15/2019

Mr. Penn is a litigation paralegal for American Family Mutual Insurance. He offers a strong background in researching and interpreting statutes and stated his passion for discussing and shaping policy.

**Thomas Feely**, Region 7, term expires 4/15/2019

Mr. Feely is a retired business operations manager for the City of Portland. He has extensive board and volunteer history including service on the budget committee for sheriff's office enhanced law enforcement. He was also recommended by Kathleen Rastetter.

#### Lawyer Members

**Amber Labrecque**, Region 4, term expires 4/15/2019

Ms. Labrecque was admitted to practice in 2009 and served one year on the region 5 HOD before moving to the firm of Houser & Allison in region 4.

**Hans Huggler**, Region 5 member, term expires 4/15/2019

Mr. Huggler was admitted to practice in 2014 and is an associate at Lane Powell. He focuses his practice on litigation including life, health, disability and ERISA.

**Holly Puckett**, Region 5, term expires 4/15/2019

Ms. Puckett is the Associate Director of the Campaign for Equal Justice. She was admitted to practice in 2012 and served as a litigation technology specialist at Ater Wynne before moving to the CEJ.

**Jeffrey Young**, Region 5, term expires 4/15/2019

Mr. Young was admitted to practice in Oregon in 2007. He is a civil litigator with Lindsay Hart, primarily focusing his practice on medical malpractice defense.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 29, 2016  
**From:** Rod Wegener, CFO  
**Re:** Additional Fee for Paying Membership Fee after Due Date

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### Action Recommended

Decision on the recommendation of the Budget & Finance Committee to eliminate the second increase in the membership for those members not paying by the deadline; the only additional fee after the deadline is \$100.00 per active member and \$50.00 per inactive member.

### Background

The recommendation is the result of the Committee's action at its July meeting. Bar staff recommended the change for two key reasons: 1) the two fee increases will cause additional modifications to the bar's new software; 2) will eliminate the cost and additional required processing staff performs at the two deadline dates. Here are the current statutes addressing the fee payment deadlines.

- ORS 9.191 allows the Board of Governors to "establish the date by which annual membership fees must be paid." Traditionally this date is January 31.
- ORS 9.200 permits the executive director to send via electronic mail a notice of delinquency if not paid timely.

Since 2014 the bar's practice has been to increase the active membership fee by \$50.00 if not paid by the first due date, and another \$50.00 if not paid within 30 days of the due date. The additional fee for Inactive members is \$25.00 and 25.00 for the two dates respectively. If not paid within 90 days after the due date the member is administrative suspended.

### Fee Schedule for 2016 Membership Fees (Current Schedule)

Note: Due date was February 1 as January 31 was a Sunday.

<b>Membership Fee Status</b>	<b>Fee through February 1</b>	<b>Fee effective February 2</b>	<b>Fee effective March 3</b>
Active Over Two Years	\$557.00	\$607.00	\$657.00
Active Under Two Years**	\$470.00	\$520.00	\$570.00
Active Pro Bono	\$125.00	\$125.00	\$125.00
Inactive	\$125.00	\$ 150.00	\$175.00

The recommendation would eliminate the additional fee 30 days after the deadline, and the fee on the current schedule of that date (March 3) would become the fee payment after the due date in 2017 (February 1 on the proposed schedule). If not paid by May 1, 2017, the member would be suspended.

### Fee Schedule for 2017 Membership Fees (Proposed Schedule)

Note: Due date is January 31, a Tuesday.

Membership Fee Status	Fee through January 31	Fee effective February 1
Active Over Two Years	\$557.00	\$657.00
Active Under Two Years**	\$470.00	\$570.00
Active Pro Bono	\$125.00	\$125.00
Inactive	\$125.00	\$ 175.00

**Financial Impact:** The amount of revenue to the bar with members paying after the 2016 deadline was \$66,663. This was an increase over 2015, but a few years ago the additional revenue exceeded \$100,000.

- The number of members paying late at February 1, 2016 was 1,241 (6.4% of members billed). Of that total 604 were active members and 638 were inactive.
- At the second deadline 669 (now 3.5% of members) were still late (314 active, 355 inactive).
- There were 118 members suspended on May 3, 2016 for non-payment of their 2016 member fees.

It is uncertain what impact the change will have on 2017 revenue. If the number paying late after January 31, 2017 is the same as the number who paid late at the second deadline in 2016, the additional revenue would approximate \$49,000. However, it is unlikely that the drop-off will be that many in 2017 and it is more likely that the additional revenue in 2017 will approximate the amount received in 2016.

# **OREGON STATE BAR**

## **Board of Governors Agenda**

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 22, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Assessment

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### **Action Recommended**

Approve the 2017Assessment.

### **Background**

On an annual basis, the Board of Governors approves the PLF assessment for the coming year. The Board of Directors proposes that the assessment remain at \$3,500 (unchanged from 2016).

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** August 22, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Claims Made Primary Plan and Excess Plan

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### **Action Recommended**

The Board of Directors (BOD) of the Professional Liability Fund requests that the Board of Governors approve the proposed 2017 PLF Claims Made Primary Plan (EXHIBIT 1) and 2017 Excess Plan (EXHIBIT 2)<sup>1</sup>. There are changes to both plans.

### **Background**

The Primary Coverage Plan has not been significantly reviewed for over ten years although changes here and there have occurred in the interim. Madeleine Campbell (Claims Attorney) led the effort in taking a fresh look at the current Plan with an eye toward asking: "What is our purpose in having specific language?" Ms. Campbell did the majority of the rewriting and reorganization. Jeff Crawford, Emilee Preble, Bruce Schafer and I reviewed, edited and commented, along with the PLF's primary outside coverage attorney Bill Earle.

The revised Primary Plan reorganizes current Plan language and shortens its length to eliminate unnecessary or repetitive language and to allow someone to read and understand the Plan in the order it is presented. The revision is intended to make it easier to find and identify related provisions without a lot of going back and forth between pages and provisions. Because the Plan has been completely reworked and reorganized, a red-line version showing the changes would not be useful. Below is a summary of the significant substantive changes.

### **SECTION 1 – SUMMARY OF PROPOSED PLAN REVISIONS – BOTH PLANS**

#### **A. Structural Reorganization**

Both revised Plans are reorganized in order to eliminate unnecessary or repetitive language and to make the Plans easier to read and understand.

#### **B. Comments Removed**

Over many years, Comments have been added to both the Primary and Excess Plans to clarify intent and meaning. The proposed revised Plans eliminate the Comments. Instead, where appropriate, the Comments have been incorporated into the language of the Plan and examples are added when helpful.

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<sup>1</sup> There will also be changes to the Pro Bono Plan consistent with the proposed changes to the Primary Plan. The proposed Pro Bono Plan will be presented to the BOG at its November meeting.

**C. “Legally Obligated” Definition Added**

Both revised Plans contain a definition for the words “legally obligated,” previously undefined. The need for a definition became particularly important after the Oregon Supreme Court decision in *Brownstone Homes v. Brownstone Forest Heights*, which overturned *Stubblefield*.

**D. Arbitration Agreements**

The revised Plans adds new language directed at trying to prevent Covered Parties from entering into fee agreements that call for the arbitration of malpractice claims. The PLF does not want to be subject to advance restrictions on the forum for a malpractice claim, or to have no right of appeal.

**E. Defense of Certain Excluded Claims**

The revised Plans add a specific defense provision stating the PLF will defend, but not indemnify, Claims for malicious prosecution, abuse of process and wrongful initiation of legal proceedings, as well as claims subject to Exclusion 4 of the Plans. This reflects the current policy and practice of the PLF, but Plan language in that respect is relocated and clarified.

**F. “Private Practice” Definition Added**

Adding a definition for Private Practice allows the PLF to further define activities covered under the Plans and also to exclude from that definition work as an employee of a private entity that is not a Law Entity, or work as a government employee. Currently this type of employment is excluded through Excess Plan Exclusions 14 and 15. The revised Plans will eliminate these exclusions.

**G. “Professional Legal Services” and “Special Capacity Services” Definitions Added**

In order to bring more clarity and certainty to the scope of what is a Covered Activity, the revised Plans contain definitions for Professional Legal Services and Special Capacity Services.

**J. Related Claims**

Both revised Plans contain new language regarding Related Claims, currently defined as “SAME OR RELATED.” This new language is intended to make the PLF’s intent with respect to these claims clearer and more apparent. The Primary Revised Plan also contains additional examples in order to clarify how limits work when there are multiple covered parties who are the subject of Related Claims.

**K. Exclusions**

Proposed changes to exclusions are fully discussed in Exhibits 3 and 4. The following highlights the substantive changes of particular note:

**Exclusion 4:** Punitive Damages or Certain Fee Awards. The revised exclusion would exclude imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law against the Covered Party. If the sanction award is against the client, the exclusion applies unless the Covered Party establishes the sanction was caused by mere negligence on the part of the Covered Party and/or anyone for whose conduct any Covered Party is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the Covered Party, or on the part of anyone for whose conduct a Covered Party is legally liable. This change means any sanction against a Covered Party is automatically excluded and there is no coverage for any vicarious liability of the Covered Party's firm for such sanction. It further clarifies when there will be coverage when the sanction is against the client and who has the burden of proof.

**Exclusion 11:** Family Member and Ownership Exclusion. The definition of Family Member was expanded.

**Exclusion 20:** Confidential or Private Data Exclusion. The purpose of this exclusion was to mirror the cyber coverage found in our Excess Plan. But as currently written, the language was far broader than we intended. The new language is more tailored to the types of cyber losses the endorsement is meant to cover.

## **SECTION 2 – SUMMARY OF PROPOSED PLAN REVISIONS – EXCESS ONLY**

Again, the main change to the Excess Plan is restructure. In this case, the goal was to make the Excess Plan flow from the Primary Plan and eliminate repetition.

The only true substantive change not also in the Primary Plan relates to when a claim is first made and the claim year. The proposed revisions explain the differences of when a claim is "made" between the Primary and Excess Plans. And, when claims are Related, explains how the Plan Year is determined (which can be different with respect to Related claims in Primary vs. Excess).

Attachments:

- Exhibit 1: Proposed - 2017 PLF Primary Coverage Plan
- Exhibit 2: Proposed - 2017 PLF Excess Coverage Plan
- Exhibit 3: Comparison Chart – Primary Coverage Plan Exclusions
- Exhibit 4: Comparison Chart – Excess Coverage Plan Exclusions

## 2017 PRIMARY COVERAGE PLAN

The Professional Liability Fund ("PLF") is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The PLF Primary Coverage Plan ("Plan") is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the statutory requirements and to meet the Mission and Goals set forth in Chapter One of the PLF Policies, including, "To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention." The limits, exclusions, and conditions of the Plan are to be fairly and objectively construed for that purpose.

While mandatory malpractice coverage and the existence of the PLF provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

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## INTRODUCTION

Throughout this Professional Liability Fund (“PLF”) Primary Coverage Plan (“Plan”): **You** and **Your** refer to the Named Party shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth in the Plan. A List and Index of Defined Terms is attached as an Appendix.

## SECTION I - COVERAGE AGREEMENT

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Plan and the applicable **Limit of Coverage** and **Claims Expense Allowance**, as defined in Section VII, the coverage provided by this Plan is as follows:

### A. Indemnity

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which this **Coverage Period** applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

**Legally Obligated** to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of **Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the claimant to collect money **Damages** directly from the **Covered Party**.

**Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**.

### B. Defense

1. Until the **Claims Expense Allowance** and the **Limit of Coverage** are exhausted, the PLF will defend a **Covered Party** against any **Suit** seeking **Damages** to which this Plan applies. The PLF is not bound by any **Covered Party’s** agreement to resolve a dispute through arbitration or any other

alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

**Suit** means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay **Claims Expense** the PLF incurs.

**Claims Expense** means fees and expenses charged by any attorney designated by the PLF; all other fees, costs and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

### C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

### D. No Prior Knowledge or Prior Coverage

This Plan applies only to a **Covered Activity** that occurred after the Retroactive Date shown in the Declarations and either: (a) during the **Coverage Period**, or (b) before the **Coverage Period** if (i) on the effective date of this Plan, **You** had no knowledge of any **Claim** having been asserted or of any facts or circumstances that you were aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity** and (ii) there is no prior Plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior Plan or policy are sufficient to pay any liability or **Claim**.

### E. Coverage Territory

This Plan applies to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

## SECTION II - WHO IS A COVERED PARTY?

Only the following are **Covered Parties** under this Plan:

### A. The Individual Attorney Named in the Declarations

**You** are a **Covered Party** under this Plan, or in the event of **Your** death, adjudicated incapacity or bankruptcy, **Your** conservator, guardian, trustee in bankruptcy, or legal or personal representative, when acting in such capacity, is a **Covered Party**, regarding any **Claim** to which this Plan applies provided, at the time of the error, omission, negligent act or breach of duty on which such **Claim** is based: (1) **You** were engaged in **Private Practice**; (2) **You** were licensed to practice in Oregon; and (3) **Your Principal Office** was in Oregon.

**Private Practice** means providing **Professional Legal Services** or **Special Capacity Services** through a **Law Entity**. **Private Practice** does not include:

- a. **Your** work or conduct as an employee of any entity that is not a **Law Entity**, including but not limited to any private entity or any governmental body, subdivision or agency, whether or not **You** are employed as a public official or employee, if **You** are subject to the direction and control of the non-**Law Entity** regarding the means and manner of providing services and are paid on a salaried basis, or hourly employee basis, as opposed to being retained as an independent contractor, paid on a fee for service or hourly fee basis; or
- b. **Your** work or conduct in any other capacity that comes within the defense and indemnity provisions of ORS 30.285 and 30.287, unless the public body rejects any duty to defend and indemnify **You**. If the public body rejects **Your** defense and indemnity, the PLF will provide coverage, provided the **Claim** relates to a **Covered Activity** to which this Plan would otherwise apply, and the PLF will be subrogated to all **Your** rights against the public body.

For purposes of determining the location of **Your Principal Office**, a law office is a location held out to the public as **Your** law office. If **You** have only one law office, then that is the location of **Your Principal Office**. If **You** have two or more law offices and any of them is in Oregon, **Your Principal Office** is in Oregon if the total amount of time **You** spend engaged in **Private Practice** in such Oregon law office locations is greater than 50% of the time **You** engage in **Private Practice** in all law office locations when measured over the course of the 12 months prior to January 1st of each year. If **You** do not have a law office **Your Principal Office** is in Oregon if: **You** reside in Oregon; or, if **You** reside outside Oregon but are not an active member of the bar of the jurisdiction where you reside.

### B. Law Entities Legally Liable for Your Covered Activities

A **Law Entity** legally liable for any **Claim** against **You**, based on **Your Covered Activities** is also a **Covered Party** under this Plan. However, in the event the **Claim** also involves claims against other attorneys not covered under a PLF Plan, any defense or indemnity for the **Law Entity** under this Plan is limited to that portion of the **Law Entity's** legal liability that relates to **Your Covered Activities**.

A **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon.

## SECTION III - WHAT IS A COVERED ACTIVITY?

### A. What Qualifies as a Covered Activity?

This Plan does not apply to all activities an attorney may engage in while practicing law. To fall within coverage, a **Claim** must arise out of a **Covered Activity**, subject to the following definitions, restrictions and limitations, and all applicable exclusions in this Plan.

A **Covered Activity** is an error, omission, negligent act or breach of duty committed in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**, as limited below, by:

- a. **You**;
- b. Another attorney for whose conduct you are legally liable, in **Your** capacity as an attorney, but only if the attorney was covered under a PLF Plan at the time of the act, error, omission, negligent act or breach of duty; or
- c. **Your Non Attorney** employee, for whose conduct **You** are legally liable in **Your** capacity as an attorney, but only to the extent such employee was assisting **You** in providing **Professional Legal Services** or **Special Capacity Services**.

**Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or in any other state.

### B. What Are Professional Legal Services?

**Professional Legal Services** are legal services or legal advice provided in a **Covered Party's** capacity as an attorney in **Private Practice**, including services a **Covered Party** provides as a mediator or arbitrator. **Professional Legal Services** do not include activities such as, but not limited to, the following:

- a. Any conduct in carrying out the commercial or administrative activities associated with practicing law, including but not limited to activities such as collecting fees or costs, guaranteeing a client will pay third party vendors or service providers, such as court reporters, depositing, endorsing or otherwise transferring negotiable instruments, depositing or withdrawing any money or other instruments into or from trust accounts or other bank accounts, any activities relating to or arising from the receipt, transmittal or negotiation of counterfeit or fraudulent checks or instruments, or any activities that require no specialized skill or training, such as paying bills on time or not incurring unnecessary expenses;
- b. Business related activities or services, including operating, managing or controlling any property, business property, business or institution in a manner similar to an owner, officer, director, partner or shareholder, whether as a trustee or otherwise;
- c. Activities as an officer, director, partner, employee, shareholder, member or manager of any entity except a **Law Entity**;

- d. Activities on any board, including but not limited to serving on the board of trustees of a charitable, educational or religious institution, or a real estate or other investment syndication;
- e. Serving as trustee for the liquidation of any business or institution, or as trustee for the control of a union or other institution; or
- f. Non-legal services such as architectural, engineering, accounting, lobbying, marketing, advertising, trade services, public relations, real estate appraisal, real estate development, brokerage services, or other such services.

### C. Special Capacity Services

**Special Capacity Services** provided by a **Covered Party** arising out of a **Special Capacity Relationship**, are **Covered Activities** but only with respect to a **Claim** made by or for the benefit of a beneficiary of the **Special Capacity Relationship** and provided such **Claim** does not arise as a result of a claim by a third party relating to business activities or services provided by the **Covered Party** in the course of the **Special Capacity Relationship**.

**Special Capacity Relationship** means the **Covered Party** is formally named or designated to act in the capacity of a Personal Representative, Administrator, Conservator, Executor, Guardian Ad Litem, Special Representative pursuant to ORS 130.120, or a successor statute, or a Trustee administering a formal trust instrument for the benefit of a beneficiary.

**Special Capacity Services** means certain services commonly provided by an attorney in the course of a **Special Capacity Relationship** for the purposes of administering an estate or trust in accordance with applicable law and/or performing the legally required duties and obligations owed to beneficiaries of **Special Capacity Relationships**. **Special Capacity Services** do not include:

- a. Business related services, including but not limited to operating, managing or controlling any property, business property, business or institution, whether owned by the estate or trust or otherwise, in a manner similar to an owner, officer, director, partner or shareholder;
- b. Services provided by a **Covered Party** that generally fall within the scope of services commonly provided by another type of professional such as an accountant, tax professional, financial planner or advisor, appraiser, architect, engineer, surveyor, real estate agent or other such professional, or by a person in another trade or occupation such as a contractor, landscaper, gardener, caregiver, caretaker, housekeeper, or similar service provider.

## SECTION IV - WHAT IS THE APPLICABLE COVERAGE PERIOD?

### A. Date of Claim

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed, or an arbitration or ADR proceeding is first initiated against a **Covered Party** under this Plan;

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
3. The date notice of a **Claim** is received by any **Covered Party** under this Plan;
4. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan;
5. The date the PLF opens a file in order to take steps and/or make expenditures for a matter that is not a **Claim**, for the purpose of investigation, mitigation, review or prevention of any potential **Claim** against a **Covered Party** under this Plan; or
6. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

#### B. Special Rule Regarding Related Claims

If any **Claim** against a **Covered Party** is **Related** to one or more **Related Claim(s)**, the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or ADR proceeding was initiated with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, received notice of the earliest **Related Claim**;
4. The date the PLF received notice of the earliest **Related Claim**; or
5. The date a **Covered Party**, under this Plan, or any attorney covered under any other PLF Plan applicable to a **Related Claim**, first became aware that a claimant intended to make the earliest **Related Claim**, but the claimant was delaying assertion of the **Claim**, or the **Covered Party** was delaying notice of such intent to make a **Claim**, for the purposes of obtaining coverage under a later Plan.

However, if **You** did not have a PLF Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and **You** have no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** against **You** is determined using the method set forth in Section IV A.

## SECTION V - WHAT ARE RELATED CLAIMS?

### A. Related Claims

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. A **Claim** against **You** may be **Related** to another **Claim(s)** against **You** and/or to a **Claim(s)** against other attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

B. General examples of **Related Claims** include, but are not limited to, the following:

1. Secondary or dependent liability. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral are **Related** to the **Claims** on which they are based.
2. Same transaction or occurrence. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences are **Related**. However, provided the **Claims** do not also fall within one of the other categories in this Section V B, the PLF will not treat the **Claims** as **Related** if: (a) the participating **Covered Parties** acted independently of one another; (b) they represented different clients or groups of clients whose interests were adverse; and (c) the claimants do not rely on any common theory of liability or damage.
3. Alleged scheme or plan. If claimants tie together different acts as part of an alleged overall scheme or operation, then the **Claims** are **Related**.
4. Actual pattern or practice. Even if a scheme or practice is not alleged, if **Claims** arise from a method, pattern, or practice in fact used or adopted by one or more **Covered Parties** or **Law Entities** representing multiple clients in similar matters, such **Claims** are **Related**.
5. One loss. When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses, then the **Claims** are **Related**.
6. Class actions. All **Claims** alleged as part of a class action or purported class action are **Related**.

*For the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to which **Claims** are considered to be **Related**, and subject to the special rules regarding limits under Section VII D, examples illustrating the PLF's intent, not intended to be exhaustive, are as follows:*

*Example 1: Secondary or Dependent Liability - Attorney A is an associate in a firm and commits malpractice. **Claims** are made against Attorney A, various attorneys who were partners in the firm at the time of the malpractice and the firm. Even if Attorney A and some of the other lawyers are at different firms at the time of the **Claim**, all **Claims** are **Related**.*

*Example 2: Same Transaction, Occurrence or Series of Transactions or Occurrences - Attorney A writes a tax opinion for an investment offering. Attorneys B and C, with a different law firm, assemble the offering circular. In 2010, Investors 1 and 2 bring **Claims** relating to the offering. Investor 3 brings a claim in 2011. **Claims** against all attorneys and firms, by all 3 investors, are **Related**.*

Example 3: Independent Representation of Adverse Clients Where There is No Common Theory of Liability or Damage - Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's **Claims** are not **Related**.

Example 4: Same Transaction, Occurrence or Series of Transactions or Occurrences/One Loss - An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel, its ERISA attorney, the owner and his attorney, and the plans' former attorney, contending there were improprieties in due diligence, the form of the agreements and the amount and value of shares issued. The defendants file cross-claims. All **Claims** against the four attorneys are **Related** because they arise out of the same transactions or occurrences. The three necessary elements of the exception described in Section V B 2 are not satisfied because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Even if the exception in Section V B 2 did apply, however, the **Claims** would still be **Related** under Section V B 5 because they involve one loss.

Example 5: Claimants Allege Overall Scheme or Operation - Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. These **Claims** are all **Related** because, as is often the case in securities claims, the claimants have tied together different acts as part of an alleged overall scheme or operation.

Example 6: Actual Pattern or Practice - Attorneys A, B, and C in the same firm represent a large number of asbestos clients over several years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation. Plaintiffs do not allege a common scheme or plan, but because the firm in fact operated a firm-wide formula for handling the cases, these **Claims** are **Related** based on the **Covered Parties'** own pattern or practice.

Example 7: Successive or Collective Errors - Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. All claims are **Related**.

Example 8: Class Action or Purported Class Action - Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All claims are **Related**.

## SECTION VI - WHAT IS EXCLUDED FROM COVERAGE?

1. Fraudulent Claims. This Plan does not apply to any **Claim** in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, has participated in any fraud or collusion with respect to the **Claim**.
2. Wrongful Conduct. This Plan does not apply to any **Claim** based on or arising out of:
  - a. any criminal act or conduct;
  - b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or
  - c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any **Covered Party** who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.

3. Disciplinary Proceedings. This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.
4. Punitive Damages, Sanctions or Certain Fee Awards. This Plan does not apply to:
  - a. The part of any **Claim** seeking punitive, exemplary or statutorily enhanced damages against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable;
  - b. Any **Claim** for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law. However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the **Covered Party** establishes the sanction was caused by mere negligence on the part of the **Covered Party** and on the part of anyone for whose conduct a **Covered Party** is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the **Covered Party**, or on the part of anyone for whose conduct a **Covered Party** is legally liable; or
  - c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.
5. Failure to Pay Lien. This Plan does not apply to any **Claim** based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any **Covered Party** or to anyone for whose conduct a **Covered Party** is legally liable, prior to the payment of the funds to a client or any person or entity other than the rightful lien-holder.
6. Business Interests. This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
  - a. In which **You** are a general partner, managing member, or employee, or in which **You** were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;
  - b. That is controlled, operated, or managed by **You**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by **You** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
  - c. In which **You** either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) **You**, those controlled by **You**, **Your** spouse, parent, step-parent, child, sibling or any member of **Your** household, and those with whom **You** are regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.
7. Partner and Employee Exclusion. This Plan does not apply to any **Claim** made by:

- a. A present, former, or prospective law partner, employer, or employee of a **Covered Party**, or of anyone for whose conduct a **Covered Party** is legally liable; or
- b. A present, former, or prospective officer, director, or employee of a professional corporation in which a **Covered Party**, or in which any attorney for whose conduct a **Covered Party** is legally liable, is or was a shareholder.

This exclusion 7 does not apply if the **Claim** arises solely out of conduct in an attorney-client capacity for a person or entity listed in subsections a and b.

8. Business Transaction with Client. This Plan does not apply to any **Claim** based upon or arising out of any business transaction in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.

9. Investment Advice. This Plan does not apply to any of the following **Claims** or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:

- a. Any **Claim** for investment losses, or for any damages arising from or relating to such losses, as a result of any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.

This subsection (a) does not apply, however, to **Claims** made by a purchaser of securities for losses that arise only from **Professional Legal Services** provided to a seller of securities, provided no **Covered Party** nor any attorney for whose conduct a **Covered Party** is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.

- b. Any **Claim** arising from any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any **Covered Party** for the **Covered Party** or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.
- c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of **Special Capacity Services**.

10. Law Practice Business Activities or Benefits Exclusion. This Plan does not apply to any **Claim**:

- a. For any amounts paid, incurred or charged by any **Covered Party** as fees, costs or disbursements, (or by any **Law Entity** with which any **Covered Party** was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.

- b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any **Covered Party**, or any **Law Entity** with which any **Covered Party** is now associated, or was associated at the time of the conduct giving rise to the **Claim**; or
- c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any **Covered Party**.

In the event the PLF defends any **Claim** or **Suit** that includes any claim within the scope of this exclusion, the **Covered Party** is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s). This exclusion does not apply to the extent a **Claim** is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.

*The following illustrative examples, not intended to be exhaustive, are provided for the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 10:*

*Example 1: Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A which allegedly were excessive and negligently incurred by Attorney A. Under subsection a, there is no coverage for the claim.*

*Example 2: Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill, but later sues Attorney B to recover the fees paid. Under subsection a, there is no coverage for the claim.*

*Example 3: Attorney C writes a demand letter to Client for unpaid fees, and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Subsection b, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.*

*Example 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under Subsection b, there is no coverage for the claim.*

*Example 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under Subsection c, there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.*

11. Family Member and Ownership Exclusion. This Plan does not apply to any **Claim** based on or arising from any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having provided or failed to provide:

- a. **Professional Legal Services** to any person or entity that is his or her own **Family Member** or **Family Business** at the time any such services are provided or fail to be provided; or
- b. **Special Capacity Services** to a trust or estate: (i) if the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such **Special Capacity Services** are provided, or fail to be provided, any **Family Member** or **Family Business** of that **Covered Party**, or of the person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate.

**Family Member(s)** means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling,

step-sibling, half sibling, brother or sister-in-law or any member of the **Covered Party's** household and, if the household member is a spousal equivalent of the **Covered Party**, the Family Members of any such person.

**Family Business** means a business entity in which the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, and/or the **Family Members**, of such **Covered Party** or person for whose conduct a **Covered Party** is legally liable, collectively or individually, have a controlling interest.

This exclusion does not apply to **Professional Legal Services** or **Special Capacity Services** an attorney provides to another attorney's **Family Member** or **Family Business**.

12. Benefit Plan Fiduciary Exclusion. This Plan does not apply to any **Claim** arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having acted as a fiduciary under any employee retirement, deferred benefit, or other similar plan.

13. Notary Exclusion. This Plan does not apply to any **Claim** arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.

14. Loss of Client Funds or Property/Certain Disbursements. This Plan does not apply to any **Claim** against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable, relating to or arising from: conversion, misappropriation, improper commingling, negligent supervision of client funds or trust account property, including loss or reduction in the value of such funds or property; or the disbursement of funds, checks or other similar instruments deposited to a trust, escrow or other similar account in which the deposit was not irrevocably credited to such account.

15. General Tortious Conduct. This Plan does not apply to any **Claim** for:

- a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or
- b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services** or **Special Capacity Services**.

*The following illustrative examples, not intended to be exhaustive, are provided for the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 15:*

*Example 1: Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C. Following the completion of the matter, the documents are lost or destroyed. Client makes a claim for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this claim because the loss of documents did not adversely affect the professional services, which had already been completed.*

*Example 2: Client gives Attorney B a defective ladder from which Client fell, to be used as critical evidence in his personal injury case. Attorney B loses the ladder and cannot use it as evidence, causing a defense verdict. A claim for the value of the lost personal injury case would not be excluded.*

*Example 3: A client makes a claim for bodily injury or emotional distress based on allegations that an attorney engaged in sexual contact with the client, the client suffered injury while riding in an attorney's car or that the client slipped on the floor in an attorney's office. As an initial matter, none of these claims arise out of a **Covered Activity**. They are also excluded by exclusion 15 a, and may also be subject to other exclusions.*

*Example 4: An attorney negligently fails to inform a client of a court date in a criminal matter. As a result, the client fails to appear and is arrested, jailed and injured by another inmate. A claim against the attorney alleging damages arising from bodily injury and emotional distress is not excluded by exclusion 15 a.*

16. Harassment and Discrimination. This Plan does not apply to any **Claim** based on or arising out of harassment or discrimination on the basis of race, creed, age, religion, sex, sexual orientation, disability, pregnancy, national origin, marital status, or any other basis.

17. Patent Exclusion. This Plan does not apply to any **Claim** based upon or arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.

18. Contractual Obligation Exclusion. This Plan does not apply to any **Claim**:

- a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a **Covered Party** or by someone for whose conduct any **Covered Party** is legally liable, unless the **Claim** arises out of **Special Capacity Services**, and the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, signed the bond or agreement solely in a representative capacity arising from the **Special Capacity Relationship**;
- b. For liability based on an agreement or representation, if the **Covered Party** would not have been liable in the absence of the agreement or representation; or
- c. To the extent the **Claim** is based on an actual or alleged promise to obtain a certain outcome or result if the **Covered Party** would not have been liable in the absence of such a promise.

*The following illustrative examples, not intended to be exhaustive, are provided to assist a **Covered Party** or Court in interpreting the PLF's intent as to the scope of Exclusion 18:*

*Example 1: Attorney A personally guarantees that a client will secure funding for a real estate development. Any claim against Attorney A arising from the guarantee is not covered.*

*Example 2: Attorney B enters into an agreement with a client that if there is any dispute arising from the representation, the prevailing party will be able to recover attorney fees. The client sues Attorney C for malpractice and prevails. The contractually based attorney fee award is not covered because it would not exist in the absence of the agreement.*

*Example 3: Attorney C promises a plaintiff that he will recover at least \$200,000 in a lawsuit, but does not achieve this result. To the extent the client bases any claim against Attorney D solely on a promise to obtain a particular outcome, rather than on negligence in failing to meet the applicable standard of care, there is no coverage for the breach of contract claim.*

19. Bankruptcy Trustee Exclusion. This Plan does not apply to any **Claim** arising out of activity as a bankruptcy trustee.

20. Confidential or Private Information/Computer Systems. This Plan does not apply to any **Claim** arising from:

- a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, whether or not such information was in electronic form or in paper form;
- b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security of information referenced in subsection a, including but not limited to failure to report the loss of such information; or
- c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by a computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.

**Personally Identifiable Non-Public** information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information. This includes, but is not limited to certain medical or health care information, driver's license or state identification information, social security numbers, credit information or financial account information.

**Third Party Corporate Information** means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party which is not available to the general public.

This exclusion 20, however, does not apply to a **Claim** to the limited extent it arises solely out of immediate inability to provide **Professional Legal Services** or **Special Capacity Services** caused by the sudden and unexpected loss of documents or information necessary to such services provided: (i) such loss materially and adversely affected the ability to provide such services; and (ii) following the discovery of any such loss of documents or information, the **Covered Party** at the **Covered Party's** own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.

If the PLF agrees to defend a **Suit** that includes a **Claim** falling within this exclusion, and/or a **Claim** falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.

## SECTION VII — LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE AND SPECIAL LIMITS REGARDING RELATED CLAIMS

### A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this Plan is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this Plan applies. The making of multiple claims or claims against more than one **Covered Party** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this Plan applies:

1. All **Claims Expense** paid by the PLF on behalf of any **Covered Party** under this Plan, that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF's payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments or any other indemnity payments arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

### B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this Plan also provides a separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this Plan, subject to Section VII C, below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments or any other indemnity payments.

### C. Special Rules and Limits for Related Claims

If **Your** Plan and one or more other Plans issued by the PLF to other attorneys apply to **Claims** that are **Related**, then regardless of the number of claims, claimants, clients, attorneys or **Law Entities** involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF Plan regarding all such **Related Claims**. This is subject only to the exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available to **You** cannot exceed the amount of the available remaining limit of **Your** Plan in effect during the **Coverage Period** that applies to the **Related Claim(s)** against **You**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on **Your** behalf, or on behalf of other attorneys or **Law Entities** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** available to **You** has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any **Related Claim** against **You**.

Under the following circumstances, the PLF may grant more than one **Claims Expense Allowance** with respect to **Related Claims**: (1) the **Related Claims** allegedly arise from **Covered Activities** by two or more **Law Entities**; (2) the **Law Entities** were separate entities at the time of the alleged errors,

omissions, negligent acts or breaches of duty; and (3) a **Covered Party** requests, and in the sole judgment of the PLF, should be entitled to separate defense counsel. Not more than one separate **Claims Expense Allowance per Law Entity**, or group of **Law Entities** practicing together as a single firm, will be granted. Any such separate allowance may be used only for the defense of **Claims** arising from the **Covered Activities** of the **Law Entity** or group of **Entities** to which the separate allowance applies. If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

For the purposes of assisting a **Covered Party** or Court in interpreting the PLF's intent as to meaning of Section VII C, illustrative examples, not intended to be exhaustive, are as follows:

*Example 1:* In 2009 Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 2013, Investor W brings securities **Claims** against Attorneys B and C. The PLF incurs \$50,000 in **Claims Expense** relating to Investor W's **Claims** against Attorneys B and C and settles the **Claims** against them for a total of \$250,000-\$125,000 for Attorney B and \$125,000 for Attorney C.

In 2014, following the settlement of Investor W's **Claims** against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B and C regarding Investor X's investment in the LLC. Because the **Claims** by Investor X are **Related** to the previous **Claims** against Attorneys B and C, this **Claim** relates back to the 2013 Plans issued to Attorneys A, B and C.

There was another completely unrelated **Claim** against Attorney A in 2013, but the PLF successfully defended Attorney A, using his entire \$50,000 **Claims Expense Allowance** for 2013. Although Attorney A has not used his \$300,000 limit for 2013, because the PLF has already spent \$250,000 settling the **Related Claims** against Attorneys B and C, all the attorneys collectively, now have a total limit of \$50,000, under their 2013 Plans, to respond to the **Claim** by Investor X. Because Attorney A has already used his **Claims Expense Allowance** for 2013, he does not have another **Claims Expense Allowance** for this **Claim**. There is no additional **Claims Expense Allowance** available for Attorneys B and C because they are entitled to only one shared **Claims Expense Allowance** regarding the **Related Claims**, and this was already spent on the **Related Claim** by Investor W.

*Example 2:* Same facts as in Example 1, except that the previous unrelated 2013 **Claim** against Attorney A was not successfully defended. The PLF spent Attorney A's \$50,000 **Claims Expense Allowance**, plus \$275,000 settling the unrelated 2013 **Claim** against Attorney A. Under this scenario, there is a total maximum limit of \$25,000 for Attorney A to respond to the **Claim** by Investor X. Although the \$50,000 left after settling the **Claim** by Investor W is available collectively to A, B and C, no more than \$25,000 of this amount can be used for Attorney A because that is all that is remaining of his 2013 limit. Assuming \$25,000 is spent to settle the Investor X **Claim** against Attorney A, there is \$25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

*Example 3:* Same facts as in Example 1, except that \$300,000 is spent settling Investor W's claim against Attorneys B and C. Attorneys B and C have exhausted both their 2013 Limit of Coverage and their 2013 **Claims Expense Allowance**. Attorney A exhausted his 2013 **Claims Expense Allowance** to defend an unrelated **Claim**. The PLF has already paid the most it will pay regarding the **Related Claims**. As a result, there is nothing left to defend or indemnify Attorneys A, B or C against the **Claim** by Investor X under any PLF Primary Coverage Plan.

*Example 4:* Same facts as Example 1, except the PLF settles Investor W's claim against Attorneys B and C for \$30,000, without incurring any **Claims Expense** for them, and Attorney A has used all but \$5,000 of his 2013 limit, as well as his **Claims Expense Allowance**, for an earlier unrelated **Claim**. Under this scenario, there is a maximum total limit of \$270,000 to respond to the **Claim** by Investor X against all three attorneys, but only \$5,000 of this amount is available to Attorney A because that is the limit remaining under his 2013 Plan. Attorney A has no **Claims Expense Allowance** remaining. Attorneys B and C, however, have a shared \$50,000 **Claims Expense Allowance** for their defense against the **Claim** by Investor X.

*Example 5:* Same facts as Example 1, except Attorney A already spent both his entire 2013 **Claim Expense Allowance**, plus his entire 2013 limit on an unrelated **Claim**. Attorney A has no coverage for the **Claim** by Investor X under the PLF Primary Coverage Plan.

*Example 6:* Attorney A performed **Covered Activities** for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 **Limit of Coverage** and two **Claims Expense Allowances**. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate **Law Entity** from the firm at which she worked. Accordingly, two, not three, **Claims Expense Allowances** are potentially available.

*Example 7:* Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case which he concluded involved special issues requiring the expertise of Attorney D, from another firm. D and C work together in representing the client and commit errors in handling the case. Two **Claims Expense Allowances** are potentially available. There are only two separate firms – the BC partnership and D's firm.

## SECTION VIII – DUTIES OF COVERED PARTIES

### A. Notice of Claims, Suits and Circumstances

As a condition precedent to any right of protection afforded by this Plan, the **Covered Party** must give the PLF, at the address shown in the Declarations, timely written notice of any **Claim, Suit**, or Circumstances, as follows:

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** which otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

### B. Assistance and Cooperation in Defense

As a condition of coverage under this Plan, the **Covered Party** will, without charge to the PLF, cooperate with the PLF and will:

1. Provide to the PLF, within 30 days after written request, narrative statements or sworn statements providing full disclosure concerning any **Claim** or any aspect thereof;
2. Attend and testify when requested by the PLF;
3. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any **Claim** against the **Covered Party**;

4. Execute authorizations, documents, papers, loan receipts, releases, or waivers when requested by the PLF;
5. Submit to arbitration of any **Claim** when requested by the PLF;
6. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense and settlement of all **Claims**;
7. Not communicate with any person, other than the PLF or an insurer for the **Covered Party**, regarding any **Claim** that has been made against the **Covered Party**, after notice to the **Covered Party** of such **Claim**, without the PLF's written consent; and
8. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any **Claim** against the **Covered Party**.

#### C. No Voluntary Payments, Admissions or Representations

No **Covered Party** can bind or prejudice the PLF with voluntary payments or admissions or representations. If a **Covered Party**, without the advance written consent of the PLF, voluntarily makes any payment, assumes any obligation or incurs any expense with respect to a **Claim**, makes any representation to a claimant that the claimant will be indemnified or makes any representation as to the value or potential value of the **Claim**, any payment, obligation, expense, obligation to pay, or obligation to pay the represented amount will be the sole obligation of the **Covered Parties**, to be paid or satisfied at the sole cost and expense of the **Covered Parties**.

#### D. Protection of Subrogation Rights

To the extent the PLF makes any payment under this Plan, it will be subrogated to any **Covered Party's** rights against third parties to recover all or part of these sums. No **Covered Party** will take any action to destroy, prejudice or waive any right of subrogation the PLF may have, and will, if requested, assist the PLF in bringing any subrogation action or similar claim. The PLF's subrogation or similar rights will not be asserted against any **Non Attorney** employee of a **Covered Party** who was acting in the course and scope of employment, except for claims arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

#### E. Assistance and Cooperation in Coverage Issues

1. Any party claiming coverage under this Plan has a duty and obligation to timely provide, upon the request of the PLF, accurate, complete and truthful information relevant to any claimed right to coverage under this Plan.
2. In the event the PLF proposes, in writing, a settlement to be funded by the PLF but subject to the **Covered Party's** being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the **Claim** settled, the **Covered Party** must advise the PLF in writing that the **Covered Party** either agrees or objects to the PLF's proposal. The written response must be made by the **Covered Party** as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. The **Covered Party's** objection to the settlement waives any right to assert the PLF should have settled the **Claim**.

## SECTION IX - ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

1. No legal action in connection with this Plan will be brought against the PLF unless all **Covered Parties** have fully complied with all the terms and conditions of the Plan.
2. Absent the PLF's express written consent, the PLF will not be obligated to make any indemnity payments until after the **Covered Party** has been held liable in a **Suit** on the merits, and all applicable coverage issues have been determined by Declaratory Judgment.
3. The bankruptcy or insolvency of a **Covered Party** does not relieve the PLF of its obligations under this Plan, nor deprive the PLF of any of its rights under this Plan.
4. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all of the **Limit of Coverage** toward settlement of a **Claim** before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Plan is not applicable to the **Claim**, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the **Covered Party** (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the **Claim**, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's **Limit of Coverage** before all applicable coverage issues have been fully determined.
5. This Plan is governed by the laws of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to or arising out of any duties or provision of benefits under this Plan, between any **Covered Party** (or anyone claiming through a **Covered Party** or based on any actual or alleged right of direct action) and the PLF, whether any claim against the PLF is based on tort or in contract, is subject to Oregon law and will be tried in the Multnomah County Circuit Court of the State of Oregon which will have exclusive jurisdiction and venue of such disputes at the trial level.
6. No person or entity may recover consequential damages for the PLF's breach of any provision in this Plan. Any damages recoverable for any such breach are strictly limited to those amounts a court rules would have been payable by the PLF, under the provisions of this Plan, if there had been no such breach.
7. The PLF has a right of subrogation and may bring a legal action to recover from a **Covered Party** under this Plan for damages it has paid regarding a **Claim** against another attorney or entity covered under this or another PLF Plan, subject to the following conditions:
  - a. If not for the PLF's right of subrogation, the **Covered Party** against whom recovery is sought could be responsible for contribution, indemnity or otherwise to the person or entity on whose behalf the PLF's payment was made; and
  - b. The PLF's right of subrogation can be alleged based on a theory or theories for which there would not be coverage under this Plan for the **Covered Party** against whom recovery is sought.

In the circumstances outlined in this subsection 7, the PLF reserves the right to sue the **Covered Party**, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this subsection will not entitle the PLF to sue the **Covered Party** if the PLF's alleged rights against the **Covered Party** are premised on a theory of recovery that would entitle the **Covered Party** to indemnity under this Plan if the PLF's action were successful.

*The following examples, not intended to be exhaustive, illustrate the effect of Section IX 5:*

*Example 1: Attorney A engages in intentionally wrongful conduct in representing Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the **Claim** under his Plan, but Attorney B has coverage for her liability under her Plan. If the PLF pays the **Claim** under Attorney B's Plan, it has a right to sue Attorney A for the damages it paid.*

*Example 2: Same facts as the prior example, except that the PLF lends funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. The PLF has the right, pursuant to such an arrangement with Attorney B, to participate in her action against Attorney A.*

## SECTION X — SUPPLEMENTAL ASSESSMENTS

This Coverage Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, **You** agree to pay **Your** supplemental assessment to the PLF within 30 days of request. The PLF is authorized to make additional assessments against **You** for this **Plan Year** until all the PLF's liability for this **Plan Year** is terminated, whether or not **You** are a **Covered Party** under a Plan issued by the PLF at the time the assessment is imposed.

## SECTION XI — RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If a **Covered Party** has valid and collectible insurance coverage or other source of indemnification that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under the Plan until the limits of the **Covered Party's** insurance or other source of indemnification, including any applicable deductible, have been exhausted, unless such insurance or other source of indemnification is written only as specific excess coverage over the **Claims Expense Allowance** and **Limit of Coverage** of this Plan.

## SECTION XII — WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

## SECTION XIII – AUTOMATIC EXTENDED REPORTING COVERAGE

1. If **You** terminate **Your** PLF coverage during this **Plan Year**, or do not obtain PLF coverage as of the first day of the next year following the expiration of this **Plan Year**, as of **Your** last day of PLF coverage, and until the date specified in Subsection 2, **You** will automatically have extended reporting coverage under this Plan for future **Claims** made against **You**, provided such **Claims** are not based on activities that occurred after **Your** last day of PLF coverage. **Your** extended reporting coverage does not provide **You** with a renewed **Limit of Coverage** or **Claims Expense Allowance**. The remaining **Limit of Coverage** and **Claims Expense Allowance** available under this Plan, after subtracting all amounts spent by the PLF regarding any **Claims** or matters to which this Plan applied or applies, as of the date any such future **Claim** is made, will be the maximum amount available for the defense and indemnity of any such **Claim**.
2. If **You** terminate **Your** PLF coverage during this **Plan Year** and return to PLF coverage later in the same year the extended reporting coverage granted to **You** under Subsection 1 will automatically terminate as of the date **You** return to PLF coverage, the coverage provided under this Plan will be reactivated and **You** will not receive a new **Limit of Coverage** or **Claims Expense Allowance** on **Your** return to coverage.

## SECTION XIV — ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the Plan.

## APPENDIX – LIST AND INDEX OF DEFINED TERMS

1. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p. 1)
2. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)
3. **Claims Expense Allowance** means the separate allowance for aggregate **Claims Expense** for all **Claims** as provided for in Section VII B. (p. 15)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (§1, p. 1)
5. **Covered Activity** has the meaning set forth in Section III A. (p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II. (p. 3)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set- off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Section I A, p. 1)
8. **Family Business** has the meaning set forth in Exclusion 11. (p. 12)
9. **Family Member(s)** has the meaning set forth in Exclusion 11. (p. 12)
10. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. ( Section II B, p. 3)
11. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)
12. **Limit of Coverage** has the meaning set forth under Section VII A. (p. 15)
13. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Section III A, p. 4)
14. **Personally Identifiable Non-Public Information** has the meaning set forth in exclusion 20.(p. 14)
15. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (§1, p. 1)
16. “PLF” means the Professional Liability Fund of the Oregon State Bar. (§1, p. 1)

17. **Private Practice** has the meaning set forth in Section II A. (p. 3)
18. **Principal Office** has the meaning set forth in Section II A. (p. 3)
19. **Professional Legal Services** has the meaning set forth under Section III B. (pp. 4 and 5)
20. **Related Claims** has the meaning set forth in Section V. (pp. 6 - 8)
21. **Special Capacity Relationship** has the meaning set forth in Section III C. (p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C. (p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 1)
24. **Third Party Corporate Information** has the meaning set forth in exclusion 20. (p. 14)
25. **You** and **Your** refer to the Named Party shown in the Declarations. (¶1, p. 1)

# 2017

## PLF Claims Made Excess Plan

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# OREGON STATE BAR PROFESSIONAL LIABILITY FUND CLAIMS MADE EXCESS PLAN

Effective January 1, 2017

## INTRODUCTION

This Professional Liability Fund (“PLF”) Excess Plan is excess coverage over the PLF Primary Plan and is also assessable. Although the coverage provided under both the Primary and Excess Plans is similar, not all terms, conditions, definitions and exclusions are the same. Coverage under this Plan is more restrictive and differs in some respects. You should read both the Primary and Excess Plans, in their entirety, to understand your coverage.

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A. For the purposes of illustrating the PLF’s intent as to certain provisions in this Plan, Appendix B contains related examples.

**Plan Year** means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Excess Plan and the applicable **Excess Limit of Coverage**, as set forth in the Declarations and defined in Section VII, this Plan provides the following coverage:

## SECTION I – COVERAGE AGREEMENT

### A. Indemnity

The PLF will pay all sums in excess of the **Applicable Underlying Limit** and or applicable Deductible that a **Covered Party** under this Plan, becomes **Legally Obligated** to pay because of **Claims First Made** against a **Covered Party** during the **Coverage Period**, arising from a **Covered Activity**, to which this Plan applies.

**Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought.

**Claim**, **Damages**, and **Legally Obligated** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## B. Defense

1. After the **Applicable Underlying Limit** has been exhausted and the applicable Deductible has been satisfied, the PLF will defend any **Suit** against a **Covered Party** seeking **Damages** to which this Plan applies until the **Excess Limit of Coverage** is exhausted. The PLF is not bound by any **Covered Party's** agreement to resolve a dispute through arbitration or any other alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.
2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based only on projected defense costs or potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review or repair any **Claim** or matter that may create the potential for a **Claim**.
3. The PLF will pay all **Claims Expense** it incurs, and all such payments will reduce the **Excess Limit of Coverage**.
4. Notwithstanding Exclusions 2 and 4 of the PLF Primary Plan, incorporated in this Plan by reference, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

**Suit** and **Claims Expense** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## C. Exhaustion of Limit

The PLF is not obligated to investigate, defend, pay or settle any **Claim** after the applicable **Excess Limit of Coverage** has been exhausted.

## D. Coverage Territory

This Plan applies only to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

## E. Basic Terms of Coverage

This Plan applies to **Claims** for **Damages** against a **Covered Party** arising from a **Covered Activity**, subject to all definitions, terms, restrictions, limitations and exclusions applicable to this Plan, and the **Excess Limit of Coverage**, provided all the following terms and conditions of coverage are satisfied:

1. The **Claim** must be **First Made**, as determined by the rules set forth in Section VII, during the **Coverage Period**;

2. The **Covered Activity** on which the **Claim** is based must have been rendered on behalf of the **Firm**;
3. The **Covered Activity** on which the **Claim** is based must have occurred after the Retroactive Date listed in the Declarations, or listed in any endorsement to the Declarations;
4. The **Covered Activity** on which the **Claim** is based must have occurred:
  - a. During the **Coverage Period**; or
  - b. Before the **Coverage Period**, but only provided each of the following conditions are met:
    - (i) the **Firm** circulated its Application for Coverage among all attorneys listed in Section 10 of the Declarations as “Firm Attorneys,” and those listed in Section 14 of the Declarations as current “Non Oregon Attorneys”;
    - (ii) before the effective date of this Plan, no **Covered Party** had a basis to believe that the error, omission, negligent act or breach of duty was a breach of the standard of care, or may result in a **Claim**; and
    - (iii) there is no prior policy, policies or agreements to indemnify that provide coverage for such liability or **Claim**, regardless of whether the available limits of any such policy, policies or agreements to indemnify are subject to different limits, or otherwise differ from this Plan, and regardless of whether the limits of any such policy, policies or agreements to indemnify are sufficient to pay any liability or **Claim**.

Subsection 4 b (ii) will not apply as to any **Covered Party** who, before the effective date of this Excess Plan, did not have a basis to believe the error, omission, negligent act or breach of duty was a breach of the standard of care or may result in a **Claim**.

*For the purposes of demonstrating the PLF's intent as to how this subsection 4 applies, illustrative examples are set forth in Appendix B of this Plan.*

5. There must have been full and timely payment of all assessments relating to this Plan; and
6. There must have been compliance with the Duties of Covered Parties, as set forth in Section IX.

## **SECTION II - WHO IS A COVERED PARTY UNDER THIS EXCESS PLAN?**

Only the following are **Covered Parties**:

### **A. The Firm**

The **Firm** is a **Covered Party** under this Excess Plan but only with respect to liability arising out of the conduct of: an attorney(s) who is not an **Excluded Attorney** and qualifies as a **Covered Party** under Section II B; or a **Non Attorney** employee, subject to the terms and conditions of Section III.

**Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations.

**Excluded Attorney** means an attorney who is designated as such in the Declarations.

**Law Entity** and **Non Attorney** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## B. Individual Covered Parties

Only the following individuals, not otherwise listed in the Declarations as **Excluded Attorneys**, are **Covered Parties** under this Excess Plan as to any **Claim** to which this Plan applies, and only with respect to **Claims** arising from **Covered Activities** rendered on behalf of the **Firm**, as attorneys in **Private Practice**:

1. Attorneys who are specifically designated in the Declarations as “Firm Attorney,” “Former Attorney” or “Non Oregon Attorney.”
2. A former partner, shareholder, member or attorney employee of the **Firm** or any attorney formerly in an “of counsel” relationship to the **Firm** who ceased to be affiliated with the **Firm** more than five years prior to the beginning of the **Coverage Period**, but only with respect to **Claims** arising out of a **Covered Activity** that took place while a PLF Primary Plan issued to that attorney was in effect.
3. An attorney who becomes affiliated with the **Firm** after the beginning of the **Coverage Period** and who has been issued a PLF Primary Plan is automatically a **Covered Party** - unless the attorney becomes affiliated with the **Firm** as a result of one of the changes required to be reported to the PLF and newly underwritten pursuant to Section IX D. In that event, the attorney is not covered under the Plan until and unless coverage for the affiliated attorney is underwritten and specifically accepted by the PLF. (*See, Section IXD*)
4. In the event of the death, adjudicated incapacity or bankruptcy of a **Covered Party**, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of the **Covered Party**, when acting in such capacity, is a **Covered Party**.

**Private Practice** has the meaning set forth in the PLF Primary Plan in effect during this **Plan Year**.

## SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Excess Plan, a **Covered Activity** is an error, omission, negligent act or breach of duty: by a **Covered Party** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or by a **Non Attorney** employee, for whose conduct a **Covered Party** is legally liable who assists in providing such services, provided:

1. The error, omission, negligent act, error, or breach of duty, by the **Covered Party**, on which the **Claim** is based, occurred after any applicable Retroactive Date, before such **Covered Party’s** applicable Separation Date, specified in the Declarations, and satisfies the conditions of Section I E 4;
2. The error, omission, negligent act, error, or breach of duty by the **Covered Party**, on which the **Claim** is based, constituted rendering **Professional Legal Services** or **Special Capacity Services** on behalf of the **Firm**, as an attorney in **Private Practice**; and

3. Any error, omission, negligent act or breach of duty by a **Non Attorney** employee must be directly related to a **Covered Party's** rendering of **Professional Legal Services** or **Special Capacity Services**, on behalf of the **Firm**, that meets the conditions of subsections 1 and 2 above.

**Professional Legal Services** and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

## SECTION IV – WHEN IS A CLAIM FIRST MADE?

### A. Date of Claim

For the purposes of this Excess Plan, subject to the exception set forth in Section IV B, regarding **Excess-Related Claims**, a **Claim** is **First Made** on the earliest of the following dates:

1. The date a lawsuit is first filed, or an arbitration or ADR proceeding is first initiated against a **Covered Party**;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party**;
3. The date any **Covered Party** receives notice of a **Claim**;
4. The date the PLF receives notice of a **Claim** against a **Covered Party**; or
5. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

### B. Excess-Related Claims

When a **Claim** is **Excess-Related** to an earlier **Claim** or **Claims** against any **Covered Party** or **Parties** under this Excess Plan, the **Claim** is **First Made** on the date the earliest such **Excess-Related Claim** was **First Made**.

## SECTION V – EXCESS-RELATED CLAIMS

### A. Definition of Excess-Related Claims

For the purposes of this Excess Plan, two or more **Claims** are **Excess-Related** when the **Claims** are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus; and such **Claims** have been asserted, or are asserted, against **Covered Parties** under this Excess Plan.

General examples of **Excess-Related Claims** include, but are not limited to the following:

1. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral;
2. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences;
3. **Claims** in which the claimants tie together different acts as part of an alleged overall scheme or operation;
4. **Claims** that arise from a method, pattern, or practice used or adopted by one or more **Covered Party** or **Law Entities** representing multiple clients in similar matters;
5. **Claims** in which successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses; or
6. **Claims** alleged as part of a class action or purported class action.

**Related Claims**, as defined in the PLF Primary Plan, against other attorneys or firms, not **Covered Parties** under this Plan do not necessarily cause a **Claim** to which this Excess Plan applies to relate back to the same excess **Plan Year** applicable to **Related Claims** under the PLF Primary Plan. Prior knowledge of a **Covered Party** or **Parties** of the potential for a **Claim** before the inception date of this Plan however, may cause a **Claim** not to be covered under this Plan under the terms of Section I E 4.

*For the purposes of demonstrating the PLF's intent as to what constitutes an Excess-Related Claim, illustrative examples are set forth in Appendix B of this Plan.*

## B. What Happens When Claims Are Excess-Related?

When **Claims** are **Excess-Related**, they are all considered as having been **First Made** on the date the earliest such **Claim** is **First Made**. This causes all such **Claims** to share the same maximum **Excess Limit of Coverage** that was in effect when the earliest such **Claim** was **First Made**.

## SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

All Exclusions in the PLF Primary Plan, in effect during this **Plan Year**, except Exclusion 6 (Business Interests) apply equally to the coverage under this Excess Plan. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION VII – EXCESS PLAN ADDITIONAL EXCLUSIONS

1. Business Interests. This Plan does not apply to any **Claim** relating to or arising out of any business enterprise:
  - a. In which any **Covered Party** is a general partner, managing member, or employee, or in which any **Covered Party** was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;

- b. That is controlled, operated, or managed by any **Covered Party**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any **Covered Party** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or
  - c. In which any **Covered Party** either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) the **Covered Party**, those controlled by the **Covered Party** and his or her spouse, parent, step-parent, child, sibling, any member of the **Covered Party's** household, and those with whom the **Covered Party** is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.
2. **Excluded Attorney Exclusion.** This Plan does not apply to any **Claim** against any **Covered Party**:
- a. Arising from or relating to any act, error, or omission of any **Excluded Attorney** in any capacity or context, whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable; or
  - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any **Excluded Attorney**.
3. **Excluded Firm Exclusion.** This Plan does not apply to any **Claim** made against a **Covered Party**:
- a. That arises from or is related to any act, error, or omission of: (i) an **Excluded Firm**, or (ii) a past or present partner, shareholder, associate, attorney, or employee (including any **Covered Party**) of an **Excluded Firm** while employed by, a partner or shareholder of, or in any way associated with an **Excluded Firm**, in any capacity or context, and whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable therefore; or
  - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent or mitigate any activities of, or harm caused by any **Excluded Firm** or any person described in Subsection (a)(ii) above.

**Excluded Firm** means a firm designated as such in the Declarations.

4. **Office Sharing Exclusion.** This Plan does not apply to any **Claim** alleging the vicarious liability of any **Covered Party** under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom the **Firm** or attorney **Covered Parties** shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

## **SECTION VIII – EXCESS LIMIT OF COVERAGE AND DEDUCTIBLE**

### **A. Excess Limit of Coverage**

1. Regardless of the number of **Covered Parties** under this Excess Plan, the number of persons or organizations who sustain damage, or the number of **Claims** made, the PLF's maximum aggregate **Excess**

**Limit of Coverage** for indemnity and **Claims Expense** under this Plan will be limited to the amount shown as the **Excess Limit of Coverage** in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of **Claims** against more than one **Covered Party** does not increase the PLF's **Excess Limit of Coverage**.

2. All **Excess-Related Claims** are considered **First Made** during the **Plan Year** when the first such **Excess-Related Claim** was **First Made**. The single **Excess Limit of Coverage** in effect when the first such **Excess-Related Claim** was **First Made** will apply to all such **Claims**.

## B. Deductible

1. The Deductible for **Covered Parties** under this Excess Plan who are not also covered under the PLF Primary Plan is either the maximum limit of liability for indemnity and **Claims Expense** under any insurance policy covering the **Claim** or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.

2. The **Firm** is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or **Claims Expense** as a result of a **Claim** for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each **Claim**, except for **Excess-Related Claims**. The Deductible amount must be paid by the **Firm** as **Claims Expenses** are incurred or a payment of indemnity is made. At the PLF's option, it may pay such **Claims Expenses** or indemnity, and the **Firm** will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

## SECTION IX – DUTIES OF COVERED PARTIES

### A. Timely Notice of Claims, Suits or Circumstances

1. The **Firm** must, as a condition precedent to the right of protection afforded any **Covered Party** by this coverage, give the PLF, at the address shown in the Declarations, written notice of any **Claim** that is reasonably likely to involve any coverage under this Excess Plan.

2. In the event a **Suit** is brought against any **Covered Party**, that is reasonably likely to involve any coverage under this Excess Plan, the **Firm** must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the **Covered Party** or the **Covered Party's** representatives.

3. If during the **Coverage Period**, any **Covered Party** becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Excess Plan, the **Firm** must give written notice to the PLF as soon as practicable during the **Coverage Period** of: the specific act, error, or omission; the injury or damage that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.

4. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under Subsections 1 through 3 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

## B. Other Duties of Cooperation

As a condition of coverage under this Excess Plan, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Plan. These conditions are incorporated in this Plan by reference, and have the same force and effect as if fully set forth in this Plan.

## C. Duty of Full Disclosure in Application

A copy of the Application the **Firm** submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide the **Firm** with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements in the Application will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- (1) are contained in the Application;
- (2) are material and have been relied upon by the PLF; and
- (3) are either: (a) fraudulent; or (b) material either to the acceptance of the risk or to the hazard assumed by the PLF.

Without limiting the foregoing, any misrepresentation, omission, concealment of fact, or incorrect statement that causes the PLF to charge a lower premium than would otherwise have been charged is material to the acceptance of the risk or to the hazard assumed by the PLF.

## D. Duty to Notify the PLF of Certain Changes in Risk

The **Firm** must notify the PLF if, after the start of the **Coverage Period**, any of the following events or circumstances occur: (1) the number of Firm Attorneys increases by more than 100 percent; (2) there is a firm merger or split; (3) an attorney joins or leaves a branch office of the **Firm** outside Oregon; (4) a new branch office is established outside Oregon; (5) 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**; or (6) the **Firm** hires an attorney who is not eligible to participate in the PLF’s Primary Coverage Plan.

Upon the occurrence of any of the foregoing events or circumstances, the **Firm’s** coverage will again be subject to underwriting, and a prorated adjustment may be made to the **Firm’s** excess assessment.

## **SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS**

The provisions of Section IX of the PLF Primary Plan, applicable to this **Plan Year**, are incorporated into this Plan by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION XI - CANCELLATION AND TERMINATION

### A. Cancellation by the Firm or the PLF

The **Firm** may cancel this Excess Plan, before the expiration of the **Coverage Period**, by mailing or delivering prior written notice to the PLF stating the date when the cancellation will become effective.

The PLF may cancel this Excess Plan, before the expiration of the **Coverage Period**, for any of the following reasons:

- (1) Failure by the **Firm** to pay an assessment when due;
- (2) Material misrepresentation by any **Covered Party**;
- (3) Substantial breaches of contractual duties, conditions, or warranties by any **Covered Party**; or
- (4) Revocation, suspension, or surrender of any **Covered Party's** license or right to practice law.

The PLF's cancellation of this Plan, for any of the foregoing reasons, is made by mailing or delivering written notice of cancellation to the **Firm**, stating the effective date of cancellation, to occur within no less than 10 days after the date notice of cancellation is mailed or delivered.

The last and final day of the **Coverage Period** will be the date preceding the effective date of cancellation stated in the cancellation notice sent by the **Firm** or the PLF. Coverage will expire at 11:59 pm on the date preceding the specified date of cancellation. If the PLF cancels this Plan, assessments shall be computed and refunded to the **Firm** pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. If the **Firm** cancels this Plan, the PLF will retain the assessment on a pro rata basis.

### B. Termination

This Excess Plan terminates on the date and time shown as the end of the **Coverage Period** in the Declarations, unless canceled by the PLF or by the **Firm** in accordance with the provisions of this Plan before such date and time. There is no automatic renewal.

## SECTION XII – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, the **Firm** agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. The **Firm** further agrees that liability for such supplemental assessments shall be joint and several among the **Firm** and the partners, shareholders, and professional corporations listed as **Firm Attorneys** in the Declarations.

The PLF is authorized to make additional assessments for this **Plan Year** until all its liability for this **Plan Year** is terminated, whether or not any **Covered Party** maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.

## SECTION XIII – RELATION OF THE PLF'S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the **Covered Party's** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Limit of Coverage** of this Excess Plan.

## SECTION XIV – WAIVER AND ESTOPPEL

The provisions of Section XII of the PLF Primary Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION XV – EXTENDED REPORTING COVERAGE

After 24 months of continuous excess coverage with the PLF, upon termination or cancellation of this Excess Plan by either the **Firm** or the PLF, the **Firm** may be eligible to purchase an extended reporting endorsement. This endorsement extends the period within which a **Claim** may be **First Made** under this Excess Plan, but does not otherwise change the terms of this Plan. Eligibility to purchase an extended reporting endorsement, the amount of the additional assessment for such coverage and the period during which **Claims** may be **First Made** under the endorsement are determined by the PLF's underwriting department based on the **Firm's** claims experience and other underwriting factors.

## SECTION XVI – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment, without the express written consent of the PLF, voids any coverage under this Plan.

## APPENDIX A - LIST AND INDEX OF DEFINED TERMS

1. **Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought. (Excess Plan, p. 1)
2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Primary Plan, p.1)
3. **Claims Expense** has the meaning set forth in Section I B 3 of the Primary Plan. (p. 2)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.” (Excess Plan, p. 1)
5. **Covered Activity** has the meaning set forth in Section III of this Plan. (Excess Plan, p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II of this Plan. (Excess Plan, pp. 3-4)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**. (Primary Plan, p.1)
8. **Excess Limit of Coverage** has the meaning set forth in Section VIII of this Plan. (Excess Plan, p. 7)
9. **Excess-Related** has the meaning set forth in Section V of this Plan. (Excess Plan, pp. 5-6)
10. **Excluded Attorney** means an attorney who is designated as such in the Declarations. (Excess Plan, p. 3)
11. **Excluded Firm** means a firm designated as such in the Declarations. (Excess Plan, p. 7)
12. **Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations. (Excess Plan, p. 3)
13. **First Made** has the meaning set forth in Section IV of this Plan. (Excess Plan, p. 5)
14. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Primary Plan, p. 3)
15. **Legally Obligated** has the meaning set forth in Section I A of the Primary Plan. (p. 1)

16. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state.  
(Primary Plan, p. 4)
17. **Plan Year** means the period of January 1 through December 31 of the calendar year for this Excess Plan was issued. (Excess Plan, p. 1)
18. “PLF” means the Professional Liability Fund of the Oregon State Bar. (Excess Plan p. 1)
19. **Private Practice** has the meaning set forth in Section II A of the Primary Plan. (p. 3)
20. **Professional Legal Services** has the meaning set forth under Section III B of the Primary Plan.  
(pp. 4 and 5)
21. **Special Capacity Relationship** has the meaning set forth in Section III C of the Primary Plan.  
(p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C of the Primary Plan. (p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding, but only if the PLF expressly consents to it. (Primary Plan, p. 1)

## APPENDIX B – EXCESS PLAN ILLUSTRATIVE EXAMPLES

For the purpose of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the meaning of certain Excess Plan provisions, the PLF provides the following illustrative examples, not intended to be exhaustive regarding Section I E 4 and Section V-**Excess-Related Claims**:

### 1. Section I E 4:

**a.** Law firm A maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year. Nevertheless, it does not report the matter to Carrier X in Year 1. Law firm A obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 PLF Excess Plan. This is true whether or not Carrier X provides coverage for the claim.

**b.** Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities, but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm, but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a Covered Party (i.e., Attorney C) prior to the beginning of the **Coverage Period**, and because the firm did not circulate its application among the Firm Attorneys and Current Non-Oregon Attorneys before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.

**c.** Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Section I E 4 will not be applied to deny coverage for the claim as to Attorneys A and B and the Firm. However, there will be no coverage for Attorney C because the claim falls outside the coverage grant under the terms of Section I E 4, and because Attorney C made a material misrepresentation to the PLF in the application.

### 2. Section V – Excess Related Claims:

**a. Related Under the PLF Primary Plan vs. Excess-Related:** Firm G, and one of its members, Attorney A, are sued by a claimant in 2014. The **Claim** is covered under Attorney A's 2014 PLF Primary Plan. Claimant amends the Complaint in 2015, and for the first time, asserts the same **Claim** also against Firm H and one of its members, Attorney B, also covered under the PLF Primary Plan. Under the terms of the PLF Primary Plan, the firms and attorneys all share a single primary Limit of Coverage under the 2014 PLF Primary Plan. This is because the **Claims** are **Related**, for primary purposes, and the earliest **Related Claim** was made in 2014.

Firm H purchased PLF Excess Coverage in 2015, but was previously covered for excess liability, in 2014, by Carrier X. Neither Firm H, nor Attorney B, were aware of the potential claim in 2014, and therefore did not give notice of a potential claim against Attorney B or Firm H to the PLF or Carrier X until 2015. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in 2014 and Firm H did not purchase tail coverage from Carrier X. Under this scenario, any PLF excess coverage

would be under the 2015 PLF Excess Plan because no **Claim** was made against the **Covered Parties** until 2015. (If, however, Firm G and Attorney B did have a basis to believe that the act, error, omission or breach of duty to which the **Claim** relates was a breach of the standard of care, or may result in a **Claim** before the PLF Excess Plan was issued, there would not be coverage for the Claim under the 2015 PLF Excess Plan. Also if they had previously given notice to Carrier X, or purchased applicable tail coverage, there would not be coverage under the PLF 2015 Excess Plan, because other insurance would apply.

**b. Secondary or Dependent Liability** – Firm A has Excess coverage with the PLF between 2013 and 2015. Attorney X, while an associate in the Firm A, commits malpractice in 2012 and then leaves to work with another firm in 2014. He is listed as a Former Attorney in the Declarations of the PLF Excess Plan. **Claims** are alleged only against Attorney A in 2014, and in 2015, a lawsuit is filed also alleging **Claims** against various attorneys who are partners in Firm A, and the Firm itself, based on vicarious liability for Attorney X's malpractice. The **Claims** are **Excess-Related** and, therefore, were **First Made** in 2014.

**c. Same Transaction, Occurrence or Series of Transactions or Occurrences** - Attorney A, a partner in a Firm, with PLF excess coverage between 2007 and the present, writes a tax opinion in 2008 for an investment offering. Attorneys B and C, with a different law firm, and then assemble the offering circular in 2007. In 2010, Investors 1 and 2 bring **Claims** against all 3 attorneys relating to the offering. In 2011, Investor 3 also brings a **Claim** against all 3 attorneys. Under the PLF Primary Plan, **Claims** against all attorneys and firms, by all 3 investors, are **Related** and all attorneys and firms share one Primary Limit of Coverage, applicable to all 3 claims. For the purposes of Attorney A's PLF Excess Plan, however, the **Claims** against B and C are not **Excess-Related**. Therefore, the **Claims** against Attorney A are **First Made** in 2010 and Attorney A has a separate 2010 Excess Limit that applies to all 3 Investor Claims.

**d. Actual Pattern or Practice** - Attorneys A, B, and C, who are all members of a Firm, covered under the PLF Excess Plan for the past 12 years, represent a large number of asbestos clients over several years, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by various clients in 2014 for improper evaluation and by other clients making similar allegations in 2015. Plaintiffs do not allege a common scheme or plan, but because the Firm in fact operated a firm-wide formula for handling the cases, all claims are Excess-Related, First Made in 2014, and subject to the Limit of the 2014 Excess Plan.

**e. Successive or Collective Errors** - Attorney C, an associate at a Firm covered under the PLF Excess Plan during all relevant periods, represents a group of clients at trial and commits certain errors. Attorney D, a partner at the Firm, undertakes the appeal, but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice, but misses the statute of limitations. Clients sue all three attorneys. Under the PLF Primary Plan, all three claims are Related and share a single primary limit. Only the Claims against Attorneys C and D, however, are Excess-Related.

**f. Class Action or Purported Class Action** - Attorneys A, B, and C, all at a Firm covered under the Excess Plan during the relevant periods, represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All the class action claims are **Excess-Related** and subject to the excess limit that was in place at the time the class action **Claim** was **First Made**.

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>1. Fraudulent Claim Exclusion.</b> This Plan does not apply to a COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.</p>	<p>1. <u>Fraudulent Claims</u>. This Plan does not apply to any <b>Claim</b> in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, has participated in any fraud or collusion with respect to the <b>Claim</b>.</p>
<p><b>2. Wrongful Conduct Exclusion.</b> This Plan does not apply to the following CLAIMS, regardless of whether any actual or alleged harm or damages were intended by YOU:</p> <p>(a) any CLAIM against YOU arising out of or in any way connected with YOUR actual or alleged criminal act or conduct;</p> <p>(b) any CLAIM against YOU based on YOUR actual or alleged dishonest, knowingly wrongful, fraudulent or malicious act or conduct on the part of any COVERED PARTY;</p> <p>(c) any CLAIM against YOU based on YOUR intentional violation of the Oregon Rules of Professional Conduct (ORPC) or any other applicable code of professional conduct; or</p> <p>(d) This Plan does not apply to any CLAIM based on or arising out of YOUR non-payment of a valid and enforceable lien if actual notice of such lien was provided to YOU, or to anyone employed in YOUR office, prior to the payment of the funds to a person or entity other than the rightful lien-holder.</p>	<p>2. <u>Wrongful Conduct</u>. This Plan does not apply to any <b>Claim</b> based on or arising out of:</p> <p>a. any criminal act or conduct;</p> <p>b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or</p> <p>c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.</p> <p>Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any <b>Covered Party</b> who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>3. Disciplinary Proceedings Exclusion.</b> This Plan does not apply to any CLAIM based on or arising out of a proceeding brought against YOU by the Oregon State Bar or any similar entity.</p>	<p>3. <u>Disciplinary Proceedings.</u> This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.</p>
<p><b>4. Punitive Damages and Cost Award Exclusions.</b> This Plan does not apply to:</p> <p>a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or</p> <p>b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct, false or unwarranted certification in a pleading, or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.</p>	<p>4. <u>Punitive Damages, Sanctions or Certain Fee Awards.</u> This Plan does not apply to:</p> <p>a. The part of any <b>Claim</b> seeking punitive, exemplary or statutorily enhanced damages against any <b>Covered Party</b>, or against anyone for whose conduct a <b>Covered Party</b> is legally liable;</p> <p>b. Any <b>Claim</b> for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law.</p> <p>However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the <b>Covered Party</b> establishes the sanction was caused by mere negligence on the part of the <b>Covered Party</b> and on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the <b>Covered Party</b>, or on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>6. Business Ownership Interest Exclusion.</b> This Excess Plan does not apply to any CLAIM based on or arising out of any business enterprise:</p> <p>a. In which YOU have an ownership interest, or in which YOU had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;</p> <p>b. In which YOU are a general partner, managing member, or employee, or in which YOU were a general partner, managing member, or employee at the time of the alleged acts, errors or omissions on which the CLAIM is based; or</p> <p>c. That is controlled, operated, or managed by YOU, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by YOU at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.</p> <p>Ownership interest, for the purpose of this exclusion, will not include any ownership interest now or previously held by YOU solely as a passive investment, as long as those YOU control, YOUR, spouse, parent, step-parent, child, step-child, siblings, or any member of YOUR household and those with whom YOU are regularly engaged in the practice of law, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.</p>	<p>6. <u>Business Interests.</u> This Plan does not apply to any <b>Claim</b> relating to or arising out of any business enterprise:</p> <p>a. In which <b>You</b> are a general partner, managing member, or employee, or in which <b>You</b> were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based;</p> <p>b. That is controlled, operated, or managed by <b>You</b>, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by <b>You</b> at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based; or</p> <p>c. In which <b>You</b> either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based unless: (i) such interest is solely a passive investment; and (ii) <b>You</b>, those controlled by the <b>You</b>, <b>Your</b> spouse, parent, step-parent, child, sibling, any member of <b>Your</b> household, and those with whom the <b>You</b> are regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>7. Partner and Employee Exclusion.</b> This Plan does not apply to any CLAIM made by:</p> <p><b>a.</b> YOUR present, former, or prospective partner, employer, or employee; or</p> <p><b>b.</b> A present, former, or prospective officer, director, or employee of a professional corporation in which YOU are or were a shareholder,</p> <p>unless such CLAIM arises out of YOUR conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.</p>	<p>7. <u>Partner and Employee Exclusion.</u> This Plan does not apply to any <b>Claim</b> made by:</p> <p>a. A present, former, or prospective law partner, employer, or employee of a <b>Covered Party</b>, or of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which a <b>Covered Party</b>, or in which any attorney for whose conduct a <b>Covered Party</b> is legally liable, is or was a shareholder.</p> <p>This exclusion does not apply if the <b>Claim</b> arises solely out of conduct in an attorney-client capacity for one of the parties listed in Subsections a and b.</p>
<p><b>8. ORPC 1.8 Exclusion.</b> This Plan does not apply to any CLAIM based on or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which YOU participate with a client unless any required written disclosure has been properly executed in compliance with that rule and has been fully executed by YOU and YOUR client prior to the business transaction giving rise to the CLAIM.</p>	<p>8. <u>Business Transaction with Client.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any business transaction in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>9. Investment Advice Exclusion.</b> This Excess Plan does not apply to any CLAIM based on or arising out of any act, error, or omission committed by YOU (or by someone for whose conduct YOU are legally liable) while in the course of rendering INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all INVESTMENT ADVICE rendered by YOU constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10.</p> <p>("INVESTMENT ADVICE" refers to any of the following activities:</p> <ul style="list-style-type: none"> <li>a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;</li> <li>b. Managing any investment;</li> <li>c. Buying or selling any investment for another;</li> <li>d. (1) Acting as a broker for a borrower or lender, or (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;</li> <li>e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;</li> <li>f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or</li> <li>g. Inducing someone to make a particular investment.)</li> </ul>	<p>9. <u>Investment Advice.</u> This Plan does not apply to any of the following <b>Claims</b> or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:</p> <ul style="list-style-type: none"> <li>a. Any <b>Claim</b> for investment losses, or for any damages arising from or relating to such losses, as a result of any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.</li> </ul> <p>This subsection (a) does not apply, however, to <b>Claims</b> made by a purchaser of securities for losses that arise only from <b>Professional Legal Services</b> provided to a seller of securities, provided no <b>Covered Party</b>, nor any attorney for whose conduct a <b>Covered Party</b> is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.</p> <ul style="list-style-type: none"> <li>b. Any <b>Claim</b> arising from any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any <b>Covered Party</b> for the <b>Covered Party</b> or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.</li> <li>c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of <b>Special Capacity Services</b>.</li> </ul>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>10. Law Practice Business Activities or Benefits Exclusion.</b> This Excess Plan does not apply to any CLAIM:</p> <p>a. For any amounts paid, incurred or charged by any COVERED PARTY, as fees, costs, or disbursements, (or by any LAW ENTITY with which the COVERED PARTY, THE FIRM or any other LAW ENTITY was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY, THE FIRM, or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY or THE FIRM.</p> <p>In the event the PLF defends any claim or suit that includes any claim within the scope of this exclusion, it will have the right to settle or attempt to dismiss any other claim(s) not falling within this exclusion, and to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to any CLAIM based on an act, error or omission by any COVERED PARTY regarding the client's right or ability to recover fees, costs, or expenses from an opposing party, pursuant to statute or contract.</p>	<p>10. <u>Law Practice Business Activities or Benefits Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. For any amounts paid, incurred or charged by any <b>Covered Party</b> as fees, costs or disbursements, (or by any <b>Law Entity</b> with which any <b>Covered Party</b> was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any <b>Covered Party</b>, or any <b>Law Entity</b> with which any <b>Covered Party</b> is now associated, or was associated at the time of the conduct giving rise to the <b>Claim</b>; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any <b>Covered Party</b>.</p> <p>In the event the PLF defends any <b>Claim</b> or <b>Suit</b> that includes any claim within the scope of this exclusion, the <b>Covered Party</b> is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a <b>Claim</b> is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p>11. <b>Family Member and Ownership Exclusion.</b> This Plan does not apply to: (a) any CLAIM based on or arising out of legal services performed by YOU on behalf of YOUR spouse, parent, step-parent, child, step-child, sibling, or any member of YOUR household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest; or (b) any CLAIM, against YOU based on or arising out of another lawyer having provided legal services or representation to his or her own spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest</p>	<p>11. <u>Family Member and Ownership Exclusion.</u> This Plan does not apply to any <b>Claim</b> based on or arising from any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having provided or failed to provide:</p> <ul style="list-style-type: none"> <li>a. <b>Professional Legal Services</b> to any person or entity that is his or her own <b>Family Member</b> or <b>Family Business</b> at the time any such services are provided or fail to be provided; or</li> <li>b. <b>Special Capacity Services</b> to a trust or estate: (i) if the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such <b>Special Capacity Services</b> are provided, or fail to be provided, any <b>Family Member</b> or <b>Family Business</b> of that <b>Covered Party</b>, or of the person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate.</li> </ul> <p><b>Family Member(s)</b> means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter-in-law, sibling, adopted sibling, step-sibling, half sibling, brother or sister-in-law or any member of the <b>Covered Party's</b> household and, if the household member is a spousal equivalent of the <b>Covered Party</b>, the Family Members of any such person.</p> <p><b>Family Business</b> means a business entity in which the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, and/or the <b>Family Members</b>, of such <b>Covered Party</b> or person for whose conduct a <b>Covered Party</b> is legally liable, collectively or individually, have a controlling interest.</p> <p>This exclusion does not apply to <b>Professional Legal Services</b> or <b>Special Capacity Services</b> an attorney provides to another attorney's <b>Family Member</b> or <b>Family Business</b>.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>13. Notary Exclusion.</b> This Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of YOUR employee and YOU have no actual knowledge of such act.</p>	<p>13. <u>Notary Exclusion.</u> This Plan does not apply to any <b>Claim</b> arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.</p>
<p><b>16. General Tortious Conduct Exclusions.</b> This Plan does not apply to any CLAIM against any COVERED PARTY for:</p> <p>a. Bodily injury, sickness, disease, or death of any person;</p> <p>b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or</p> <p>c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.</p> <p>This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.</p>	<p>15. <u>General Tortious Conduct.</u> This Plan does not apply to any <b>Claim</b> for:</p> <p>a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b>; or</p> <p>b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects a <b>Covered Party's</b> performance of <b>Professional Legal Services</b>.</p>
<p><b>18. Patent Exclusion.</b> This Plan does not apply to any CLAIM based upon or arising out of professional services rendered or any act, error or omission committed in relation to the prosecution of a patent if YOU were not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.</p>	<p>17. <u>Patent Exclusion.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>20. Contractual Obligation Exclusion.</b></p> <p>This Plan does not apply to any CLAIM:</p> <p><b>a.</b> Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by YOU or someone for whose conduct YOU are legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;</p> <p><b>b.</b> Any costs connected to ORS 20.160 or similar statute or rule;</p> <p><b>c.</b> For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p><b>d.</b> Claims in contract based upon an alleged promise to obtain a certain outcome or result.</p>	<p>18. <u>Contractual Obligation Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a <b>Covered Party</b> or by someone for whose conduct any <b>Covered Party</b> is legally liable, unless the <b>Claim</b> arises out of <b>Special Capacity Services</b> and the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, signed the bond or agreement solely in a representative capacity arising from the <b>Special Capacity Relationship</b>;</p> <p>b. For liability based on an agreement or representation, if the <b>Covered Party</b> would not have been liable in the absence of the agreement or representation; or</p> <p>c. To the extent the <b>Claim</b> is based on an actual or alleged promise to obtain a certain outcome or result if the <b>Covered Party</b> would not have been liable in the absence of such a promise.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
<p><b>22. Confidential or Private Data Exclusion.</b> This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUIT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.</p> <p><i>COMMENTS</i></p> <p><i>There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, driver's licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a COVERED PARTY; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a COVERED PARTY or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.</i></p> <p><i>There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.</i></p>	<p>20. <u>Confidential or Private Information/Computer Systems.</u> This Plan does not apply to any <b>Claim</b> arising from:</p> <p>a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of <b>Personally Identifiable Non-Public Information</b> or <b>Third Party Corporate Information</b>, whether or not such information was in electronic form or in paper form;</p> <p>b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security information referenced in subsection a, including but not limited to failure to report the loss of such information;</p> <p>c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by any <b>Covered Party's</b> computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any <b>Covered Party's</b> electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.</p> <p><b>Personally Identifiable Non-Public</b> information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information. This includes, but is not limited to certain medical or health care information, driver's license or state identification information, social security numbers, credit information or financial account information.</p>

CURRENT PRIMARY PLAN	REVISED PRIMARY PLAN
	<p><b>Third Party Corporate Information</b> means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party which is not available to the general public.</p> <p>This exclusion 20, however, does not apply to a <b>Claim</b> to the limited extent it arises solely out of a <b>Covered Party's</b> immediate inability to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b> caused by the sudden and unexpected loss of documents or information necessary to such services provided: (a) such loss materially and adversely affected the <b>Covered Party's</b> ability to provide such services; and (b) following the discovery of any such loss of documents or information, the <b>Covered Party</b> at the <b>Covered Party's</b> own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.</p> <p>If the PLF agrees to defend a <b>Suit</b> that includes a <b>Claim</b> falling within this exclusion, and/or a <b>Claim</b> falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>1. Fraudulent Claim Exclusion.</b> This Excess Plan does not apply to any COVERED PARTY for any CLAIM in which that COVERED PARTY participates in a fraudulent or collusive CLAIM.</p>	<p>1. <u>Fraudulent Claims.</u> This Plan does not apply to any <b>Claim</b> in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, has participated in any fraud or collusion with respect to the <b>Claim</b>.</p>
<p><b>2. Wrongful Conduct Exclusion.</b> This Excess Plan does not apply to the following CLAIMS, regardless of whether any actual or alleged harm or damages were intended:</p> <p>(a) Any CLAIM against any COVERED PARTY arising out of or connected with any actual or alleged criminal act or conduct on the part of any COVERED PARTY;</p> <p>(b) any CLAIM against any COVERED PARTY based on any actual or alleged dishonest, knowingly wrongful, fraudulent or malicious act or conduct on the part of any COVERED PARTY;</p> <p>(c) any CLAIM against any COVERED PARTY based on any COVERED PARTY’S intentional violation of the Oregon Rules of Professional Conduct (ORPC) or any other applicable code of professional conduct; or</p> <p>(d) any CLAIM based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any COVERED PARTY, or anyone employed by the FIRM, prior to the payment of the funds to any person or entity other than the rightful lien-holder.</p> <p>Subsections (a), (b) and (c) of this exclusion do not apply to any COVERED PARTY who: (i) did not personally commit, direct or participate in any of the acts or conduct excluded by these provisions; <u>and</u> (ii) either had no knowledge of any such acts or conduct, or who after becoming aware of any such acts or conduct did not acquiesce or remain passive regarding any such acts or conduct, and upon becoming aware of any such acts or conduct, immediately notified the PLF.</p>	<p>2. <u>Wrongful Conduct.</u> This Plan does not apply to any <b>Claim</b> based on or arising out of:</p> <p>a. any criminal act or conduct;</p> <p>b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct, any intentional tort; or</p> <p>c. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.</p> <p>Exclusion 2 applies regardless of whether any actual or alleged harm or damages were intended. However, it does not apply to any <b>Covered Party</b> who did not commit or participate in any acts or conduct set forth in subsections (a) through (c), had no knowledge of any such acts or conduct at the time they occurred and did not acquiesce or remain passive after becoming aware of such acts or conduct.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>3. Disciplinary Proceedings Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of a proceeding brought the Oregon State Bar or any similar entity.</p>	<p>3. <u>Disciplinary Proceedings.</u> This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.</p>
<p><b>4. Punitive Damages and Cost Award Exclusions.</b> This Excess Plan does not apply to:</p> <p>a. The part of any CLAIM seeking punitive, exemplary or statutorily enhanced damages; or</p> <p>b. Any CLAIM for or arising out of the imposition of attorney fees, costs, fines, penalties, or other sanctions imposed under any federal or state statute, administrative rule, court rule, or case law intended to penalize bad faith conduct, false or unwarranted certification in a pleading, or the assertion of frivolous or bad faith claims or defenses. The PLF will defend the COVERED PARTY against such a CLAIM, but any liability for indemnity arising from such CLAIM will be excluded.</p>	<p>4. <u>Punitive Damages, Sanctions or Certain Fee Awards.</u> This Plan does not apply to:</p> <p>a. The part of any <b>Claim</b> seeking punitive, exemplary or statutorily enhanced damages against any <b>Covered Party</b>, or against anyone for whose conduct a <b>Covered Party</b> is legally liable;</p> <p>b. Any <b>Claim</b> for or arising out of the imposition of attorney fees, costs, fines, penalties or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law.</p> <p>However, with respect to any sanction awarded only against the client, this subsection b does not apply if: the <b>Covered Party</b> establishes the sanction was caused by mere negligence on the part of the <b>Covered Party</b> and on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct or misrepresentation on the part of the <b>Covered Party</b>, or on the part of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>6. Business Ownership Interest Exclusion.</b>  This Excess Plan does not apply to any CLAIM based on or arising out of any business enterprise:</p> <ul style="list-style-type: none"> <li>a. In which any COVERED PARTY has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions upon which the CLAIM is based;</li> <li>b. In which any COVERED PARTY is a general partner, managing member, or employee, or was a general partner, managing member, or employee at the time of the alleged acts, errors or omissions on which the CLAIM is based; or</li> <li>c. That is controlled, operated, or managed by any COVERED PARTY, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed at the time of the alleged acts, errors, or omissions upon which the CLAIM is based.</li> </ul> <p>Ownership interest, for the purpose of this exclusion, will not include any ownership interest now or previously held solely as a passive investment, as long as all COVERED PARTIES, those they control, spouses, parents, step-parents, children, step-children, siblings, or any member of their households, collectively now own or previously owned an interest of 10 percent or less in the business enterprise.</p>	<p>Excess Plan - Section VII</p> <ul style="list-style-type: none"> <li>1. <u>Business Interests.</u> This Plan does not apply to any <b>Claim</b> relating to or arising out of any business enterprise: <ul style="list-style-type: none"> <li>a. In which any <b>Covered Party</b> is a general partner, managing member, or employee, or in which any <b>Covered Party</b> was a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based;</li> <li>b. That is controlled, operated, or managed by any <b>Covered Party</b>, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by any <b>Covered Party</b> at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based; or</li> <li>c. In which any <b>Covered Party</b> either has an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the <b>Claim</b> is based unless: (i) such interest is solely a passive investment; and (ii) the <b>Covered Party</b>, those controlled by the <b>Covered Party</b> and his or her spouse, parent, step-parent, child, sibling, any member of the <b>Covered Party's</b> household, and those with whom the <b>Covered Party</b> is regularly engaged in the practice of law collectively own, or previously owned, an interest in the business enterprise of less than ten percent.</li> </ul> </li> </ul>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>7. Partner and Employee Exclusion.</b> This Excess Plan does not apply to any CLAIM made by:</p> <p>a. THE FIRM'S present, former, or prospective partner, employer, or employee; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which any COVERED PARTY is or was a shareholder,</p> <p>unless such CLAIM arises out of conduct in an attorney-client capacity for one of the parties listed in Subsections a or b.</p>	<p>7. <u>Partner and Employee Exclusion</u>. This Plan does not apply to any <b>Claim</b> made by:</p> <p>a. A present, former, or prospective law partner, employer, or employee of a <b>Covered Party</b>, or of anyone for whose conduct a <b>Covered Party</b> is legally liable; or</p> <p>b. A present, former, or prospective officer, director, or employee of a professional corporation in which a <b>Covered Party</b>, or in which any attorney for whose conduct a <b>Covered Party</b> is legally liable, is or was a shareholder.</p> <p>This exclusion does not apply if the <b>Claim</b> arises solely out of conduct in an attorney-client capacity for one of the parties listed in Subsections a and b.</p>
<p><b>8. ORPC 1.8 Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of any business transaction subject to ORPC 1.8(a) or its equivalent in which any COVERED PARTY participated with a client unless any required written disclosure has been properly executed in compliance with that rule and has been properly executed by any COVERED PARTY and his or her client prior to the business transaction giving rise to the CLAIM.</p>	<p>8. <u>Business Transaction with Client</u>. This Plan does not apply to any <b>Claim</b> based upon or arising out of any business transaction in which any <b>Covered Party</b>, or in which anyone for whose conduct a <b>Covered Party</b> is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>9. Investment Advice Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of any act, error, or omission in the course of providing INVESTMENT ADVICE if the INVESTMENT ADVICE is in fact either the sole cause or a contributing cause of any resulting damage. However, if all of the INVESTMENT ADVICE constitutes a COVERED ACTIVITY described in Section III.3, this exclusion will not apply unless part or all of such INVESTMENT ADVICE is described in Subsections d, e, f, or g of the definition of INVESTMENT ADVICE in Section I.10 of the PLF CLAIMS MADE PLAN.</p> <p>("INVESTMENT ADVICE" refers to any of the following activities:</p> <ul style="list-style-type: none"> <li>a. Advising any person, firm, corporation, or other entity respecting the value of a particular investment, or recommending investing in, purchasing, or selling a particular investment;</li> <li>b. Managing any investment;</li> <li>c. Buying or selling any investment for another;</li> <li>d. (1) Acting as a broker for a borrower or lender, or (2) Advising or failing to advise any person in connection with the borrowing of any funds or property by any COVERED PARTY for the COVERED PARTY or for another;</li> <li>e. Issuing or promulgating any economic analysis of any investment, or warranting or guaranteeing the value, nature, collectability, or characteristics of any investment;</li> <li>f. Giving advice of any nature when the compensation for such advice is in whole or in part contingent or dependent on the success or failure of a particular investment; or</li> <li>g. Inducing someone to make a particular investment.)</li> </ul>	<p>9. <u>Investment Advice.</u> This Plan does not apply to any of the following <b>Claims</b> or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:</p> <ul style="list-style-type: none"> <li>a. Any <b>Claim</b> for investment losses, or for any damages arising from or relating to such losses, as a result of any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.</li> </ul> <p>This subsection (a) does not apply, however, to <b>Claims</b> made by a purchaser of securities for losses that arise only from <b>Professional Legal Services</b> provided to a seller of securities, provided no <b>Covered Party</b>, nor any attorney for whose conduct a <b>Covered Party</b> is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.</p> <ul style="list-style-type: none"> <li>b. Any <b>Claim</b> arising from any <b>Covered Party</b>, or any person for whose conduct any <b>Covered Party</b> is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any <b>Covered Party</b> for the <b>Covered Party</b> or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.</li> <li>c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of <b>Special Capacity Services</b>.</li> </ul>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>10. Law Practice Business Activities or Benefits Exclusion.</b> This Excess Plan does not apply to any CLAIM:</p> <p>a. For any amounts paid, incurred or charged by any COVERED PARTY, as fees, costs, or disbursements, (or by any LAW ENTITY with which the COVERED PARTY, THE FIRM or any other LAW ENTITY was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to a COVERED PARTY, THE FIRM, or any LAW ENTITY with which the COVERED PARTY is now associated, or was associated at the time of the conduct giving rise to the CLAIM; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any COVERED PARTY or THE FIRM.</p> <p>In the event the PLF defends any claim or suit that includes any claim within the scope of this exclusion, it will have the right to settle or attempt to dismiss any other claim(s) not falling within this exclusion, and to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to any CLAIM based on an act, error or omission by any COVERED PARTY regarding the client's right or ability to recover fees, costs, or expenses from an opposing party, pursuant to statute or contract.</p>	<p>10. <u>Law Practice Business Activities or Benefits Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. For any amounts paid, incurred or charged by any <b>Covered Party</b> as fees, costs or disbursements, (or by any <b>Law Entity</b> with which any <b>Covered Party</b> was associated at the time the fees, costs or expenses were paid, incurred or charged), including but not limited to fees, costs and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off or otherwise.</p> <p>b. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any <b>Covered Party</b>, or any <b>Law Entity</b> with which any <b>Covered Party</b> is now associated, or was associated at the time of the conduct giving rise to the <b>Claim</b>; or</p> <p>c. For damages or the recovery of funds or property that have or will directly or indirectly benefit any <b>Covered Party</b>.</p> <p>In the event the PLF defends any <b>Claim</b> or <b>Suit</b> that includes any claim within the scope of this exclusion, the <b>Covered Party</b> is required to consent to and cooperate with the PLF's attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a <b>Claim</b> is based on an act, error or omission that eliminates, reduces or prejudices a client's right or ability to recover fees, costs or expenses from an opposing party.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>11. Family Member and Ownership</b></p> <p><b>Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of an attorney COVERED PARTY’S legal services performed on behalf of the attorney COVERED PARTY’S spouse, parent, step-parent, child, step-child, sibling, or any member of his or her household, or on behalf of a business entity in which any of them, individually or collectively, have a controlling interest, based upon or arising out of the acts, errors or omissions of that COVERED PARTY.</p>	<p>11. <u>Family Member and Ownership Exclusion.</u> This Plan does not apply to any <b>Claim</b> based on or arising from any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having provided or failed to provide:</p> <p>a. <b>Professional Legal Services</b> to any person or entity that is his or her own <b>Family Member</b> or <b>Family Business</b> at the time any such services are provided or fail to be provided; or</p> <p>b. <b>Special Capacity Services</b> to a trust or estate: (i) if the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such <b>Special Capacity Services</b> are provided, or fail to be provided, any <b>Family Member</b> or <b>Family Business</b> of that <b>Covered Party</b>, or of the person for whose conduct a <b>Covered Party</b> is legally liable, is a beneficiary of the trust or estate.</p> <p><b>Family Member(s)</b> means spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son or daughter in-law, sibling, adopted sibling, step-sibling, half sibling, brother or sister-in-law or any member of the <b>Covered Party’s</b> household and, if the household member is a spousal equivalent of the <b>Covered Party</b>, the Family Members of any such person.</p> <p><b>Family Business</b> means a business entity in which the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, and/or the <b>Family Members</b>, of such <b>Covered Party</b> or person for whose conduct a <b>Covered Party</b> is legally liable, collectively or individually, have a controlling interest.</p> <p>This exclusion does not apply to <b>Professional Legal Services</b> or <b>Special Capacity Services</b> an attorney provides to another attorney's <b>Family Member</b> or <b>Family Business</b>.</p>
<p><b>13. Notary Exclusion.</b> This Excess Plan does not apply to any CLAIM arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public, unless such CLAIM arises from the acts of THE FIRM’S employee and no COVERED PARTY has actual knowledge of such act.</p>	<p>13. <u>Notary Exclusion.</u> This Plan does not apply to any <b>Claim</b> arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>16. General Tortious Conduct Exclusions.</b> This Excess Plan does not apply to any CLAIM against any COVERED PARTY for:</p> <ul style="list-style-type: none"> <li>a. Bodily injury, sickness, disease, or death of any person;</li> <li>b. Injury to, loss of, loss of use of, or destruction of any real, personal, or intangible property; or</li> <li>c. Mental anguish or emotional distress in connection with any CLAIM described under Subsections a or b.</li> </ul> <p>This exclusion does not apply to any CLAIM made under ORS 419B.010 if the CLAIM arose from an otherwise COVERED ACTIVITY.</p>	<p>15. <u>General Tortious Conduct.</u> This Plan does not apply to any <b>Claim</b> for:</p> <ul style="list-style-type: none"> <li>a. Bodily injury, sickness, disease, mental anguish, emotional distress or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act or breach of duty in providing or failing to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b>; or</li> <li>b. Injury to, loss of, loss of use of, or destruction of any real, personal, tangible or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects a <b>Covered Party's</b> performance of <b>Professional Legal Services</b>.</li> </ul>
<p><b>18. Patent Exclusion.</b> This Excess Plan does not apply to any CLAIM based upon or arising out of professional services performed or any act, error or omission committed in relation to the prosecution of a patent if the COVERED PARTY who performed the services was not registered with the U.S. Patent and Trademark Office at the time the CLAIM arose.</p>	<p>17. <u>Patent Exclusion.</u> This Plan does not apply to any <b>Claim</b> based upon or arising out of any <b>Covered Party</b>, or anyone for whose conduct a <b>Covered Party</b> is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>20. Contractual Obligation Exclusion.</b></p> <p>This Plan does not apply to any CLAIM:</p> <p><b>a.</b> Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a COVERED PARTY or someone for whose conduct any COVERED PARTY is legally liable, unless the CLAIM arises out of a COVERED ACTIVITY described in SECTION III.3 and the person against whom the CLAIM is made signs the bond or agreement solely in that capacity;</p> <p><b>b.</b> Any costs connected to ORS 20.160 or similar statute or rule;</p> <p><b>c.</b> For liability based on an agreement or representation, if the Covered Party would not have been liable in the absence of the agreement or representation; or</p> <p><b>d.</b> Claims in contract based upon an alleged promise to obtain a certain outcome or result.</p>	<p>18. <u>Contractual Obligation Exclusion.</u> This Plan does not apply to any <b>Claim</b>:</p> <p>a. Based upon or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a <b>Covered Party</b> or by someone for whose conduct any <b>Covered Party</b> is legally liable, unless the <b>Claim</b> arises out of <b>Special Capacity Services</b> and the <b>Covered Party</b>, or person for whose conduct a <b>Covered Party</b> is legally liable, signed the bond or agreement solely in a representative capacity arising from the <b>Special Capacity Relationship</b>;</p> <p>b. For liability based on an agreement or representation, if the <b>Covered Party</b> would not have been liable in the absence of the agreement or representation; or</p> <p>c. To the extent the <b>Claim</b> is based on an actual or alleged promise to obtain a certain outcome or result if the <b>Covered Party</b> would not have been liable in the absence of such a promise.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
<p><b>22. Confidential or Private Data Exclusion.</b>  This Plan does not apply to any CLAIM arising out of or related to the loss, compromise or breach of or access to confidential or private information or data. If the PLF agrees to defend a SUTT that includes a CLAIM that falls within this exclusion, the PLF will not pay any CLAIMS EXPENSE relating to such CLAIM.</p> <p><i>COMMENTS</i></p> <p><i>There is a growing body of law directed at protecting confidential or private information from disclosure. The protected information or data may involve personal information such as credit card information, social security numbers, driver’s licenses, or financial or medical information. They may also involve business-related information such as trade secrets or intellectual property. Examples of loss, compromise, breach or access include but are not limited to electronically stored information or data being inadvertently disclosed or released by a COVERED PARTY; being compromised by the theft, loss or misplacement of a computer containing the data; being stolen or intentionally damaged; or being improperly accessed by a COVERED PARTY or someone acting on his or her behalf. However, such information or data need not be in electronic format, and a data breach caused through, for example, the improper safeguarding or disposal of paper records would also fall within this exclusion.</i></p> <p><i>There may be many different costs incurred to respond to a data breach, including but not limited to notification costs, credit monitoring costs, forensic investigations, computer reprogramming, call center support and/or public relations. The PLF will not pay for any such costs, even if the PLF is otherwise providing a defense.</i></p>	<p>20. <u>Confidential or Private Information/Computer Systems.</u> This Plan does not apply to any <b>Claim</b> arising from:</p> <p>a. Any loss of, access or potential access by third parties, disclosure to third parties, or publication of <b>Personally Identifiable Non-Public Information</b> or <b>Third Party Corporate Information</b>, whether or not such information was in electronic form or in paper form;</p> <p>b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security information referenced in subsection a, including but not limited to failure to report the loss of such information;</p> <p>c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by any <b>Covered Party’s</b> computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any <b>Covered Party’s</b> electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.</p> <p><b>Personally Identifiable Non-Public</b> information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state or foreign law or regulation, if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual’s financial account or medical record information. This includes, but is not limited to certain medical or health care information, driver’s license or state identification information, social security numbers, credit information or financial account information.</p>

CURRENT EXCESS PLAN	REVISED EXCESS PLAN
	<p><b>Third Party Corporate Information</b> means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party which is not available to the general public.</p> <p>This exclusion 20, however, does not apply to a <b>Claim</b> to the limited extent it arises solely out of a <b>Covered Party's</b> immediate inability to provide <b>Professional Legal Services</b> or <b>Special Capacity Services</b> caused by the sudden and unexpected loss of documents or information necessary to such services provided: (a) such loss materially and adversely affected the <b>Covered Party's</b> ability to provide such services; and (b) following the discovery of any such loss of documents or information, the <b>Covered Party</b> at the <b>Covered Party's</b> own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace or obtain such documents or information before the time the services had to be provided.</p> <p>If the PLF agrees to defend a <b>Suit</b> that includes a <b>Claim</b> falling within this exclusion, and/or a <b>Claim</b> falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs or any similar costs.</p>

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**Memo Date:** September 6, 2016  
**From:** Dawn Evans, Disciplinary Counsel  
Amber Hollister, General Counsel  
**Re:** Disciplinary System Adjudicator

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### **Action Recommended**

Review the options presented for engaging a disciplinary system adjudicator and determine whether to create the position.

### **Background**

At its March 11, 2016 special meeting, the Board voted to pursue creating a disciplinary system adjudicator position (DSRC Recommendation #16), on the condition that the person be an employee of the Oregon Supreme Court. Board members were concerned that, if the adjudicator were a bar employee, the physical proximity to the Disciplinary Counsel's Office (DCO) might raise a perception that the exercise of independent judgment and decision-making was compromised. At the same time, the Board expressed interest in improving the quality and consistency of trial panel opinions as well as the efficiency of the disciplinary process. Several members believed that an adjudicator would accomplish these goals. Thus, staff was asked to explore whether the Oregon Supreme Court would be willing to employ the adjudicator.

Over the following months, bar staff met with representatives of the Oregon Supreme Court, the State Court Administrator's Office, and the Oregon Judicial Department to discuss the logistics and statutory requirements associated with creating an adjudicator position as an employee of the court. It became apparent that there are significant challenges and serious disadvantages to the Court employing an adjudicator. These challenges and disadvantages were outlined in a memorandum presented at the June 24, 2016 Board meeting, with various options for engaging an adjudicator. That memo is attached hereto.

At the June meeting, the Board voted to continue exploring options for establishing an adjudicator position that would not be an employee of the Supreme Court but that would address concerns about a lack of independence from DCO. Given the Board's input, staff developed the two options outlined below.

Since the Board's last meeting, the bar has also taken preliminary steps to create a framework for a possible adjudicator position. Disciplinary Counsel Dawn Evans has drafted proposed changes to court rules (see attached summary of Proposed Duties of Adjudicator), and the bar has asked legislative counsel to draft a proposed amendment to statute, which could be introduced in the 2017 session.

## Description of Options

### 1. Adjudicator Appointed by Court/Chief Justice and Employed by OSB

**Position Description:** Under this scenario, the adjudicator would be an Oregon lawyer appointed by the Supreme Court (or the Chief Justice) and an employee of the OSB. The bar would enter into an employment contract with the adjudicator, which could be renewed on an annual basis. Appointment by the Supreme Court would be a requirement for continued employment. Only the Supreme Court (or the Chief Justice) would have the power to remove the adjudicator.

**Supervision:** The Executive Director would engage in day-to-day supervision of the adjudicator. This would mean that the Executive Director would be responsible for administrative supervision of the individual (e.g. approving timesheets, vacation requests, and reimbursement requests).

The Executive Director would also be responsible for ensuring the adjudicator received adequate support as he or she became accustomed to the position. Part of this support might include asking General Counsel to provide background information on the format of opinions, procedural questions, ethics law, and existing disciplinary precedent.

While the adjudicator would report to the Executive Director, and the Executive Director could furnish general information about the disciplinary system, the Executive Director would not have any decisional authority over disciplinary matters. Any decisions about specific cases would be reserved exclusively for the adjudicator (and other disciplinary panel members appointed to the case).

The adjudicator would be subject to bar policies, including accounting and human resources policies. If an adjudicator violated a bar policy, the Executive Director could report that violation to the Supreme Court and request that the Supreme Court remove the adjudicator. Ultimately, any decision to remove the adjudicator would be up to the Supreme Court.

**Benchmarks:** The adjudicator would be responsible for meeting performance benchmarks, as approved by the Supreme Court. The Executive Director and adjudicator would submit reports to the Supreme Court on an annual basis on the adjudicator's progress on performance benchmarks. The Executive Director would make available all opinions and orders drafted by the adjudicator throughout the year to the Court (regardless of whether they were appealed).

The performance benchmarks would include measures on timeliness and responsiveness. The Executive Director would also provide the Supreme Court with general feedback about the adjudicator's job performance, training and professional development. In

the reports, the Executive Director would share any feedback she received about the adjudicator from other disciplinary board members, respondent's counsel and DCO.

**Office Location:** The position would be advertised as an off-site position, so that the individual would be expected to work from home or out of another office space. This off-site location would provide an additional degree of physical separation between bar staff and the adjudicator.

**Support:** The adjudicator would receive administrative support from the Disciplinary Board Clerk. The Disciplinary Board Clerk would provide assistance as needed in connection with appointment of panels, scheduling of hearings, locating and securing hearing space and court reporters, and other procedural matters. The Disciplinary Board Clerk would also provide example forms of orders, and copies of necessary documents from the Clerk's files, but would not provide secretarial or word processing support to the adjudicator. The Disciplinary Board Clerk would continue to report to General Counsel.

The adjudicator would receive a bar laptop and IT support from bar staff. Although the adjudicator would utilize the bar's server, the adjudicator's electronic files would be not be open for review by disciplinary staff; similarly, the adjudicator would not have access to disciplinary or client assistance office electronic files.

The bar's General Counsel would be available to provide general information about the disciplinary system, case law and rules of procedure, in the same manner she is available to existing disciplinary board members. While General Counsel would offer general input on interpretation of bar rules of procedure and could serve as a resource for legal research questions, General Counsel would not provide input on specific case decisions.

The bar would provide the adjudicator with training, including the opportunity to attend conferences related to ethics and lawyer regulation. The bar could also seek out opportunities for the adjudicator to attend trainings with Oregon judges related to opinion writing and courtroom management.

**Cost:** A ballpark estimate from our CFO suggests that this position would cost roughly \$92,300 for a half-time employee or \$184,600 for a full-time position (this includes annual salary and benefits only). This approximate cost assumes that the position is filled at the same range as that of the bar's Disciplinary Counsel. If this position were created and assuming implementation of changes to the Rules of Procedure within the same timeframe, it would likely be filled in mid-2017, so any cost would be half of the above amount for the first year.

## **2. Panel of Independent Contractor Adjudicators, Appointed by Court/Chief Justice**

**Position Description:** Under this scenario, three Oregon lawyers would be appointed as adjudicators by the Supreme Court (or Chief Justice), but would serve as independent

contractors of the OSB. The term of the contract could be for up to one year, but would not be automatically renewed. The adjudicators would only be removable by the Supreme Court.

The adjudicators would need to be able to demonstrate to the bar that they were otherwise engaged in the business of law or a related field, to support their designation as independent contractors.

A contract would detail the OSB and the Court's broad-based expectations for the position, and the tasks required to be completed pursuant to the bar rules of procedure. If an adjudicator had specific questions about contract requirements, the Executive Director or General Counsel could field questions.

**Supervision:** Because of the nature of the independent contractor relationship, the bar would not (and could not) exercise day-to-day supervision over the adjudicators, or exercise control over the manner in which they complete their assigned tasks. Adjudicators hired as independent contractors would be required to supply their own on-the-job training and would need to have the existing skills to perform the work when retained.

**Benchmarks:** The adjudicators would be responsible for meeting high-level benchmarks related to timeliness and responsiveness, as approved by the Supreme Court. The adjudicators would submit reports to the Supreme Court on an annual basis (these reports would likely be similar to those already provided by Disciplinary Counsel and the Client Assistance Office). The Executive Director would make available to the Court all opinions and orders drafted by the adjudicators throughout the year (regardless of whether they were appealed).

To the extent that the adjudicators sought others' feedback, they would be charged with obtaining it through their own inquiries. The Executive Director could share her feedback about the adjudicators with the Court (or Chief Justice) to help inform appointment decisions.

**Office Location:** The adjudicators would be responsible for supplying their own office space and equipment, off of bar premises.

**Support:** The adjudicators would be responsible for providing for their own staff and administrative support, and could hire and pay assistants. Although the adjudicators would coordinate with and, to some extent, work in concert with the Disciplinary Board Clerk, they would not otherwise receive administrative support from the bar, and would be expected to provide all tools and equipment required to complete their required work.

The bar's General Counsel would be available to provide basic information about the disciplinary system, in the same manner she is available to existing disciplinary board members.

**Cost:** Using the data from the 2012 survey for a "Government Lawyer" and updated by the CPI to a 2016 estimate, our CFO has estimated that we would hire at a billing rate of approximately \$138 per hour. At 1,080 hours a year (equal to a half-time employee), the cost to

the bar would be \$149,000/year for each half-time contractor. Ultimately, any rate of pay would need to be negotiated with the adjudicators.

The bar could also explore paying adjudicators based on a piece rate, which would depend on the adjudicator's work on any given case (e.g. a flat rate per motion, per opinion, or per day of trial).

If this position were created, and again assuming timely implementation of the rule changes, it would likely be filled in mid-2017, so any cost would be half of the above amount for the first year.

### Options – Pro/Con Charts

#### Option 1 – Adjudicator Appointed by Court, Employed by OSB.

+ Pros	- Cons
The adjudicator would have the opportunity to <b>develop expertise</b> as the presiding member of every disciplinary board panel (unless successfully challenged for cause or otherwise unavailable).	Hiring one adjudicator could lead to the perception that one individual decision maker has <b>significant influence</b> in the disciplinary process (although panels will continue to consist of 3 members).
Having one person serving in this position would <b>increase consistency</b> in trial panel opinions in terms of quality, reasoning and outcome.	Because the individual would be a <b>bar employee</b> , there could be a perception that disciplinary counsel has sway over decision making.
A presiding adjudicator would have the ability to coordinate with regional chairs and the disciplinary board, with the goal of <b>improving efficiency and reducing delay</b> .	
If the bar pursued this option, it could provide direct technical and administrative support to the position, thereby <b>maximizing efficiency</b> .	
Because the individual would work off site and be appointed and removed by the Court, there would be a <b>clear separation</b> between the bar and the adjudicator.	
Initial estimates suggest an adjudicator appointed by the Court, who is an OSB employee, may be retained at a <b>lower cost</b> than an independent contractor.	

### Option 2 – Adjudicator Appointed by Court, Employed by OSB.

+ Pros	- Cons
Engaging three adjudicators as independent contractors, rather than as an employees, may foster the appearance of <b>increased separation</b> between the bar’s disciplinary and adjudicatory functions.	Because the work would be divided among a number of individuals, there may be <b>less consistency</b> in decisions – that lack of consistency is precisely the concern the Court has raised about the current system.
Retaining a panel of adjudicators would allow the bar to <b>easily substitute</b> an adjudicator who is challenged for cause.	Each contractor would have less of an opportunity to serve on trial panels, and may <b>develop expertise more slowly</b> .
A panel would also give the bar the opportunity to hire contractors from <b>across Oregon</b> .	The independent contractor model places <b>significant restrictions</b> on how the positions are structured, in order to ensure that the classification withstands scrutiny.
	Adjudicators would also be required to <b>provide their own staff, technical and administrative support</b> , which could lead to logistical complications.
	Initial estimates suggest that this option may come at a <b>higher cost</b> to the bar. Any rate would need to be negotiated.

### Option 3 – Abandon DSRC proposal to establish adjudicator position.

+ Pros	- Cons
Retaining current system would mean <b>costs remain the same</b> .	The Court has expressed concern with <b>consistency and quality</b> of opinions.
Allows for <b>increased volunteer participation</b> (three volunteers serve per panel, instead of two).	Relying entirely on volunteers <b>does not allow adjudicators to develop depth of experience and knowledge</b> . (Volunteers typically only serve on a panel every few years.)
Oregon lawyers are <b>familiar</b> with this system.	Volunteers are busy with existing practices and often have <b>limited time and energy</b> to devote to a panel.
	The <b>Court has expressed support</b> for the creation of an adjudicator position.

Proposed Duties of Adjudicator

1. Coordinating and overseeing the activities of the Disciplinary Board – interacting with the Disciplinary Board Clerk and with the Regional Chairs on a regular basis;
2. Presiding member of all trial panels – ruling on challenges to other trial panel members, ruling on all pretrial matters, setting hearings, conducting all pretrial hearings and conferences (other than the BR 4.6 pre-hearing conference, which is more akin to a settlement conference), ruling on all challenges to other trial panel members, presiding at trial, and ruling on any post-hearing motions (such as objections to the record and reviewing statements of cost);
3. Opinion writing – drafting orders, and when in majority, writing all trial opinions;
4. Making appointments – appointing trial panelist who will conduct BR 4.6 pre-hearing conference, trial panelists for cases referred by the Supreme Court (serving a “master” function), and trial panelists on an at-large basis to fill in from other regions as needed;
5. Serving as the sole adjudicator – upon agreement of the parties in lieu of a 3-member panel, ruling on defaults and various special proceedings (BR 7.1 motions, temporary interlocutory suspensions, reciprocal discipline cases, and interim suspensions based upon criminal convictions); and
6. Stipulations – Reviewing and entering orders approving all stipulations imposing six months or less.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** June 24, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** Disciplinary System Professional Adjudicator

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### **Action Recommended**

Review the options presented for engaging a disciplinary system professional adjudicator and provide feedback on a general direction.

### **Background**

At its special meeting on March 11, 2016, the Board voted to recommend engaging a disciplinary system professional adjudicator, on the condition that the person be an employee of the Court.

The Court has expressed general enthusiasm about the prospect of creating a professional adjudicator position. The Court believes that creating a professional adjudicator position would support the Board's goals of improving the quality of disciplinary opinions and the efficiency of the disciplinary system.

Since March, bar staff has engaged in discussions with the Chief Justice, the State Court Administrator, and other representatives of the Oregon Judicial Department to delve into the logistics and statutory limitations of creating such a position.

At the request of the Court, bar staff and OJD staff researched the advantages and disadvantages of the following options for structuring the professional adjudicator position:

1. Professional Adjudicator Employed by Court/OJD
2. Professional Adjudicator who is an Independent Contractor Retained by Court/OJD
3. Professional Adjudicator Appointed by Court, but Employed/Retained by OSB
4. Professional Adjudicator who is an Independent Contractor Retained by OSB
5. Professional Adjudicator Employed by OSB

As a result of this collaborative process, it became apparent that if the Professional Adjudicator was an employee of the Court, there would be several additional challenges to implementation, which can be summarized as follows:

- The Oregon Judicial Department must have specific authority from the legislature to hire additional FTE. Any budget associated with that hire also requires legislative approval. See ORS 8.125(2)(b); ORS 8.105.

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- Any money paid by the bar to fund an OJD employee may need to be deposited in the General Fund and specially allocated by the legislature to the Court. *See* ORS 8.130.
  - If the Professional Adjudicator is supervised by the Chief Justice, the Chief Justice may be disqualified from hearing a disciplinary case before the Supreme Court. *See* ORS 14.275. Court staff acknowledged the Board's desire to avoid any appearance of an improper connection between an adjudicator and the bar, but pointed out that direct supervision by the Court would likely create significant conflicts.
  - The Professional Adjudicator would be prohibited from engaging in the private practice of law. ORS 8.160. As a result, it may be difficult to find a person interested in a part-time position, if that were what the position required.
  - The Oregon State Court Administrator's Office may be statutorily required to support the Professional Adjudicator's function, with potential added expense. ORS 8.125.

In addition, the Court has made it clear that from a policy perspective, regardless of what entity retains the Professional Adjudicator, the Professional Adjudicator position should be funded entirely out of bar funds rather than OJD funds (which are primarily general funds) in order to avoid shifting the costs of the disciplinary system to the public.

### Options

- **Further Explore Options 3-5 (OSB Employee, OSB Independent Contractor, or Appointed by Court but Employed/Retained by OSB).** Given the challenges outlined above, staff recommends completing further research about these options.
- **Abandon proposal to establish position of professional adjudicator.** Given the Court's support for the idea of a professional adjudicator, staff would not recommend this option at this time.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen Hierschbiel, CEO/Executive Director  
**Re:** CSF Awards Recommended for Payment  
KRULL (Cisneros) 2016-02

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### **Action Requested**

The Client Security Fund Committee recommends reimbursement of \$7,500 to Guillermo Pahua Cisneros for his loss resulting from the conduct of attorney Julie Krull.

### **Discussion**

#### Background

Guillermo Pahua Cisneros hired Julie Krull on March 28, 2014 to represent him in immigration removal proceedings. Although Mr. Cisneros resides in Hillsboro, Oregon, the proceedings were filed in Houston, Texas because that is where Mr. Cisneros was detained. The first objective of the representation was to secure a change of venue from Texas to Oregon.

The fee agreement provides for a flat fee of \$11,000. Mr. Cisneros paid Ms. Krull \$7,500 of the retainer. Ms. Krull's file reflects six separate time entries for a total of .5 hours spent on Mr. Cisneros' case, which appear to be for purely administrative tasks. The CSF investigator found no evidence that Ms. Krull took any substantive or meaningful action on behalf of Mr. Cisneros, including no evidence of any efforts to change venue of the removal proceedings.

Ms. Krull resigned Form B effective November 12, 2015. She never returned the money that Mr. Cisneros paid to her.

#### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. Generally, a lawyer's failure to perform or complete a legal engagement is not, in itself, evidence of dishonest conduct. CSF Rule 2.2.2. However, reimbursement of a legal fee will be allowed if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee found that Mr. Cisneros' loss was caused by the dishonest conduct of Ms. Krull who promised to provide legal services in exchange for the advance payment of a legal fee. Further, it determined that Ms. Krull's legal services, if any, were minimal or insignificant. Finally, Mr. Cisneros submitted his claim within the required time. Therefore, the

CSF Committee recommends that Mr. Cisneros be reimbursed \$7,500, the full amount of his claim.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-21 MILSTEIN (Colvin) Request for BOG Review

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### Action Requested

Consider claimant's request for BOG review of the CSF Committee's decision to partially approve her claim for reimbursement of \$4,000.

### Discussion

#### *Summary of Facts*

Kayla Ann Colvin seeks reimbursement of \$4,000 that she paid to Jeff Milstein for legal fees and costs for representation in defense of two charges: Driving Under the Influence of Intoxicants ("DUI") and resisting arrest charges. In late 2013 and early 2014, Ms. Colvin paid \$2,000 (in four installments) pursuant to a Flat Fee Agreement for legal services. In April 2014, Ms. Colvin paid an additional \$2,000 at Mr. Milstein's request for a purported "team of experts" to aid in Ms. Colvin's defense at trial.

Mr. Milstein did provide some legal services for Ms. Colvin. He met with her and communicated with her on numerous occasions regarding her case. In addition, he appeared at several court proceedings and attempted to negotiate a plea bargain. Ms. Colvin saw no evidence of work by Mr. Milstein's "experts," however, and believes the request for these additional funds was a ruse to get more money from her. The only alleged expert that Ms. Colvin was aware of was a childhood friend of Mr. Milstein and disbarred California lawyer who was staying with Milstein on a personal visit. Despite requests from the OSB, Mr. Milstein has not provided an accounting of the \$2,000 cost advance or any description of services provided by any experts. Mr. Milstein did not deposit the funds into a trust account, and has not refunded any of these costs to Ms. Colvin, despite her demand that he do so.

The SPRB found probable cause of misconduct and charged Mr. Milstein with violations of RPC 1.15-1(c)(failing to deposit and maintain in trust until earned or incurred fees or costs paid in advance); RPC 8.4(a)(2)(committing a criminal act that reflects adversely on honesty, trustworthiness or fitness); and RPC 8.4(a)(3)(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; dishonest conversion of client funds).

Ms. Colvin petitioned for fee arbitration, and an award of \$2,000 was issued in her favor, which remains uncollected. The Client Security Fund Committee approved an award from the CSF to Ms. Colvin of \$2,000.

Ms. Colvin has appealed the CSF Committee decision to award her only \$2,000 and asks that the Board consider awarding her the full \$4,000 that she paid to Mr. Milstein. Ms. Colvin says that she only asked for \$2,000 in the fee arbitration proceeding because she did not feel like she could prove she was entitled to more than that. At the time of the proceedings, she was unable to access text and email messages from Mr. Milstein related to the case because her cell phone was broken. Since then, she has been able to retrieve those text and email messages, and believes she can prove she was entitled the full \$4,000.

*CSF Committee Analysis*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. In addition, CSF Rule 2.2.3 provides that reimbursement of a legal fee is allowed only if: (i) the lawyer provided no legal services to the client; (ii) the legal services provided were minimal or insignificant; or (iii) the claim is supported by a court or arbitration award that establishes a refund is owed. Finally, as a condition of receiving an award, a claimant must transfer the claimant's rights against the lawyer who may be liable for the claimant's loss. CSF Rule 5.1.1.

The CSF Committee found evidence of dishonesty on the part of Mr. Milstein. However, the Committee determined that Mr. Milstein did provide some legal services to Ms. Colvin, and that such services were not minimal or insignificant. Therefore, the Committee did not find Ms. Colvin to be eligible for reimbursement of the \$2,000 paid for legal services. Further, the fee arbitration award established that Ms. Colvin was entitled to \$2,000, but no more. Because Ms. Colvin cannot transfer rights to collect from Mr. Milstein any more than that established by the fee arbitration award, the arbitration award limits the OSB's subrogation rights. Consequently, the CSF Committee felt bound to award Ms. Colvin no more than the \$2,000.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2016-05 BOCCI (Tait) Request for BOG Review

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### Action Requested

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

### Discussion

#### *Summary of Facts*

On July 30, 2009, Mr. J.H. Tait paid a flat fee of \$1,000 to the Christopher Bocci and Associates law firm for representation in the appeal of two traffic convictions in Salem Municipal Court—one for speeding and one for failing to use a seatbelt. William Carl was initially responsible for the case; Mr. Bocci took over the case when Mr. Carl was suspended in January 2010 (for reasons unrelated to Mr. Tait's case).

The Flat Fee Agreement did not state that the fee was "earned on receipt" as required under RPC 1.5(c)(3) and RPC 1.15-1(c). Therefore, the funds should have been deposited into Mr. Bocci's lawyer trust account. Mr. Bocci admits that he mistakenly deposited the funds into his general account instead. As a result of this violation of RPC 1.15-1(c), Mr. Bocci received a letter of admonition from Disciplinary Counsel's Office.

Mr. Carl filed a Notice of Appeal and a Motion to Stay the Salem Municipal Court and DMV Action on Appeal and paid the filing fee of \$189. The motion was granted on August 6, 2009. Due to court staff error the file did not get transferred to Circuit Court until nearly three years later, in May 2012. Even so, the Circuit Court still showed no record of the case as late as March 2014. Mr. Bocci prepared a Motion to Dismiss based on speedy trial grounds in July 2013, but because the Circuit Court had no record of the case, he could not file the motion. Ultimately, the Salem Municipal Court deemed the case to be transferred back to its jurisdiction and Mr. Bocci appeared on May 6, 2014 to request that the Municipal Court dismiss the charges due to the unreasonable delay in transferring the file. The request was denied.

Mr. Tait was unhappy with the outcome of the case and with the representation. Mr. Bocci says he reached an agreement with Mr. Tait in which Mr. Bocci would pay Mr. Tait's fines in order to settle Mr. Tait's claims against Mr. Bocci. Mr. Bocci did in fact pay the court fines of \$217.09 on May 9, 2014. In the end, Mr. Bocci paid Mr. Tait's court fees and fines of approximately \$421; he retained \$579 of the original retainer as payment for the 6.9 hours of time he devoted to the case.

In November 2014, Mr. Tait contacted Mr. Bocci and made a demand for \$825 plus “statutory interest” of \$405. In his ethics complaint to the bar, Mr. Tait claimed that Mr. Bocci owed him \$825. On January 1, 2016, Mr. Tait made a claim against the CSF for the full \$1,000 retainer he paid to the Bocci law firm.

In reviewing Mr. Tait’s ethics complaints against Mr. Carl and Mr. Bocci, the SPRB determined that the fee collected was not clearly excessive.

*CSF Committee Analysis*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer’s dishonest conduct. CSF Rule 2.2.1. The CSF Committee found no evidence of dishonesty on the part of Mr. Bocci or his law firm. Rather, it appeared to the Committee that Mr. Tait’s complaint was in the nature of a fee dispute.

**FORMAL OPINION NO. 2015-xxx**

**Client Property:  
Electronic-Only or “Paperless” Client Documents and Files**

**Facts:**

Lawyer prefers to maintain client file documents in electronic form only, to the greatest extent possible. For open matters, Lawyer plans to convert documents to electronic form and contemporaneously destroy the paper copies as they are received.

Lawyer’s closed matters contain a mix of paper and electronic documents. Lawyer plans to similarly convert the paper documents in her closed files to electronic form and destroy the paper copies of the documents.

**Question:**

May Lawyer maintain electronic-only files and convert existing paper files to electronic form?

**Conclusion:**

Yes, qualified.

**Discussion:**

With limited exceptions for documents that are intrinsically significant or are valuable original paper documents, such as securities, negotiable instruments, deeds, and wills, there is no ethical prohibition against maintaining the “client file” solely in electronic or paperless form.<sup>1</sup>

Lawyers must take appropriate steps to safeguard client property (RPC 1.15(a)), maintain confidentiality of client information (RPC 1.6(c), RPC 1.9(c)(2)), and communicate with the client regarding the terms of the representation and relevant developments affecting the representation (RPC 1.4). Accordingly, lawyers who maintain electronic-only client files should take reasonable steps to ensure the security<sup>2</sup> and availability<sup>3</sup> of electronic file documents during appropriate time periods, including following the completion of the matter or termination of the representation.

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<sup>1</sup> For a discussion of what constitutes the “client file,” see OSB Formal Ethics Op 2005-125 [Client Property: Photocopy Charges for Client Files, Production or Withholding of Client Files].

<sup>2</sup> See, e.g., OSB Formal Ethics Opinion 2011-188 [Information Relating to the Representation of a Client: Third-Party Electronic Storage of Client Materials], explaining that a “Lawyer may store client materials on a third-party server so long as Lawyer complies with the duties of competence and confidentiality to reasonably keep the client’s information secure within a given situation.”

<sup>3</sup> Whether and how long to maintain a client file is a matter of substantive law and beyond the scope of this opinion. The Professional Liability Fund generally recommends that files be kept for a minimum of 10 years to ensure the file will be available to defend the lawyer against malpractice claims. See, e.g., “File Retention and Destruction,” part of the PLF practice aid and form collection in the “File Management” category on the PLF’s website, [www.osbplf.org](http://www.osbplf.org).

Lawyers and clients may enter into reasonable agreements regarding how the lawyer will maintain the client's file during and after the conclusion of a matter. A lawyer who chooses to convert paper file documents in closed files to electronic-only documents should confirm that doing so will not violate the terms of the retention agreement with the client. The lawyer should also consider the former client's circumstances—e.g., whether an electronic-only file might present a hardship for the former client if the former client needs to access and work with the documents in paper form.<sup>4</sup> Even after a lawyer has taken reasonable steps to electronically preserve original documents created by a client, the lawyer should not destroy original client documents without the client's express consent.

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<sup>4</sup> Examples may include indigent or incarcerated former clients, or other clients who may have difficulty using electronic-only documents.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, Executive Director  
**Re:** Revision to Oregon RPC 7.2(b)

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### Action Recommended

Consider the recommendation of the Legal Ethics Committee (“LEC”) to amend Oregon RPC 7.2(b).

### Background

At the 2013 HOD meeting, the HOD approved a package of changes to the advertising rules—including RPC 7.2—with the goal of bringing Oregon’s advertising rules more in line with the ABA Model Rules.<sup>1</sup> The changes were not intended to be substantive. Rather, the purpose of the amendments was to provide Oregon practitioners with advertising guidelines that are clear, simple, and more consistent with other jurisdictions.

Over the course of the last year and a half, the Legal Ethics Committee has been revising the formal ethics opinions to bring them in line with the new advertising rules. Recently, it was brought to the LEC’s attention that one of the rule amendments resulted in a substantive change to the former advertising rules.

Prior to the January 1, 2014 amendment of RPC 7.2, Oregon lawyers were permitted to pay referral fees to any lawyer referral service, if certain conditions were met. Former Oregon RPC 7.2 provided:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a

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<sup>1</sup> The LEC developed the proposal at the BOG’s request in response to a 2010 HOD resolution to conform Oregon’s advertising rules to Washington’s. Because Washington’s advertising rules are similar to the ABA Model Rules, the LEC decided to look to the ABA Model Rules for overall guidance and eventually modelled its proposal on the ABA Model Rules, rather than the Washington Rules of Professional Conduct.

lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and

(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Under this former version of the rule, Oregon lawyers could utilize lead services or for-profit lawyer referral services, as long as the service complied with the additional restrictions of RPC 7.2(c)(1)-(4).

As amended, Oregon's RPC 7.2 currently provides:

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Under this amended version of the rule, payments to for-profit referral services are simply not allowed. Nothing in the LEC Agendas, BOG minutes or HOD minutes from that time suggest that

that the bar intended to implement an across-the-board prohibition of all lawyer payments to for-profit lawyer referral services. Therefore, it appears that prohibiting all lawyer payments to for-profit lawyer referral services was an unintended consequence of the 2014 amendments.

The question of whether Oregon lawyers may pay a for-profit lawyer referral service for recommendations is not merely theoretical. In July, General Counsel received a request for an informal written ethics opinion from a lawyer interested in receiving referrals from Avvo, which is a for-profit entity. The request raised a number of issues, one of which was whether the lawyer could pay Avvo for leads or referrals under any circumstance. Given the current rules, General Counsel advised that RPC 7.2 prohibited making payments to Avvo for client referrals.

The Legal Ethics Committee considered a number of options to remedy this oversight, the first of which was to revert back to the language from the original rule. In keeping with its original directive to simplify the advertising rules, however, the LEC ultimately decided to recommend the following change to Oregon RPC 7.2(b):

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a ~~not-for-profit~~ lawyer referral service.

(3) pay for a law practice in accordance with Rule 1.17.

If the BOG approves this amendment, it will be placed on the November 2016 HOD Agenda for the HOD's approval before being submitted to the Oregon Supreme Court for final adoption.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, Executive Director  
**Re:** Revision to Oregon RPC 7.2(c) and RPC 7.3(c)

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### Action Recommended

Consider the Legal Ethics Committee recommendation to amend Oregon RPC 7.2(c) and RPC 7.3(c).

### Background

In response to a resolution presented at the 2010 HOD meeting, the BOG directed the Legal Ethics Committee (“LEC”) to study and make recommendations to the BOG regarding conforming Oregon’s advertising rules to those of our neighboring states. After more than a year of work, the LEC submitted its recommendations to the BOG at the June 22, 2012 meeting. The BOG asked that the rules be submitted to the membership for comment prior to adoption.

Comments received were nominal and generally supportive of the changes. In late August 2013, however, shortly before the rules were to be submitted to the HOD for approval, one Oregon lawyer expressed concern that RPC 7.2(c) and RPC 7.3(c) are unconstitutional as they relate to electronic communications. The rules at issue are set forth in their entirety below, with the alleged offending language in bold.

#### RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

**(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.**

RULE 7.3 SOLICITATION OF CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

**(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).**

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Rather than halt the amendment process and start over with a review of two provisions in a package of multiple rule revisions, the BOG decided to move forward with the proposed amendments as they were. The new advertising rules were approved by the HOD in November 2013 and adopted by the Supreme Court effective January 1, 2014. The Board of Governors then asked the Legal Ethics Committee to revisit the issue of whether RPC 7.2(c) and 7.3(c) are constitutional.

The Legal Ethics Committee has completed its review and, for the reasons set forth in more detail below, recommends that RPC 7.3(c) be stricken entirely and that RPC 7.2(c) be amended to require the inclusion of contact information rather than the office address.

## Analysis

### Free Speech Protections

The Supreme Court has long held that lawyer advertising that is truthful and not misleading is protected by the First Amendment to the United States Constitution. See e.g., *Zauderer v. Office of Disciplinary Counsel of Supreme Court*, 417 US 626 (1985)(state may not prohibit non-deceptive illustrations in advertising); *Shapiro v. Kentucky Bar Ass'n*, 486 US 466 (1988)(state may not prohibit non-deceptive direct mailing). Under the First Amendment, a state may regulate lawyer advertising if that regulation satisfies the three-part test for regulation of commercial speech generally. *Florida Bar v. Went For It, Inc.*, 515 US 618 (1995), citing *Central Hudson Gas & Electric v. Public Serv. Comm. Of New York*, 447 US 557 (1980). First, the state must assert a substantial interest in support of its regulation; second, the restriction on speech must “directly and materially advances that interest”; and third, the regulation must be “narrowly drawn.” *Central Hudson*, 447 US at 624.

Lawyers in other jurisdictions have challenged advertising rules similar to those at issue here, with mixed results. Compare *Public Citizen Inc. v. Louisiana Attorney Disciplinary Bd.*, 632 F.3d 212 (5th Cir. 2011) (discussing potential constitutional issues with advertising rules and upholding rules as constitutional); and *Rubenstein v. Florida Bar*, 72 F. Supp. 3d 1298 (S.D. Fla. 2014) (holding certain advertising rules were unconstitutional).

It is well-established that Article I, Section 8 of the Oregon Constitution provides greater protections to speech than the Federal First Amendment. The Oregon Supreme Court applies its own approach to free speech analysis under the Oregon Constitution. First, the Court distinguishes between laws that restrict the *content* of speech and laws that restrict the *results or effects* of speech. *State v. Robertson*, 293 Or 402, 416-417 (1982). Content-based restrictions are prohibited “unless the scope of the restraint is wholly confined within some historical exception that was well established when the first American guarantees of freedom of expression were adopted and that the guarantees then or in 1859 demonstrably were not intended to reach. Examples are perjury, solicitation or verbal assistance in crime, some forms of theft, forgery, and fraud, and their contemporary variants.” *Id.* at 412. As noted by the 2009 OSB Advertising Task Force report, this historical exception is particularly significant as to lawyer advertising because before 1859, and into the early 20<sup>th</sup> century, advertising and solicitation by Oregon lawyers was not prohibited.

Laws that focus on “forbidden effects, but expressly prohibit expression used to achieve to those affects” are analyzed for overbreadth. Laws that focus on “forbidden effects but without referring to expression at all” are analyzed to determine whether they are unconstitutionally vague or unconstitutional as applied. *Id.* at 417-418. Generally, reasonable restrictions on the time, place or manner of speech (as opposed to outright prohibitions) are allowed as long as they are narrowly tailored to meet specific, clearly expressed and permissible objectives. See, e.g., *In re Lasswell*, 296 Or 121 (1983)(pretrial publicity limitation on lawyer speech upheld as long as there was a “serious and imminent threat” to a fair trial.)

### LEC Analysis

In 2009, the OSB Advertising Task Force issued a report which gave an overview of the federal and state constitutional free speech protections as applied to the advertising rules. It concluded that significant changes to the advertising rules were necessary in order to strike a proper balance in terms of constitutional law and public policy. Among the changes proposed were significant changes to the provisions at issue here.

Although the Legal Ethics Committee did discuss these constitutional restrictions on the regulation of advertising, it did not engage in an in-depth analysis of whether these provisions actually violate free speech protections under the Oregon and Federal Constitutions. Instead, it focused on whether the provisions actually serve the purposes for which they exist. The LEC determined that the sections provide no additional consumer protection and risk violating free speech.

Oregon RPC 7.2(c) requires that lawyers include their office address in all advertising. In practice, this means that lawyers may be unable to use modern electronic advertising mediums with character restrictions (e.g. Twitter has a 140 character limit, GoogleAd Words is also limited) because of the length of the address. Arguably, requiring an office address is out of step with today's legal culture, in which lawyers interact with potential clients through various mediums and not just the mail. In fact, many lawyers operate primarily online through "virtual offices."

The purpose of RPC 7.2(c) is to enable members of the public to identify the lawyer or law firm advertising, and to give them the tools to find out more about the lawyer and report the lawyer to the bar if necessary. This same purpose would be served by simply requiring the lawyer to include some contact information in the advertising (e.g. telephone number, email address or twitter handle). Requiring contact information is unlikely to limit lawyers; after all, advertising that does not provide the potential client a method to contact the lawyer is poor advertising.

The purpose of RPC 7.3(c) is to ensure that members of the public are not led to believe that an advertisement or solicitation from a lawyer is some type of legal process or other official communication that requires their response. The concern with the rule—as with the "laundry list" of prohibitions contained in former RPC 7.1(a)—is that it is overbroad. Lawyers are already prohibited from making false or misleading communications. See RPC 7.1(a). Thus, a lawyer who sends an advertisement that looks like a summons (with the hope that the prospective client will open it and respond, rather than throw it away) would violate RPC 7.1(a) because the communication is misleading.

Oregon RPC 7.3(c) does not provide any additional protection against this type of misleading conduct. Instead, like RPC 7.2(c), it unduly restricts lawyers from advertising in mediums with character restrictions. Perhaps more troubling is that including the phrase "Advertising Material" on lawyer solicitations might lead persons in need of legal services to simply discard a communication that may help them recognize a legal need and access legal services. In other words, the limitations on lawyer speech in RPC 7.3(c) do not protect against consumer harm and instead limit the public's access to legal services.

## Recommendation

The Legal Ethics Committee recommends that RPC 7.3(c) be stricken entirely, and that RPC 7.2(c) be amended as follows:

(c) Any communication made pursuant to this rule shall include the name and ~~office address~~ contact information of at least one lawyer or law firm responsible for its content.

The proposed new rules are set forth below in their entirety.

### RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and ~~office address~~ contact information of at least one lawyer or law firm responsible for its content.

### RULE 7.3 SOLICITATION OF CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).~~

(cd) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Helen M. Hirschbiel, CEO/Executive Director  
**Re:** Section Co-Sponsorship with CLE Seminars

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### **Action Recommended**

None. This is for information purposes only.

### **Background**

#### Current Situation

The OSB Labor & Employment Law Section has prepared a draft resolution for the House of Delegates that would direct the Board of Governors to reverse a policy decision it made in 2014 regarding co-sponsorship of CLE seminars. The new policy, slated to take effect in 2017, would give the bar's CLE Seminars Department the right of co-sponsorship with any section program four hours or more in length. The CLE Seminars Department would have discretion over which programs to co-sponsor, and as a practical matter has the capacity to add only 3-4 new cosponsored programs per year.

#### Background

For the past several years, the Board of Governors has been engaged in a review of bar programs and services in order to ensure that bar programs are aligned with the bar's mission and operate with maximum effectiveness and efficiency. In 2014, the BOG undertook a year-long, in-depth examination of the CLE Seminars Department. Former OSB President Tom Kranovich summarized the board's discussions and sought input from the membership about the policy questions involved in a column published in the August/September 2014 issue of the OSB Bulletin, a copy of which is attached.

As a result of its review, the BOG approved a number of policy changes intended to advance two goals. The first and most important goal was to make quality CLE programs that appeal to a broad cross-section of the membership available and accessible to all members. Secondly, the BOG sought to avoid using member license fees to subsidize CLE programs.

For section CLE programs, the policies establish new requirements to use registration services for all section CLE seminars, and to co-sponsor longer programs with the CLE Seminars Department. During 2015 and early 2016, staff met with each section executive committee at least once to communicate the policy changes and to seek input on how to implement the policies in a way that would best serve section needs while still advancing the Board's primary goals. Past President Tom Kranovich attended several of these section meetings; President Rich Spier, who attended even more, wrote about the process in the November 2015 issue of the OSB Bulletin, a copy of which is attached.

Many of the sections offered suggestions, several of which were incorporated into the implementation plan. On June 8, 2016, all section leaders were invited to a Section Summit at the bar center, with live webcasting available for those unable to attend in person. The purpose of the summit was to communicate the implementation plan for the registration and co-sponsorship requirements and to seek input on other section issues that the Board had identified as ripe for review. The presentation slides are attached.

The primary point of contention raised at the summit (and during the individual section meetings) was the co-sponsorship requirement. A follow-up communication was sent to summit participants and section chairs in June, and section leaders were invited to submit comments to the board in writing. The follow-up communication and written comments received are attached.

Because the CLE policy changes were the primary focus of conversations with the sections, discussion of other section issues was limited at many of the individual section meetings and those issues were not addressed at all at the summit. A summary of those issues, which is also attached, was sent to all summit participants and section chairs on August 26, 2016 requesting feedback for the BOG's review in early 2017.

Attachments:

- Kranovich, *A Business, or a Service? CLE Seminars*, OSB Bulletin (Aug/Sept 2014)
- Spier, *A Work in Progress: Considering CLE Seminars and Sections*, OSB Bulletin (Nov 2015)
- Section Summit Power Point presentation slides
- Hirschbiel post-summit email to section leaders
- Written comments received from sections
- Hirschbiel email soliciting feedback on other section issues

## Oregon State Bar Bulletin — AUGUST/SEPTEMBER 2014

August/September 1: ▾

### President's Message

#### **A Business, or a Service?**

#### **CLE Seminars**

*By Tom Kranovich*

Last month I referred to bar services and products such as BarBooks, Fastcase, lawyer referral services and CLE programming as being part of the bar's efforts to meet its statutory mission of "advancement of the science of jurisprudence and the improvement of the administration of justice." I emphasized that the programs provided to carry out this obligation are discretionary and, accordingly, potentially the most vulnerable to reduction or elimination. From last month's article you know that the Board of Governors is reviewing all of the bar's programs and services, beginning with the OSB CLE Seminars Department, to assure that bar resources are used appropriately and efficiently.

Historically, the Board of Governors has set policies and bar staff has implemented procedures that have not only maintained but increased services to the membership. Through the exercise of sound fiscal decisions, new services, such as BarBooks and Fastcase, have been provided to all members, statewide, without any fee increase or assessment. Through the program review process, the board and bar staff reduced expenses and made relevant programs more efficient to the degree that there has not been a fee increase in 10 years.

Our program reviews have focused on service programs that generate supplemental income separate from annual membership fees. As a result of earlier program reviews, the board eliminated the printed membership directory and decided to make BarBooks a member service, foregoing an earlier subscription model (and the associated revenue) to make sure this valuable service and resource was available to all members. Other than occasional (and diminishing) laments to bring back the printed directory, no one is proposing we do anything differently with bar publications.

Several years back, the lawyer referral service went through a stringent review and the flat-fee registration system was changed to a percentage recovery system. Until that time, the Lawyer Referral Service had been running at a \$240,000 yearly deficit. Lawyers who participate in the LRS program have the potential of making money from the referrals generated. Accordingly, changing to a percentage system seemed a more equitable way to minimize and recover the bar's costs for the service of connecting potentially profitable clients with proficient attorneys. While the LRS deficit has not yet been eliminated, it has been significantly reduced and continues to shrink at a rate greater than what was originally forecast.

Of the bar's remaining revenue-generating services, at least for this year's board, the discussion on CLE seminars has been the most protracted and, dare I say it, contentious topic. As of the July meeting, the board seems to have reached a consensus that the bar should continue to provide CLE seminars to its members. The unresolved issue under discussion is: should the bar provide CLE seminars on a strict business model, or should the bar subsidize CLE seminars as a service to members?

Unlike lawyer referral, continuing legal education is mandatory (although there is no requirement to obtain CLE credits from the OSB). Like lawyer referral, the CLE seminars program has never "run in the black," and the CLE seminars department is now under similar scrutiny as was the LRS program. The questions before the board are 1) should we take steps to require the CLE seminars department to run "in the black" as a business model (and if we cannot, should the department be eliminated?); or 2) should we continue to "subsidize" CLE programs as a bar service, albeit after implementing as many efficiencies as are reasonably possible? To answer these questions, we need look at the circumstances defining the deficit, the limitations preventing the CLE seminars department from minimizing the deficit and the prior policy decisions that have promoted, contributed to and/or exacerbated the situation.



**Defining the deficit.** The OSB CLE Seminars Department produces and markets 45 to 55 programs a year. Of those, 18-20 are co-sponsored with sections and other bar groups in multiple formats that provide convenient statewide participation options, including: live webcasts; DVDs; online, on-demand video; and audio-only formats. In 2013 the CLE seminars department generated revenues of \$984,855 with direct expenses (staff salary and benefits, materials, promotional and venue expenses) of \$832,258, for a net revenue of \$152,597. The department made more than it cost in direct expenses but the analysis does not stop there.

After allocating the department's share of indirect costs it had a net expense of \$230,000. Indirect costs include the department's percentage of building floor space and pro rata allocations for I.T., human resources, creative services and other "overhead" expenses. Eliminating the department would only cause its share of the indirect expenses to be reallocated back against the remaining departments while at the same time giving up the \$984,855.00 in revenue that it brought in last year.

**Competing interests.** Although the bar was once the primary provider of continuing legal education for members, that is no longer the case. Many bar-related groups such as the Oregon New Lawyers Division, bar sections and the Professional Liability Fund offer discounted or free CLEs to their members. There is a myriad of other nonprofit and for-profit CLE providers in the market, some who offer online CLE "blocks" of 45 hours of CLE for under \$200. I offer no opinion on the quality of such "block" programming, but I recognize that for our under-employed attorneys or others in tight financial circumstances, these offerings are a godsend. Similarly, while most other states require a certain percentage of credits to be earned in settings that allow participation (live programs, live webcasts and moderated replays), our board and the court have historically been reluctant to do the same lest it make meeting MCLE requirements more onerous for members, especially those in rural areas.

**Past policy decisions.** The board does what it can to promote the availability of low cost CLEs. Currently, if someone buys or streams an online OSB program, anyone else can watch it and claim credit for having seen it without paying for its use. Law libraries offer CDs of OSB CLEs for no charge. Additionally, over the years the board has adopted "complimentary admission" policies to support member involvement in certain events (serving on CLE panels, grading bar exams, teaching law school classes, participating in the New Lawyer Mentoring Program) or in recognition of certain status (judges and their staff, 50-year members). The board also promotes and subsidizes the CLE offerings of our sections by charging less than what it costs us for support services, especially the handling of checks by our accounting staff. We also try to minimize CLE costs for those providing low-cost or free legal service for underrepresented people. From a public service point of view and as a policy matter, this all makes sense, but from a break-even business point of view, revenue is not being optimized.

**Considerations to be discussed** (not comprehensive or exhaustive):

- Should the bar stop offering CLEs that have historically proven unprofitable because they relate to less common practice areas of law?
- Should we require that a minimum number of MCLE credits come from seminars with program formats that allow live interaction among participants?
- Should all sections be required to use OSB support services for their CLEs and if so, should the cost to the section be directly proportionate to OSB's cost?
- Should all sections be required to provide a certain percentage of discounted or free CLE?
- Should our pricing take into consideration the lack of availability for CLEs in remote areas of the state?
- Should the bar continue to offer free registration for 50-year members, active pro bono members, and judges and their attorney staff?
- Do our current policies and efforts to hold down CLE prices help keep down the prices from outside vendors and, if so, should that be a concern? What will happen to outside vendor prices if the OSB is no longer in the market?
- Should MCLE credit be given for listening to a CD for which the listener has made no payment?
- Should OSB be more stringent on quality control and exercise more rigorous MCLE approval criteria for all CLEs regardless of who puts them on?

The bar staff has been diligent in finding ways, consistent with board policy, to efficiently deliver quality CLE programs at the lowest cost possible while at the same time seeking to maintain or increase our market share. Expect to see some new products and new delivery platforms in the next year or so, including more emphasis on live webcasting so lawyers can participate remotely in real time for more seminars. We are also watching developments in other states, many of which are seeing declines in CLE revenue despite more business-oriented policies.

We on the board will continue our review. Are we in the business of providing CLEs or are we providing CLEs as a member service? Are CLE seminars an essential part of the bar's core mission in providing necessary services for the benefit of the public and the membership, or are they an opportunity to promote the bottom line?

Write me at [president@osbar.org](mailto:president@osbar.org) or send a letter to the editor. I invite you to weigh in.

#### **ABOUT THE AUTHOR**

OSB President Tom Kranovich practices law in Lake Oswego. Reach him at [president@osbar.org](mailto:president@osbar.org).

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## Oregon State Bar Bulletin — NOVEMBER 2015

November Issue ▼

### President's Message

#### **A Work in Progress:**

#### **Considering CLE Seminars and Sections**

*By Rich Spier*

For several years, the Board of Governors has conducted program reviews to ensure that the bar's discretionary programs are run effectively and efficiently and adhere closely to our mission. Through this process, we have contained costs and managed our resources to the degree that there has not been a general fee increase in 11 years. Earlier program reviews have led to the elimination of the printed membership directory, the decision to make BarBooks a member benefit instead of a subscription service, and the adoption of a percentage-fee funding model for the Lawyer Referral Service. Although some of you still miss the printed directory, we stand by that decision for reasons of efficiency, sustainability and accuracy of our posted membership records. The BarBooks decision has always been popular — like BarBooks itself, which is averaging more than 12,000 page views per work day this year — but it did mean a substantial decrease in revenue to the bar. The lawyer referral changes, like the membership directory, were contentious, but they have achieved the intended result of making the program self-supporting through user fees rather than general membership fees.

Last year, we turned our attention to continuing legal education. The OSB CLE Seminars Department has been unable to meet its goal of a break-even budget for many years. We took a hard look at market conditions, including internal and external competition, and reviewed a number of bar policies regarding CLE. We considered several courses of action, including eliminating our program and allowing bar sections to carry the weight of live, local CLE production. The problem with that, we discovered, was it would actually cost us much more.

Here's the situation: About half of the bar's 42 sections work with the CLE Seminars department to put on their seminars. Financially that's a break-even proposition since the fees paid by the sections cover the costs. The sections that host seminars without involving our CLE Seminars department, on the other hand, actually cost the bar money. The reason is that no fees are charged but costs are still incurred, most notably for processing registration payments. Bar groups that don't contract for registration services can only accept payment by check (due to accounting standards that apply to the bar) and those checks need to be processed by the bar's accounting department. Check processing is much more expensive than credit card processing, plus we have had repeated issues with tracking down missing checks and getting checks submitted months after they were written.

Once we understood the financial situation, it was clear that something needed to change. We saw three possibilities: charge a fee for processing checks for section CLE registrations; increase the per-member "support assessment" currently charged to all sections; or require sections to use registration services. The first option would be an administrative nightmare and the second would have a broad, negative impact on all section budgets. The third option not only seemed the most fair, it also offered other benefits: every seminar would have online registration 24/7 with payment by credit card; cancellation and refund processing would be included; sections would get registration lists for check-in purposes; MCLE attendance reporting would be simplified; date conflicts would be reduced with a single-source entry point for scheduling; and all programs would be automatically included in the bar's online event calendar, giving members a convenient place to find and register for any seminar sponsored by the bar or one of its affiliate groups.

The Board of Governors decided to move forward with requiring the use of registration services for all section CLE events. To make the changes easier to implement, we decided to wait until after installation of the bar's new database software (scheduled for mid-2016) to make them effective. This gives us time to work with the sections to address any concerns and work on



implementation details. By waiting for the new software, which allows us to bring registration services in house, we also expect to decrease costs and lower the fees we charge for registration services.

The financial realities were not the only reason we decided to continue offering OSB CLE. Last year, while the Board of Governors was conducting its review, President Tom Kranovich wrote about the situation in this space. The responses he received were strongly in support of continuing the program. I personally was most persuaded by the many comments I have heard from bar members in rural areas, who greatly appreciate the live webcasts offered by OSB CLE. These programs allow lawyers to participate in real time from any remote location, and are currently only available with bar-sponsored programs. As a statewide organization, we need to provide more of these live webcasts, not fewer.

Which brings us to a second area of section CLE: co-sponsorship. Many sections co-sponsor with CLE Seminars to present programs, with the section responsible for the legal content and the seminars staff responsible for administration and logistics. Because of the benefits of a coordinated approach, and the desirability of promoting live webcasting and other delivery methods, we have decided to require sections to offer co-sponsorship to CLE Seminars for all programs longer than three hours. Again, the new policy will not take effect immediately; to give sections time to adjust, the policy will not take effect until 2017. The policy does not envision that all section programs will be co-sponsored — which is the rule in other states — or that co-sponsorship will necessarily work the same way it does today. We are open to new models and suggestions that further our goals of increased efficiency and greater access to live CLE programming.

With these preliminary decisions made, the Board of Governors directed bar staff to meet with each section to talk about the changes and discuss any concerns. I have attended several of these meetings, as has Tom Kranovich, who wanted to continue with the project that consumed much of his term as OSB president. We have received a lot of feedback, both positive and negative, and some excellent suggestions. The Board of Governors will be discussing that feedback at our annual retreat in November.

One takeaway from the section meetings that troubles me is that some sections clearly do not see themselves as part of the larger bar organization. I suspect we do not interact enough to maintain strong relationships. While that may be understandable given the number of sections we have, I think the Board of Governors could do a better job of connecting sections to the larger organization. That's why we will be hosting a special session for section leaders next spring to talk about the final outcome of all these discussions. This is still a work in progress.

Not coincidentally, the board's next area of program review is bar sections. While each section has its own executive committee and budget, their operations are subsidized by general membership fees. The Board of Governors has always supported that subsidy because of the unquestioned importance of bar sections. Sections promote lawyer networking and collegiality, are active in law improvement and legislative activities and provide valuable educational resources for their members. We do not want any of that to stop. We remain, however, committed to ensuring that all voluntary bar programs operate efficiently and effectively. I would like to share some of the information and questions we have been asking sections (and will continue to ask) in advance of our review.

First, the OSB has a very high number of sections, currently 42 with some talk of number 43 soon to come. State bars of comparable size include Alabama with 27 and Oklahoma with 24. Even larger bars have fewer sections: Washington and Arizona each have 28 and California only 16. Administrative time and expenses increase with the addition of each new section. Some smaller sections struggle to find a purpose, while some larger sections have large fund balances and pay independent contractors to work for them. Questions for discussion include:

Should large sections with adequate means be encouraged to form independent organizations if they want more independence from the OSB?

Should there be a minimum number of members required to maintain a section?

Could some sections be merged?

Do we need a different type of group structure, perhaps with fewer constraints? For example, we could establish online forums open to any bar member interested in a particular area of law, allowing them to communicate and share information without a formal structure.

Second, some sections are carrying large fund balances. The total fund balance for all sections has been increasing year after year, and totaled \$713,337 at the end of 2014. This is not a cost to the bar, but is not a "best practice" for membership organizations and nonprofits. Questions for section leaders include:

Should the OSB have a policy or offer guidelines on appropriate reserves for bar sections?

Should sections with large fund balances be encouraged to decrease membership fees?

Currently the bar's administrative charge to sections is set at 50 percent of the actual cost. Is it necessary to keep subsidizing sections that have fund balances exceeding two or three years of their projected dues revenue?

The Board of Governors will not take up the broader discussion about sections until next year, but your input is welcome now and in the future. If you are a section leader, look for an invitation to the meeting next spring. And please feel free to share your thoughts with me any time by sending an email to [president@osbar.org](mailto:president@osbar.org).

## ABOUT THE AUTHOR

*OSB President Rich Spier is a mediator in Portland.*

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# **SECTION SUMMIT**

OREGON STATE BAR

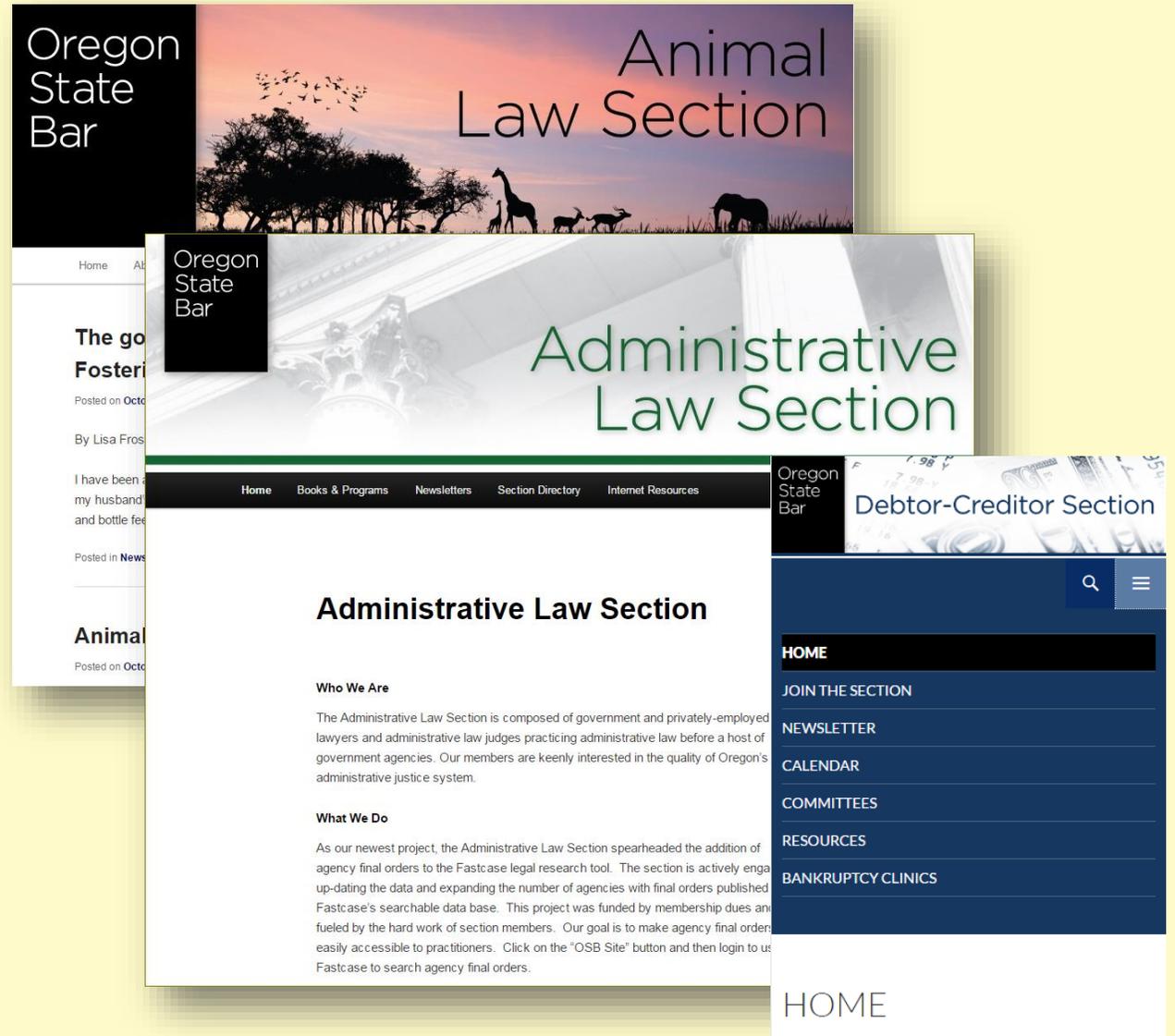


# WEBSITES

MIGRATION TO OSB WORDPRESS

# OSB WORDPRESS PLATFORM

- Set up and hosting of basic sites provided by the OSB
- Themes that are both mobile responsive and ADA accessible
- OSB branded for ready ID
- Easy-to-use content management system
- Free training for editors
- 17 section sites currently migrated to the OSB WordPress platform with another 7 in process





# **EVENT REGISTRATION**

OPTIONS FOR SECTIONS

## Registration Service Levels

	Standard	Basic	Special
Cost to section	\$10 per	\$5 per	\$100 flat fee
CLE hours	≤ 4 hrs.	≤ 4 hrs.	≤ 2 hrs.
Event limit per year	Unlimited	Unlimited	4
Registration pricing options	3 (\$2 >3)	2	Free only
<b><i>Services included:</i></b>			
Email announcements sent by OSB	3	1	1
Registration link for use on section websites and list serves	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Registration help from CLE Service Center	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Automatic registration confirmation	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Listing on OSB events calendar	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Generic forms, attendee name badges and speaker name tents	<input type="radio"/>		
Attendance reporting to MCLE	<input type="radio"/>		
Course materials posted online	<input type="radio"/>		
Audio recording - optional for mp3 download	<input type="radio"/>		

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas

## CO-SPONSORSHIP

# Co-sponsored Event Services

- All registration services offered above  
*Plus...*
- Program, speaker and event planning and project management
- Course material collection and production
- Customized marketing materials
- On-site staffing
- Webcasting (when available)
- Video and/or audio recording (when available)
- Scholarships and tuition assistance
- Credit card merchant fees paid by OSB
- MCLE application and payment

## CO-SPONSORSHIP

- Right of co-sponsorship with CLE Seminars
- on subjects of broad general interest or special content needs
- made accessible to all bar members, including members with disabilities and lawyers in rural areas



**Q & A**



# **Section Fund Balances**

\$733,778 at the end of 2015

# **Section Structure & Alternatives**

42 sections in 2016

A large, yellow, scalloped-edged shape is centered on the page, serving as a background for the main title.

# **SECTION SUMMIT**

OREGON STATE BAR

Section Officers:

Thanks to all who participated in the recent Section Summit, and to all of you who hosted us at your section executive committee meetings over the past year and a half.

A summary of the new CLE seminar registration options, as well as more detail on co-sponsorship, is available here <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>. This document will continue to evolve based on your suggestions and a better understanding of how event registration will work with the new software platform we are installing later this year. I apologize for the delay in getting this to you.

I also want to clarify that we are not attempting to limit section CLE or prevent sections from offering free or low-cost programs to their members. Our concern is that under our existing policies some of those programs are effectively subsidized with mandatory bar fees. The new policies reflect the board's commitment to ensuring all bar CLE programs cover their costs, whether they are offered by our CLE Seminars Department or a bar committee, section or division. We are also committed to making high-quality CLE available to all members and think the policy changes will advance that goal.

We have tried to be responsive to feedback received over the last year about how to implement the policy changes, and we will continue to adjust as we move forward. I welcome your comments and suggestions, which I will present to the Board of Governors. I will write again soon with any updates, including the questions about section structure and section fund balances that we did not have time to address at the summit.

Helen Hirschbiel, CEO/Executive Director

[hhirschbiel@osbar.org](mailto:hhirschbiel@osbar.org)

(503) 620-0222 ext. 361

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to request accommodations for a Section meeting or event, please contact Sarah Hackbart at [shackbart@osbar.org](mailto:shackbart@osbar.org) or 503 431-6385 as soon as possible but no later than 48 hours before the scheduled event. More information about accommodations can be found [here](#)

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Please note that while you can opt out of some bar communications, you cannot opt out of regulatory notices that may affect your membership status. Also note that other groups – including the Professional Liability Fund – maintain their own email and contact lists. Please contact these groups directly with any questions about their lists.



LAWYERS FOR ORGANIZED LABOR IN THE PACIFIC NORTHWEST

Oregon Office
3021 N.E. BROADWAY
PORTLAND, OR 97232
TELEPHONE: 866.697.6015
FACSIMILE: 503.210.9847

Alaska Office
500 W. INTERNATIONAL
AIRPORT RD.
ANCHORAGE, AK 99518
TELEPHONE: 866.697.6015
FACSIMILE: 503.210.9847

MICHAEL J. TEDESCO\*
miketlaw@miketlaw.com

SARAH K. DRESCHER\*
sarah@miketlaw.com

ANIL S. KARIA\*\*
anil@miketlaw.com

KATELYN S. OLDHAM\*\*
katelyn@miketlaw.com

HALEY ROSENTHAL\*
haley@miketlaw.com

TREVOR R. CALDWELL\*
trevor@miketlaw.com

\* Admitted in OR
\*\* Admitted in OR, WA, AK

January 20, 2016

Helen Hirschbiel
Chief Executive Officer/Executive Director
Oregon State Bar
16037 SW Upper Boones Ferry Rd.
PO Box 231935
Tigard, OR 97281

Re: OSB's Proposed Changes to Section Programming

Dear Helen:

Several months ago, representatives from the Oregon State Bar met with the labor and employment section's executive committee to discuss potential changes to section programming. One of the proposed changes would require sections to use OSB staff and services when sponsoring continuing legal education seminars (CLEs) and to split revenue from section CLEs with the Bar.

The labor and employment section sponsors an annual CLE. In the past, the section has cosponsored its CLE with the Bar, using the Bar's services and staff and sharing revenue with the Bar. The section discontinued cosponsorship with the Bar after finding that it is more cost effective to use limited services provided by the Bar and rely on volunteers from the section's executive committee instead. By using volunteers from the committee, the section has been able to increase its programming on a limited budget.

For the September 2015 CLE, the section incurred the following expenses from the Bar, using only limited services:

Table with 4 columns: Service, Quantity, Cost, Expenses. Rows include Registration, Materials Production, and Total.

Using only limited services from the Bar, the section was able to save enough money to provide five (5) scholarships to the 2015 CLE, which included registration and hotel accommodations to section members who would not have otherwise been able to attend the CLE. The section was also able to provide free registration, hotel accommodations, and travel reimbursement to speakers, and reduced registration fees for law students and recent law school graduates. While CLEs held outside the Portland area typically result in a net financial loss for the section, the 2015 CLE held at Salishan generated net revenue. Had the section been required to cosponsor the 2015 CLE with the Bar, it is unlikely that the section would have been able to provide the same benefits for section members without incurring additional costs.

The last time the section cosponsored a CLE with the Bar was in 2012. The net revenue for the 2012 program was \$3,351.45. However, the section only received \$304. The Bar received the remaining \$3,047.45 under the Bar's revenue sharing formula. Notably, the 2012 CLE did not provide any scholarships similar to those provided at the 2015 CLE.

When the section used the Bar's limited registration services for its 2014 CLE, the net revenue was approximately \$13,927. The section received the entire amount because it chose not to cosponsor the event with the Bar. The section was able to use this revenue to provide scholarships to the annual CLE and provide programs to section members at little to no cost, including the highly successful 2015 Labor & Employment Law Boot Camp and several breakfast briefings.

Requiring sections to use the Bar's staff and services and share revenue with the Bar will reduce section revenues and ultimately lead to reduced services and benefits for section members. Surely the Bar shares the section's concerns for maintaining member access to programming and providing scholarships and networking opportunities for all members. A better approach would allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue sharing with the Bar. The Bar could allow sections to choose from a variety of services, including event registration, production/printing of materials, advertising, on-site staff assistance, catering planning, A/V assistance, and general event coordination. I am confident sections will continue to take advantage of such services, which would allow the Bar to generate revenue from section CLEs without risk of depleting section revenues to the point of compromising event programming.

Please feel free to contact me if you have questions or would like to discuss this. Representatives from the labor and employment executive committee would appreciate the opportunity to present these concerns to the Board of Governors or any other committee or work group reviewing the proposed changes.

Sincerely,

***Sarah K. Drescher***

Sarah K. Drescher  
Chair, OSB Labor & Employment Section



# Oregon

Office of Public Defense Services

1175 Court Street NE  
Salem, Oregon 97301-4030  
Telephone (503) 378-3349  
Fax (503) 378-2163  
[www.oregon.gov/opds](http://www.oregon.gov/opds)

May 27, 2016

Ms. Helen Hierschbiel  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Re: OSB's Proposed Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Constitutional Law Section's Executive Committee joins in the letter dated January 20, 2016, from the Labor & Employment Section's Chair Sarah Drescher. A better approach is to allow section to use the Bar's services at a reasonable cost without requiring cosponsorship or revenue sharing with the Bar.

The Constitutional Law Section used to cosponsor its annual CLE with the Bar. The Constitutional Law Section discontinued cosponsorship in 2014 after growing discontent with the limits the Bar sought to impose on the section's CLE. We were told that these restrictions were necessary because our annual CLE, which has historically attracted around 100 attendees each year, could not meet its expenses. However, over the past two years, the Constitutional Law Section has found that it is able to provide its annual CLE at a significantly reduced cost to most of its members without running a deficit. Instead, the CLE has generated a small profit for the section.

The Constitutional Law Section is concerned about the proposal to give the Bar the "right-of-first-refusal" for all section CLE programming. When you visited our section last July, you explained that the right-of-first refusal option will help the CLE Seminar's Department avoid "subsidizing" competing section CLE programming and break even financially. However, in the section's view, requiring mandatory CLE cosponsorship is not necessary to achieve those goals. In our case, the section produced the CLE without running a deficit; something we had not achieved in recent years with Bar cosponsorship. Additionally, the Bar can

avoid subsidizing section-led CLE programming by charging an appropriate amount for the à la carte services it provides.

We join in the Labor & Employment Section's view that a better approach would be to allow sections to use the Bar's services at a reasonable cost without requiring cosponsorship and revenue-sharing with the Bar. We have always enjoyed working with the CLE Seminar Department's staff and would continue to take advantage of the Bar's services.

I and another representative from the Constitutional Law Section Executive Committee are planning on attending the summit on June 8, and we look forward to the opportunity to discuss our section's experience in person with Bar leadership. But, please feel free to contact me if you would like to discuss this or have any questions before then.

Sincerely,

A handwritten signature in blue ink that reads "Erin J. Snyder Severe". The signature is written in a cursive, flowing style.

ERIN J. SNYDER SEVERE  
Deputy Public Defender  
Criminal Appellate Section



PORTLAND OFFICE  
eleventh floor  
121 sw morrison street  
portland, oregon 97204-3141  
TEL 503 228 3939 FAX 503 226 0259

anchorage, alaska  
beijing, china  
new york, new york  
seattle, washington  
washington, d.c.  
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jbragar@gsblaw.com  
Telephone 503 553 3208

June 13, 2016

Board of Governors  
Oregon State Bar  
16037 SW Upper Boones Ferry Rd.  
P.O. Box 231935  
Tigard, OR 97281

RE: Real Estate and Land Use Section's Preliminary Comments about the  
Proposed Changes to Section Programming

To the Board of Governors,

I am the Chair of the Real Estate and Land Use Section (RELU) of the Oregon State Bar (OSB) and submit these comments on behalf of the RELU Executive Committee (RELU EC). The RELU EC understands that the Board of Governors (BOG) is contemplating changes to co-sponsorship of continuing legal education seminars (CLEs) at its June 2016 meeting. Please consider these comments before presenting a draft policy to the Bar Sections for formal comment.

Annually, RELU offers three types of CLEs, its Spring Day-long CLE at the Bar that is successfully co-sponsored with OSB; and two Section-organized event types - Annual Summer Conference and Luncheon CLEs - where the Section wishes to retain flexibility in its staffing. The following describes each type in more detail.

1) Spring Day-Long CLE at the Oregon State Bar Center - This event has been a successful day-long seminar co-sponsored by the OSB. Attendees and the RELU EC appreciate the service by the staff, the venue, and the technological assistance (preparation of CLE materials and webinar interface) provided by OSB. This event previously took place in the Fall, but after communication with OSB staff, we moved the event to the Spring in 2016. Attendance was up and we appreciate the suggestion by staff to move the date. The RELU EC believes this co-sponsored event is a success and do not see a need to change how it is run and coordinated between the RELU CLE Subcommittee and the OSB.

2) Annual Summer Conference - The RELU Annual Summer Conference is a multi-day event, beginning Thursday night through Saturday morning in early August. The long-standing event annually switches location between the Oregon Coast (Salishan) and Bend (typically the

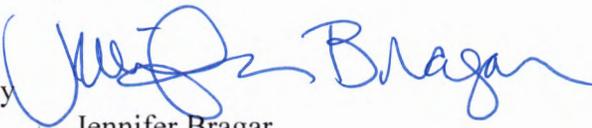
Riverhouse). The conference draws between 200-300 attendees from all around the state depending on the year and location. The event has successfully been organized by our Annual Summer Conference CLE Subcommittee with the guidance and participation of our long-time conference director, Norma Freitas. Last year, RELU relied on the OSB staff to run the on-location event. We found the staff pleasant and well-intentioned, but overall felt they were not familiar enough with the venue or the policies and practices of the event, and had to find and ask our coordinating committee members to address questions that arose. Our members and coordinating committee were not served as well as when Norma Freitas staffed the event. As a result, the RELU EC entered into a contract with Norma Freitas for 2016 to attend and staff the Annual Summer Conference, as she had for more than 10 years. We want to be able to continue to contract with outside consultants to staff the Annual Conference and ensure that funds are available for the Section to do so under the proposed co-sponsorship policy.

3) Luncheon CLEs - RELU sponsors approximately 6 lunchtime CLEs at a downtown Portland location. The effort is coordinated by our Luncheon CLE Subcommittee and payments for the luncheon are collected by one of the committee members and submitted to OSB for processing. In terms of this luncheon programming, the RELU EC's desired outcome is a co-sponsorship that streamlines payment collection and processing through OSB but retains the Subcommittee's ability to respond to current events for luncheon topics. In other words, these luncheons would not be successful if we do not have flexibility in terms of choosing the date for the luncheon (this is venue driven). In addition, the Luncheon Subcommittee would not want to have to decide topics too far in advance because the new co-sponsorship policy would impose earlier deadlines for topic choice and mailings. Last, the lunchtime CLEs are videotaped at a fee to the Section, and made available on our website for free viewing. If RELU can gain a better understanding of pricing for the recording fees under the co-sponsorship policy and whether we would be required to charge for the later viewing, that would be helpful to our future planning efforts.

Thank you for your consideration of these comments. We look forward to working with OSB to create a co-sponsorship program that works for the RELU Section and OSB.

Sincerely,

GARVEY SCHUBERT BARER

By   
Jennifer Bragar

cc: Amanda Lunsford (by e-mail)  
Dani Edwards (by e-mail)  
Karen Lee (by e-mail)



# Oregon

## Office of Public Defense Services

### Appellate Division

1175 Court Street NE

Salem, Oregon 97301-4030

Telephone (503) 378-3349

Fax (503) 378-2163

[www.oregon.gov/opds](http://www.oregon.gov/opds)

August 4, 2016

Ms. Helen Hierschbiel  
Oregon State Bar  
PO Box 231935  
Tigard, OR 97281-1935

Re: OSB's Changes to Section CLE Programming

Dear Ms. Hierschbiel,

The Criminal Law Section's Executive Committee joins the executive committees of the Labor and Employment Section and the Constitutional Law Section in opposing the changes undertaken by the Bar granting a "right of first refusal" to cosponsor section CLE events. Many of the reasons for our disagreement with the Bar's changes are ably expressed in Sarah Drescher's letter to you dated January 20, 2016, and Erin Severe's letter to you dated May 27, 2016. I write separately to highlight our specific concerns.

The large majority of our section members are (1) attorneys who work in district attorney offices, and (2) attorneys in firms, groups, or solo practices who are appointed by the court to represent indigent clients. Those attorneys serve the public good while being compensated at rate significantly less than their colleagues in the private bar.

The financial needs of the section members has always guided the executive committee's actions. In the six years that I have served on the committee, our section dues have remained at \$20. The cost of our annual CLE, which typically allows attendees to claim five to six hours of MCLE credits, including an hour of ethics, elder or child abuse reporting, diversity, etc., has remained around \$120 for section members, with discounts available for new attorneys and early registrants. My understanding is that those rates predate my tenure on the committee by several years.

Long ago, the executive committee made the decision that the benefits of co-sponsoring our annual CLE with the Bar were substantially outweighed by the resulting costs to section members. We have continued to use the Bar Center as the CLE venue, and utilize the Bar's CLE Services division for marketing, registration, etc. All other things being equal, I would predict that we would continue to use those services; the Bar Center is centrally located and suitably sized for our event, and Bar staff are responsive, courteous, and professional.

Requiring co-sponsorship, however, would significantly increase the costs to section members, without a corresponding increase in benefits. I have reviewed video of the section summit convened to explain the Bar's reasoning for the new co-sponsorship policy. While the Bar's goals in implementing the changes are laudable, the executive committee does not believe that the changes will further those goals for our section members.

For example, one of the reasons proffered for the changes is insuring that all of the Bar's CLE offerings have a consistent, high level of quality. The Criminal Law Section's annual CLE has consistently received high praise in evaluations submitted by attendees. Another reason offered for the changes is accessibility, with an emphasis on making CLE programs available online for those who are unable to travel to Tigard. The executive committee shares the Bar's focus on accessibility. To that end, for the past four years the section has presented regional CLEs in the fall, including CLE programs in central, eastern, and southern Oregon. The section has also experimented with making the CLE programs available online; however, the lack of interest in such offerings on the part of our section members has rendered the cost-benefit analysis relatively easy to resolve in favor of not incurring that expense.

In short, the Criminal Law Section has for years offered a high-quality annual CLE to its members at a reasonable rate. While the Bar's interest in co-sponsoring more sectional CLE programs is no doubt fueled by good intentions, the executive committee believes that the increased cost of co-sponsorship to its members will far outweigh the relatively few benefits they receive in return.

Sincerely,

Shawn Wiley  
Chair, Executive Committee  
Criminal Law Section

Thanks to all of you who responded to my last message regarding section CLE policies. I have received comments from several sections and will forward those comments to the Board of Governors. This message is intended to start a discussion of two issues we did not have time to cover at the summit: section fund balances and possible alternative structures for bar groups. We did get feedback from some of our meetings with sections last year, but would appreciate additional feedback and comments.

The first issue is our section fund balance. For accounting purposes, section reserves are pooled together in a single fund — the section fund — with each individual section retaining ownership of its own share. There is no reserve policy for the section fund, and no reserve policy for individual sections. The only guidance we offer is through the standard section bylaws, which require all section budgets to include a target reserve plan and a short description of any long-range plans that require an accumulation of funds.

At various points over the past 20 years or so the bar has encouraged sections to “spend down” their reserves. Despite those efforts (and acknowledging that some sections consistently maintain modest reserves) the section fund has continued to grow. At the end of 2005 the fund total was approximately \$508,000; by the end of 2015 it had reached approximately \$734,000. Nonprofit and government organizations commonly set reserve goals equivalent to 2-6 months of operating expenses; currently nearly half of the bar’s sections have reserves exceeding two years of operating expenses.

Our questions for you: Do you think this a problem? If not, why not? If yes, how should it be addressed? Should we have a policy or guidelines on appropriate reserves? Should sections with large fund balances be encouraged to decrease membership fees, offer scholarships or donate excess funds? Should the bar continue subsidizing the administrative costs of sections with large fund balances? [1] Is it even feasible to have a standard reserve policy given our large number of sections, each of which operates somewhat differently?

That last question relates to our second issue, which is whether the section model is too “one size fits all” for our members. The OSB has a very high number of sections — currently 42. Washington has 27, Arizona 28 and California only 16. Some small sections struggle to provide services to their members and maintain a full roster of executive committee members. Others have expressed dissatisfaction with the constraints that come with the OSB umbrella, such as limits on legislative activities. Crafting policies that are acceptable to all 42 sections can be difficult, and administrative costs increase when new sections, or even new section programs, are added.

Our questions for you: Does the OSB have too many sections? Should large sections with adequate means be encouraged to form independent organizations? Are there any sections that could merge? Should we create “interest groups” or some other less-formal structure as an alternative to sections? Should there be a minimum number of members required to retain the section format?

Again, these are discussion items only. I hope you will discuss these issues with your executive committee members, and that your discussions generate ideas that you are willing to share. I will present your comments and suggestions to the board early next year. Thanks in advance for your consideration.

Helen Hirschbiel, CEO/Executive Director

[hhirschbiel@osbar.org](mailto:hhirschbiel@osbar.org)

(503) 620-0222 ext. 361

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[1] The OSB subsidizes sections by sharing the administrative costs of basic section services. Administrative costs include: dues collection, general accounting services, legislative coordination, bar liaison expenses, maintenance of membership and executive committee rosters, coordination of meeting notices and agendas, and electronic communications (primarily broadcast emails and list serve maintenance). As a policy matter, since 1992 the assessment has been set at 50% of the actual costs. The cost-sharing policy reflects the importance of sections to the bar, the financial needs of smaller sections and the reality that reliance on administrative services varies by section as well as by year.

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## Delegate Resolution No. 1

### **ALLOW SECTIONS TO OPT OUT OF COSPONSORING CLE PROGRAMS WITH OSB**

*Whereas*, starting in 2017, the OSB is requiring all OSB sections that provide CLE programs of four (4) hours or more to cosponsor those programs with the OSB CLE Seminars Department, unless the OSB CLE Seminars Department decides that it does not want to cosponsor the program; and

*Whereas*, OSB sections required to cosponsor programs with the Seminars Department will be required to split revenue generated from those programs with the OSB CLE Seminars Department at a fixed percentage or rate; and

*Whereas*, splitting revenue generated from section CLE programs will result in a loss in revenue for sections that have developed successful CLE programs without previously cosponsoring those programs with the Seminars Department; and

*Whereas*, OSB sections required to cosponsor CLE programs with the Seminars Department will lose the right to establish the budget and set prices for registration, meals, printed course materials, and any other separately priced items associated with the program; and

*Whereas*, OSB sections that would be negatively impacted by mandatory cosponsorship would like the opportunity to work with the Board of Governors and OSB staff to identify alternatives or potential compromises that would meet the Board's objectives while addressing sections' concerns; now, therefore, be it

*Resolved*, that OSB sections that provide CLE programs of four (4) hours or more may opt out of cosponsoring CLE programs with the OSB Seminars Department.

### **Background**

Starting in January of 2017, OSB sections that provide CLE programs of four (4) hours or more in length will be required to notify the OSB CLE Seminars Department (Seminars Department) of the program. The Seminars Department can then choose to cosponsor the program with the section. According to the OSB, "[t]he

programs we are most likely to want to cosponsor are ones where the subject is of broad general interest or there is a lack of existing quality content.”<sup>1</sup>

If the Seminars Department chooses to cosponsor the program, the section is required to cosponsor the program with the Seminars Department. There is currently no way for sections to opt out of cosponsorship.

When a section is required to cosponsor a program with the Seminars Department, the Seminars Department will establish the budget for the program and set the prices for registration, meals, printed course materials, and any other separately priced items.<sup>2</sup> The section is also required to participate in revenue sharing with the Seminars Department.

The level of revenue sharing depends on the length of the program. For full day programs with more than \$1,000 in net revenue, the section will receive only \$15 for each registration paid at the early, regular or new lawyer rate.<sup>3</sup> For half-day programs with more than \$500 in net revenue, the section will only receive \$8 for each registration paid at the early, regular or new lawyer rate.<sup>4</sup> However, complimentary and other special or discounted registration rates—including discounted section member registration rates—are not included in the revenue sharing calculation.<sup>5</sup> As a result, if a large number of program attendees are section members whose registration is discounted at a section member rate, the section receives no revenue from those registrations.

Multi-day meal-inclusive events must share revenues on a percentage basis that includes an administrative fee. The administrative fee for programs held in 2017 will be 18% of gross event revenue, i.e., all registration, sponsor, exhibitor and any other revenue that is processed by the Seminars Department. After paying the 18% administrative fee to the Seminars Department, the section then must split any remaining net revenue with the Seminars Department.

Prior to these changes, sections could choose to cosponsor CLE programs with the Seminars Department, but cosponsorship was not required. Sections that did not cosponsor programs had the ability to pay for individual services provided by the Seminars Department, such as registration services, compilation of course

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<sup>1</sup> <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

materials, print services, and signage services, without relinquishing control over program decisions and without required profit sharing.

This resolution would maintain the status quo by allowing sections to choose whether to cosponsor CLE programs with the OSB CLE Seminars Department.

This resolution seeks to maintain the status quo so that the sections, Board of Governors, and OSB staff have additional time to identify potential alternatives before the OSB implements mandatory cosponsorship under the terms described above, with the goal of developing a revised policy that would meet the Board's objectives while addressing the concerns of sections.

### **Financial Impact**

Because this resolution seeks to maintain the status quo of 2016, it would not have a financial impact when compared to 2016. If passed, the resolution would have a financial impact in 2017, when mandatory cosponsorship will be implemented.

The OSB estimates it can increase revenue for the CLE Seminars Department by approximately \$20k - \$30k per year by requiring cosponsorship of section CLEs.

By allowing sections to opt out of mandatory cosponsorship, the CLE Seminars Department would not have the right to share in profits from section CLEs and would lose the ability to generate approximately \$20k - \$30k per year.

*Presenters:*

*Sarah Drescher, Chair, OSB Labor & Employment Section*