

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 19, 2016  
**Open Session Minutes**

President Ray Heysell called the meeting to order at 1:05 p.m. on November 19, 2016. The meeting adjourned at 4:00 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, Josh Ross, Kerry Sharp, Richard Spier, Kate von Ter Stegge, Charles Wilhoite, and Elisabeth Zinser. Not present was Tim Williams. Staff present were Helen Hierschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Kay Pulju, Kateri Walsh, Dani Edwards, Judith Baker, and Camille Greene. Also present was Carol Bernick, PLF CEO, Tim Martinez, PLF, Colin Andries, ONLD Chair, Kaori Tanabe, ONLD Chair-elect, and 2017 BOG members: Eric Foster, Eddie Medina, Tom Peachey, Liani Reeves, and Traci Rossi.

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

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

**2. 2017 President & President-elect Elections**

At the request of Mr. Heysell, the board unanimously confirmed Ms. Nordyke as 2017 President-elect.

At the request of Mr. Heysell, the board unanimously confirmed Mr. Levelle as 2017 President.

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

**A. Policy and Governance Committee**

The Policy & Governance Committee will focus in 2017 on review of the function related to diversity, equity and inclusion. Mr. Levelle reported that the Committee began its review with an overview of Diversity & Inclusion programs, and noted that diversity, equity and inclusion ought to be a part of the strategies for all other bar functions.

Mr. Levelle reported that the committee reviewed a proposed strategic action plan for 2017, and recommended they work on it and present it to the board for action next year.

**B. Board Development Committee**

Ms. Nordyke presented the committee's recommendations for several committee and board appointments. **[Exhibit A]**

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

**C. Budget and Finance Committee**

Mr. Mansfield acknowledged receipt of the audit report of the bar's combined 2014 and 2015 financial statements from Moss Adams LLP. The new accounting requirement to account for unfunded liability of the pension expense shows a lower revenue than previously calculated.

Mr. Mansfield presented the committee's motion to approve the 2017 OSB budget. **[Exhibit B]** He noted that bar application numbers and bar passage rates have decreased, foreshadowing a possible revenue shortfall in the next couple of years, which could result in the need to tap into reserve funds, make budget cuts, or increase member fees.

**Motion:** The board voted unanimously in favor of the committee motion to approve the 2017 OSB budget. The motion passed.

**D. Public Affairs Committee**

Mr. Ross gave a general update on legislative activity and presented the committee motion to adopt the 2017 legislative priorities: support court funding; supporting legal services; and the OSB law improvement package. **[Exhibit C]**

**Motion:** The board voted unanimously in favor of the committee motion to adopt the 2017 legislative priorities. The motion passed.

Mr. Ross presented the committee motion to adopt the 2017 legislative guidelines. **[Exhibit D]**

**Motion:** The board voted unanimously in favor of the committee motion to adopt the 2017 legislative guidelines. The motion passed.

**4. Professional Liability Fund**

Ms. Bernick gave an update on the PLF financials.

Ms. Bernick asked the board to approve the proposed 2017 Pro Bono Coverage Plan. There are changes to the plan. **[Exhibit E]**

**Motion:** Mr. Mansfield moved, Mr. Ramfjord seconded, and the board voted to approve the 2017 Pro Bono Coverage Plan. Mr. Chaney and Mr. Bachofner abstained.

Ms. Bernick asked the board to approve the 2017 budget. **[Exhibit F]:**

**Motion:** Mr. Greco moved, Mr. Mansfield seconded, and the board voted to approve the budget as presented. Mr. Chaney and Mr. Bachofner abstained.

Ms. Bernick asked the board to approve the revisions to PLF Policies 7.300, 7.600, and 4.350. **[Exhibit G]**

**Motion:** Mr. Mansfield moved, Mr. Greco seconded, and the board voted to approve the policy revisions. Mr. Chaney and Mr. Bachofner abstained.

Ms. Bernick asked the board to approve the 2017 Excess Base Rate. **[Exhibit H]**

**Motion:** Mr. Greco moved, Mr. Mansfield seconded, after much discussion the board voted to approve the 2017 Excess Base Rate. Mr. Chaney and Mr. Bachofner abstained.

Mr. Martinez outlined the details and effects of the changes to the allocation of assets. Ms. Bernick asked the board to approve the following reallocation of investment portfolio assets **[Exhibit I]**:

- 10% from Diversified Inflation Strategies
- +4% US Equity
- +2% International Equity
- +4% Core Fixed Income

**Motion:** Mr. Greco moved, Mr. Ramfjord seconded, and the board voted to approve the reallocation of assets. Mr. Chaney and Mr. Bachofner abstained.

## 5. OSB Committees, Sections, Councils and Divisions

### A. Discipline System Review Committee

Ms. Evans asked the board to approve the changes to the bar rules for publication and comment before submitting to the Supreme Court for adoption. **[Exhibit J]**

**Motion:** Mr. Greco moved, Mr. Ross seconded, to table the matter in order to give board members more time to read the rule revisions. Ms. Evans asked for a chance to explain. Mr. Greco withdrew his motion and Mr. Ross withdrew his second.

Ms. Evans explained some of the most significant rule changes in detail. Mr. Ross asked for clarification of changes that would change the course of action for current procedures. He was satisfied with Ms. Evans' explanations. Ms. Zinser recommend that a few board members perform a detailed review of the rule changes to be presented to the board in January 2017 if the motion to table is approved. Mr. Ramfjord reminded the board that they approved the report that recommended these rule changes and should be confident in Ms. Evans' recommendations.

**Motion:** Mr. Greco moved, Mr. Ross seconded, and the board voted to table the vote until January 2017. Ms. von Ter Stegge and Ms. Rice were opposed.

### B. Oregon New Lawyers Division Report

In addition to the written report, Mr. Andries introduced Kaori Eder who is the 2017 ONLD Chair. Ms. Eder is looking forward to the new year and likes to get things done and will encourage BOG members to help them reach out to high school students to increase bar membership.

### C. LRAP Advisory Committee

Removed from agenda.

### D. New Lawyer Mentoring Program

Ms. Walsh asked the board to sunset the New Lawyer Mentoring Committee. The committee played an essential role in creating a successful program, and providing staff with ongoing guidance in its first years of operation. **[Exhibit K]**

**Motion:** Mr. Bachofner moved, Ms. Nordyke seconded, and the board voted unanimously to sunset the New Lawyer Mentoring Committee.

**E. Client Security Fund Committee**

Claim 2016-35 FERRUA (Lopez-Diaz)

Ms. Hirschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$12,500 to Marcelino Lopez-Diaz for his loss resulting from the conduct of attorney Franco Ferrura. **[Exhibit L]**

Claim 2016-31 MILSTEIN (Connolly)

Ms. Hirschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$18,170 to Joseph A. Connolly for his loss resulting from the conduct of attorney Jeffrey S. Milstein. **[Exhibit M]**

Claim 2016-23 HAWES (Sansome)

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 N]**

Claim 2016-30 McCART (Mandelberg)

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 O]**

**Motion:** Mr. Ramfjord moved, Mr. Greco seconded, and the board voted unanimously to approve the committee's recommendations on CSF claims: 2016-35 FERRUA (Lopez-Diaz); 2016-31 MILSTEIN (Connolly); 2016-23 HAWES (Sansome); and 2016-30 McCART (Mandelberg).

Claim 2016-40 GERBER (Shorb)

Ms. Hirschbiel asked the board to consider the Client Security Fund Committee's recommendation to reimburse \$5,000 to Charles Ray Shorb for his loss resulting from the conduct of attorney Susan Gerber. **[Exhibit P]**

**Motion:** Mr. Ramfjord moved, Mr. Greco and the board voted to approve the committee's recommendation on CSF claim 2016-40 GERBER (Shorb). Ms. Nordyke and Ms. von Ter Stegge abstained.

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

**F. Legal Ethics Committee**

Ms. Hirschbiel presented the committee's request that the board consider the recommendation of the Legal Ethics Committee ("LEC") to amend Oregon RPC 7.3(a). **[Exhibit Q]** The board has the option to put this out for public comment before submission to the House of Delegates for approval. The board discussed referring the proposed rule change to the Futures Task Force Regulatory Committee. Mr. Greco noted that the proposed amendment was consistent with the recommendations of the 2009 Advertising Task Force.

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

Ms. Hirschbiel presented the committee's request that the board consider the recommendation of the Legal Ethics Committee ("LEC") to amend OSB Formal Ethics Op No. 2005-110. **[Exhibit R]**

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

**G. Other**

Mr. Heysell presented a summary of the 2016 House of Delegates meeting. Mr. Heysell asked the board to consider whether to take any action in response to the HOD resolution and discussion regarding section CLE co-sponsorship with the OSB CLE Seminars Department.  
**[Exhibit S]**

**Motion:** Mr. Spier moved, Ms. Costantino seconded, and the board voted 8-7 to postpone implementation of the CLE co-sponsorship policy until 2018. In favor was Ms. von Ter Stegge, Ms. Costantino, Mr. Chaney, Mr. Bachofner, Mr. Greco, Mr. Sharp, and Ms. Rastetter. Opposed was Mr. Mansfield, Mr. Ramfjord, Mr. Wilhoite, Mr. Levelle, Ms. Nordyke, Mr. Ross and Ms. Zinser. Mr. Heysell voted in favor of the motion to break the tie.

**Motion:** Ms. Nordyke moved, Mr. Gratchner seconded, and the board voted 11-3 to form a committee to discuss options moving forward. Mr. Mansfield, Mr. Ramfjord, and Mr. Ross were opposed.

Ms. Nordyke, Ms. Costantino, and Mr. Bachofner volunteered to be on the committee. Ms. Hirschbiel will send a list of committee members to the board.

Ms. Baker updated the board on the need for a Legal Needs Study. The Oregon Law Foundation grants committee will fund the study.

Ms. Baker informed the board on the denial of the Access to Justice Grant.

**6. Consent Agenda**

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

Report of the President  
None.

Report of the President-elect  
None.

Report of the Executive Director  
As written.

Director of Regulatory Services  
As written.

MBA Liaison Report  
None.

**Motion:** Mr. Greco moved, Ms. von Ter Stegge seconded, and the board voted unanimously to approve the consent agenda of past meeting minutes.

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

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

**8. 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  
November 19, 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.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**Memo Date:** November 19, 2016  
**From:** Vanessa Nordyke, Board Development Committee Chair  
**Re:** Appointments to various committees, councils, and boards (2 of 2)

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### Action Recommended

During the November 19 meeting the Board Development Committee selected the following members for appointment:

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

Members with terms expiring 12/31/2019:

Josh Nasbe  
Robert Johnson  
Scott Healy

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

Members with terms expiring 12/31/2019:

Alan Rapleyea  
Elaine Brown

#### **Pro Bono Committee**

Chair: Shalini Vivek

Secretary: Stephen Galloway

Members with terms expiring 12/31/2017:

Shalini Vivek

Christo de Villers, Advisory Member

Members with terms expiring 12/31/2019:

Mary Beth Allen  
Rachel Anne Woods Arnold  
David B. Avison  
Laura Westmeyer  
John C. Clarke  
Matthew W. dos Santos  
Heather Kemper, Advisory Member

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

Chair: Shayna Rogers

Secretary: Diana Winther

Members with terms expiring 12/31/2019:

Janay Haas  
Loretta Mabinton  
Emily Pringle  
Jovanna Patrick

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

Chair: Kimberly Sewell

Secretary: Jeffrey Armstead

Members with terms expiring 12/31/2018:

Daniel Le Roux

Ulanda Watkins

Members with terms expiring 12/31/2019:

Jeffrey Young  
David Park  
Anthony Kuchulis  
Katie Jo Johnson  
Karen B. Dawson  
Eva Marotrigiano

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

Chair: Erin Fitzgerald

Chair-Elect: Jay Bodzin

Secretary: Mary Briede

Members with terms expiring 12/31/2020:

Amy Cook  
Dylan Potter

**Oregon Law Center Board of Directors**

Lou Savage  
Michael Mason  
Wayne Belmont  
Amy Edwards  
Ed Goodman  
Gayle Patterson  
Manuel Perez

**Legal Aid Services of Oregon Board of Directors**

Lou Savage  
Michael Mason  
Wayne Belmont  
Amy Edwards  
Ed Goodman  
Gayle Patterson  
Manuel Perez

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

**Disciplinary Board**

**Region 3:**

Joel Benton, term expires 12/31/2019

**Region 4:**

Deena Bothello, term expires 12/31/2019

Matt McKean, term expires 12/31/2019

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**Memo Date:** November 14, 2016  
**From:** Rod Wegener, CFO  
**Re:** 2017 OSB Budget Report

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### **Action Recommended**

Review and approval of the 2017 OSB Budget.

### **Background**

The 2017 OSB Budget Report consisting of 11 pages of narrative and exhibits follows this memo. The report will be reviewed by the Budget & Finance Committee and will forward its recommendation to the board.

Highlights of the 2017 budget are listed on the first page of the report. The result is a net operating revenue of \$390,604, which is an expected lower amount than the 2016 budget. Also as expected, there is no change in the active or inactive membership fee and no reserve funds are transferred to revenue for operational needs;

# 2017 BUDGET



November 19, 2016

## Report to the Board of Governors

### Purpose of This Report

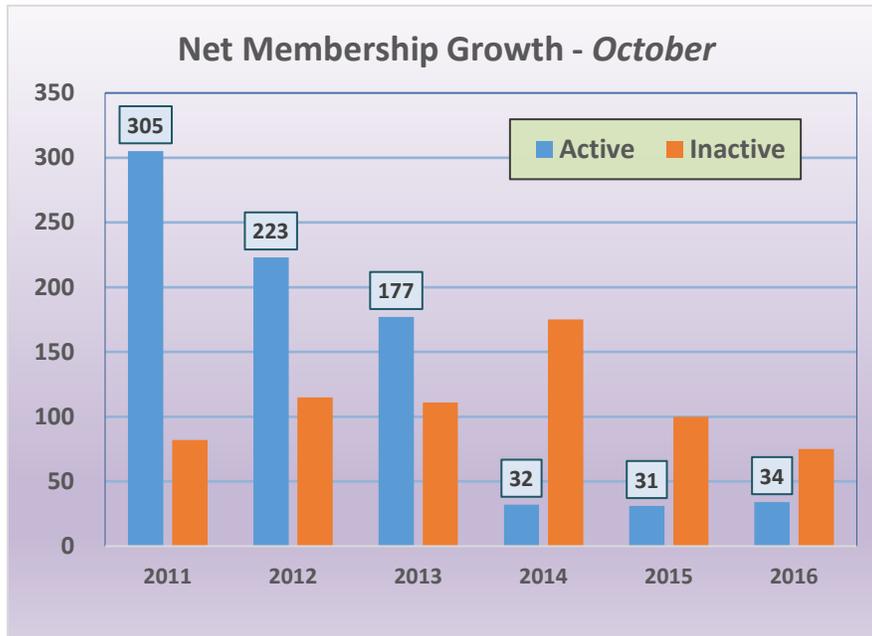
- This version of the 2017 Budget Report includes staff preparation of all the line item program and department budgets.
- The report will first be reviewed by the Budget & Finance Committee prior to the board meeting of the same date.
- The Board of Governors will formally act on the approval of the final 2017 Budget.
- The five-year forecast incorporated herein includes no changes to program or services in 2018 and beyond except to move the Professional Adjudicator position to a full-year.

### Highlights in This Report

- The Net Revenue for the 2017 General Operating budget is \$390,604 - an improvement over the \$262,353 Net Revenue reported in October.
- There is no change in the Active Member Fee of \$557.00 nor the Inactive Member Fee of \$125.00.
- All Revenue increases \$310,000 from the 2016 budget, with 92% of that amount coming from Lawyer Referral percentage fees and Admissions.
- Expenditures increase by \$775,000. Most is due to personnel related costs, although program/ services costs also increase more than the annual normal.
- There were cost reductions totaling \$218,000 from the October report. This makes for a solid Net Revenue in 2017, but with increased costs expected more adjustments are necessary in 2018 and 2019.
- The next member fee increase is forecast for 2020 as planned with the 2016 fee increase
- Section 6 addresses alternatives to raising the member fee by transferring funds to operations from Reserves invested in the long-term portfolio.

## 1. Membership Fees Revenue . . .

The bar membership count at the end of October reflects a not-so-surprising trend. The low growth in the number of members in the Oregon State Bar each year affect what the revenue will be.



The average active membership growth in the three year period 2011 to 2013 was **235**.

The last three years including 2016, the average is **32**.

The October data also shows how members are joining the bar. The number of those who entered via the bar exam declined by 94 from 2015. The number who joined via reciprocity increased by 134. An interesting demographic is Multnomah County reported a drop of 71 members from 2015.

### **CONCLUSION ON MEMBERSHIP FEE REVENUE**

*Membership Fee revenue will increase 1/2 of 1% for 2017 adding \$40,000 in additional revenue.*

## 2. Non-dues (Program Fee) Revenue . . .

Of the six largest sources of *Program Fee* revenue, three (Admissions, MCLE, Lawyer Referral) report higher revenue in 2017. Two (CLE Seminars, Legal Publications) report declines, and Bulletin advertising is about the same.

**Admissions (\$805,875):** The 2017 budget estimates that 701 candidates will sit for the bar exam. In 2016, 713 sat for the exam. Unknown is the impact of the uniform bar exam which will be offered with the July exam. The 2017 budget revenue is reasonable as for 10-month 2016 revenue is only \$7,100 short of that goal.

**CLE Seminars (\$923,185):** This revenue source continues its downward trend and won't correct until the section co-sponsor issue is resolved and the new AMS software generates more revenue.

**Legal Publications (\$275,905):** The 2017 budget is only \$8,900 less than the 2016 budget. Some books expected in 2016 have been deferred to 2017 and new in 2017, books that will be designed and marketed to the Washington lawyer. Sales of printed Legal Publications books will continue to decline as online features grow to be more popular. Revenue bucked the trend in 2015 due to the size and popularity of the *Real Estate Desk Book*.

**MCLE (\$343,700):** Revenue from Sponsor Fees and Late Fees continues upward and the 2017 projection is a conservative one using the highest-ever 2015 revenue as the base.

**Lawyer Referral (\$900,000):** Revenue from percentage fees has grown every year since its inception in 2010. The 2017 budget of \$785,000 is a 4.4% increase over the projected 2016 percentage fee revenue.

#### **CONCLUSION OF NON-DUES REVENUE**

*Program Fee, or non-dues, revenue, will increase by \$223,500 in 2017 primarily due to three program fee revenue sources.*

### **3. The Salary Pool, Taxes & Benefits . . .**

#### **SALARIES**

- a) The bar and PLF CEOs recommend a 3% salary pool for the 2017 budget. A recent Robert Half Salary Survey indicated 3% to 4% increases for finance and administrative positions for 2017.
- b) This budget report includes the 3% salary pool which adds approximately \$223,600 in personnel costs to the 2017 budget. This is \$2,300 less than presented in the October report since \$158,780 in salaries, taxes and benefits (including FTE) were eliminated for 2017 since the October report.
- c) Including taxes and benefits each 1% salary pool change over the 2016 budget adds \$74,900 (again similar to the October report because of personnel reductions).
- d) Previous salary pool increases have been: 2016 – 3%; 2015 – 3%; 2014 – 2%; 2013 – 2%; 2012 – 2%; 2011 – 3%.

#### **PERS RATES**

- e) PERS rates change on July 1, 2017. Tier 1&2 rates increase from 13.30% to 18.67% and OPSRP from 7.33% to 10.78%.
- f) These mid-year rates increases add \$116,500 to personnel costs for 2017.
- g) The overall increase in PERS costs is \$100,900 more in 2017 from 2016. This is small compared to the rate increases and is attributable to the decline in PERS salaries by \$199,400 from 2016 and the personnel reductions.
- h) Worse news about the PERS rates is the 2017 budget includes only six months of the higher rates. The budget in 2018 will include a full year of the higher rates.



**In 2017, 37% of all salaries are included in Tier 1&2, down from the budgeted 42% in 2016.**

## **CONCLUSION FOR PERSONNEL COSTS**

*Personnel costs remain the highest expenditure in the bar's 2017 budget and are 72% of revenue.*

### **4. Changes from 2016 included in the 2017 Budget . . .**

The 2017 budget includes some new or changed programs or services. A total of \$59,600 in program and administrative costs were removed from the October report, yet these costs still are \$183,800 higher than the 2017 budget. Below is a list of new or changed services or projects and other activities with cost increases and the budget for each activity.

#### **a. Governance (BOG)**

##### **Special Projects & Sponsorships for the Board of Governors.**

BUDGET: \$ 10,000 - \$5,000 each for Special Projects and Sponsorships. These were reduced by \$5,000 each from the October budget report.

#### **b. General Counsel**

##### **Professional Adjudicator (Presiding Disciplinary Judge).**

The 2017 budget assumes the position is approved in the legislative cycle and is in place by September 2017, two months later than included in the October report. Included is a full-time adjudicator and a half-time assistant. The projected annual cost for these positions is \$212,000 and one-third that amount is included in the 2017 budget.

BUDGET: \$67,500 increase

#### **c. Special Projects**

##### **Economic Survey**

This survey was performed last in 2012 and each 4 to 5 years since 1989. Staff have received inquiries from members if a current survey is available expressing value in the survey information. The approximate cost of the 2012 survey was \$20,000 and is increased for 2017 since a new contractor likely will be awarded the task.

BUDGET: \$25,000

#### **d. Loan Repayment Assistance Program**

##### **Grants**

With the increase in the allocated fee from \$5.00 to \$10.00 in 2015, more and higher grants will be made in 2017. The 2016 budget includes \$142,400 in grants; \$173,100 is included in 2017. There is a fund balance carryover for LRAP as the revenue from the \$10.00 assessment is \$154,100.

BUDGET: \$30,700 increase

#### **e. Technology**

##### **Impact of the new AMS system**

Any cost impact will not be felt until the second half of 2017 as until then time and resources are spent in the go-live and learning the system. The AMS will eliminate some existing IT related costs and add more. The impact on all staff is unknown except that numerous responsibilities and tasks will change and it will take several months for staff to learn the best practices of the system and maximize its functionality and efficiency.

BUDGET: \$7,748 increase

**f. Capitalization Policy**

The bar is changing its outdated policy on the cost of capitalizing the purchase of assets from \$500 to \$1,500. This is suggested by the bar's auditors, a review of similar organizations' policy, and the time and effort to monitor the depreciation of assets of \$500. The amount in the 2017 budget is \$16,050, but that cost will offset by lower depreciation expense.

BUDGET: \$16,050 offset by lower depreciation in 2017 and subsequent years

**g. Personnel**

**Various Departments**

Personnel costs of \$158,780 were reduced or eliminated from the October report. There were personnel changes in 2016 after the final budget due to anticipated changes in tasks caused initially by the AMS project; the reassignment of personnel in New Lawyer Mentoring, Member Services, the New Lawyers Division, and General Counsel; increases in .5 FTE each in Lawyer Referral and Legal Services; personnel changes in Disciplinary Counsel, an increase in the social security base for 2017, and an error in the calculation of benefit costs in 2016 have caused an increase in personnel costs from 2016 to 2017. Included in the cost increase is the 3% salary pool and the higher cost caused by higher PERS rates.

BUDGET: \$626,900 including salaries, taxes and benefits

**h. Other Cost Increase**

**Various Departments**

Costs of \$33,682 are higher in **Admissions** but is due to the increased revenue .... **Depreciation** expense is a non-cash item but is \$29,300 higher in 2017 as the cost of the AMS software begins being depreciated in the latter part of 2017 ... **Disciplinary Counsel** costs for court reports and contract services are more heavily needed and higher by \$ 12,050.

**5. What Stays the Same from the 2016 Budget . . .**

Not all accounts or programs and services in the bar's budget increase year over year. Here are various services or accounts included in the 2017 budget and have been included in the bar's budget at the amount listed for several years. They are listed as they are critical services of the bar, but seldom mentioned in financial reports since the amounts have not changed.

- **PLF Grant:** The PLF has committed to the \$200,000 grant for an undisclosed period.
- **Client Security Fund claims:** \$200,000 is included as the annual placeholder amount
- **Contingency:** \$25,000 for unusual or unexpected costs
- **Fastcase:** \$99,000 annual cost for the popular legal research library
- **Classroom Law Project:** \$20,000 grant
- **Campaign for Equal Justice:** \$45,000 grant
- **Council on Court Procedures:** \$4,000 grant for council member travel expenses

**Note:** Staff considered reducing the grant to the Classroom Law Project by \$5,000 due to the limited number of students benefitting from the grant.

## 6. Looking Ahead at the Five-Year Forecast . . .

This draft of the 2017 budget includes a Net Revenue of \$390,604, and is a \$128,000 net revenue improvement over the October report. Although there is a healthy net revenue in 2017, the two years thereafter include a large net expense and a \$50.00 (or higher) active member fee increase is forecast in 2020.

The challenge is making the 2016 increase extend until 2020. To do so, here are some possibilities.

- ❖ Even though there were substantial changes from the October budget report, it would take another \$30,000 to \$70,000 to attain the goal mentioned in the October report.
- ❖ At its October meeting, the Budget & Finance Committee resolved to review the budget and the bar's services looking toward 2018 to ascertain what changes should be made to the budget to assure a balanced budget and defer a fee increase as long as possible.
- ❖ Increase the Active Member Fee by at least \$50.00 in 2020, or possibly 2019, earlier than expected with the last fee increase.
- ❖ Within the next three years transfer the funds in the Capital Reserve (invested in the long-term investment portfolio) to general operations and either balance the budget with these funds and delay a fee increase.
  - The bar has paid all AMS costs from operating funds. That is possible due to the large net revenues in 2014 and 2015. The Capital Reserve of \$500,000 has never been tapped and could be used to "pay back" operational funds.
- ❖ Within the next three years transfer the funds in the PERS Contingency (also invested in the long-term investment portfolio) to general operations to offset the bar's annual expense for PERS.
  - Similar to the Capital Reserve, all PERS expenses have been paid from the annual operating budget. The PERS Contingency is \$434,000 and also has never been tapped to pay for PERS expenses.
  - One or the other of these two reserves could be transferred to general operations, not both.

**The Bar has three Reserves – Capital, PERS, Contract Legal Fees - all of which are invested in the bar's long-term portfolio. Portions could be used to balance the operating budget and hold off a member fee increase in the future.**

- ❖ Within the next three years transfer a portion of the funds in the Contract Legal Fees reserve (currently at \$ 243,923 and also invested in the long-term investment portfolio) to general operations.

Note: In the Five-Year Forecast an arbitrary amount of \$400,000 was transferred from reserves to balance the 2018 budget. Doing so is only a one year solution.

## 7. Restricted Funds . . .

None of the three Restricted Funds 2017 budgets should cause negative financial challenges for each, even though the Client Security Fund and Legal Services project a deficit budget. All three have adequate fund balances to make any financial adjustments. A vacancy in the Diversity & Inclusion director still exists, which only accumulates its fund balance.

The projected fund balances at the end of 2017 are:

| Fund                  | 2017 Fund Balance      | Notes   |
|-----------------------|------------------------|---|
| Client Security Fund  | \$1,058,000            | Always dependent on number of claims; \$200,000 is 2017 placeholder; fund balance probably will be higher due to lower claims in 2016 |
| Diversity & Inclusion | \$250,000 to \$300,000 | Unusually high due to the vacancy in the program director position  |
| Legal Services        | \$20,000               | Could be higher depending when the legislative appropriation is released  |

## 8. Fanno Creek Place . . .

The operating loss (\$635,422) for Fanno Creek Place will be slightly less than 2016 even if the bar center is not 100% occupied beginning in 2017. This is due to higher rents and the annual decrease in the mortgage interest expense.

- The lease for the 6,015 s.f. expired September 30, 2016 and two other leases expire in the last quarter of 2017. The latter two are expected to renew. The larger space is taking longer to fill.
- If the larger space remains vacant for three months in 2017, the negative cash flow is projected to remain at \$392,000, almost identical to 2016.

## 9. Recommendation of the Budget & Finance Committee . . .

The Committee will review this report and recommend to the Board of Governors the 2017 budget including decisions on:

- Changes in the 2017 budget (Section 4 in this report);
- the 2017 salary pool;
- other matters (Classroom Law Project, looking toward the 2018 budget and funding for bar services, et al)

## OREGON STATE BAR 2017 Budget Summary by Program

| <i>Department / Program</i>      | <i>Revenue</i> | <i>Sal &amp; Benefits</i> | <i>Direct Program</i> | <i>Gen &amp; Admin</i> | <i>Total Expense</i> | <i>Indirect Costs</i> | <i>Net Revenue</i> |
|----------------------------------|----------------|---------------------------|-----------------------|------------------------|----------------------|-----------------------|--------------------|
| Admissions                       | \$805,875      | \$310,780                 | \$281,450             | \$30,856               | \$623,086            | \$140,454             | \$42,335           |
| Bulletin                         | \$677,450      | \$162,200                 | \$347,876             | \$4,018                | \$514,094            | \$133,882             | \$29,474           |
| CLE Seminars                     | \$923,185      | \$453,900                 | \$360,455             | \$17,382               | \$831,737            | \$278,508             | (\$187,060)        |
| Client Assistance Office         | \$0            | \$563,500                 | \$1,700               | \$18,266               | \$583,466            | \$165,889             | (\$749,355)        |
| Communications                   | \$31,900       | \$493,900                 | \$19,270              | \$8,275                | \$521,445            | \$139,636             | (\$629,181)        |
| General Counsel                  | \$1,000        | \$577,500                 | \$66,925              | \$23,765               | \$668,190            | \$113,223             | (\$780,413)        |
| Governance (BOG)                 | \$0            | \$314,900                 | \$184,875             | \$25,445               | \$525,220            | \$107,887             | (\$633,107)        |
| Legal Publications               | \$275,905      | \$660,200                 | \$70,271              | \$21,407               | \$751,878            | \$226,181             | (\$702,154)        |
| Loan Repayment Assistance Progra | \$154,100      | \$0                       | \$173,100             | \$0                    | \$173,100            | \$0                   | (\$19,000)         |
| MCLE                             | \$343,700      | \$186,500                 | \$2,000               | \$8,656                | \$197,156            | \$102,434             | \$44,110           |
| Member Services                  | \$0            | \$222,800                 | \$12,750              | \$4,548                | \$240,098            | \$121,929             | (\$362,027)        |
| New Lawyer Mentoring Program     | \$20,200       | \$200,200                 | \$8,700               | \$5,204                | \$214,104            | \$81,144              | (\$275,048)        |
| New Lawyers Division             | \$4,850        | \$68,600                  | \$81,850              | \$2,780                | \$153,230            | \$48,703              | (\$197,083)        |
| Public Affairs                   | \$0            | \$492,200                 | \$21,500              | \$31,716               | \$545,416            | \$116,882             | (\$662,298)        |
| Referral & Information Services  | \$900,000      | \$485,900                 | \$44,500              | \$9,400                | \$539,800            | \$239,234             | \$120,966          |
| Regulatory Services              | \$88,600       | \$1,907,000               | \$123,850             | \$88,092               | \$2,118,942          | \$409,270             | (\$2,439,612)      |
| Special Projects                 | \$200,000      | \$10,800                  | \$198,200             | \$375                  | \$209,375            | \$0                   | (\$9,375)          |
| <b>TOTAL PROGRAMS</b>            | \$4,426,765    | \$7,110,880               | \$1,999,272           | \$300,185              | \$9,410,337          | \$2,425,256           | (\$7,408,828)      |
| <b>ALLOCATIONS:</b>              |                |                           |                       |                        |                      |                       |                    |
| Finance & Operations             | \$7,824,432    | \$1,661,520               | \$897,983             | \$103,598              | \$2,663,101          | (\$2,436,216)         | \$7,597,547        |
| Less: Dept Charges/Offsets       |                |                           | (\$226,885)           |                        | (\$226,885)          |                       | \$226,885          |
| Oregon State Bar Center          |                |                           |                       |                        |                      | \$0                   | \$0                |
| Contingency                      |                |                           | \$25,000              |                        | \$25,000             |                       | (\$25,000)         |
| <b>TOTAL OPERATIONS</b>          | \$12,251,197   | \$8,772,400               | \$2,695,370           | \$403,784              | \$11,871,554         | (\$10,960)            | \$390,604          |
| Fanno Creek Place                | \$868,437      | \$122,700                 | \$1,510,808           | \$30,810               | \$1,664,318          | (\$160,459)           | (\$635,422)        |
| <b>TOTAL GENERAL FUND</b>        | \$13,119,634   | \$8,895,100               | \$4,206,178           | \$434,594              | \$13,535,872         | (\$171,419)           | (\$244,819)        |
| <b>DESIGNATED FUNDS:</b>         |                |                           |                       |                        |                      |                       |                    |
| Diversity Inclusion              | \$725,300      | \$297,200                 | \$245,065             | \$40,079               | \$582,344            | \$107,741             | \$35,215           |
| Client Security Fund             | \$244,700      | \$45,700                  | \$202,950             | \$2,444                | \$251,094            | \$33,367              | (\$39,761)         |
| Legal Services                   | \$6,205,000    | \$157,800                 | \$6,035,100           | \$4,598                | \$6,197,498          | \$30,311              | (\$22,809)         |
| <b>TOTAL ALL FUNDS</b>           | \$20,294,634   | \$9,395,800               | \$10,689,293          | \$481,715              | \$20,566,808         | \$0                   | (\$272,174)        |

Exhibit A

| 2017 Budget                        |  | Oregon State Bar |             |                 |                                |             | Five-Year Forecast |             |
|------------------------------------|--|------------------|-------------|-----------------|--------------------------------|-------------|--------------------|-------------|
|                                    |  | Operations       |             |                 | No Member Fee Increase in 2017 |             |                    |             |
| November-16                        |  |                  |             |                 |                                |             |                    |             |
| Proposed Fee increase for Year     |  | \$0              | \$0         | \$0             | \$50                           | \$0         | \$0                |             |
| Operations                         |  | BUDGET 2016      | BUDGET 2017 | F O R E C A S T |                                |             |                    |             |
|                                    |  | 2016             | 2017        | 2018            | 2019                           | 2020        | 2021               | 2022        |
| <b>REVENUE</b>                     |  |                  |             |                 |                                |             |                    |             |
| MEMBER FEES                        |  |                  |             |                 |                                |             |                    |             |
| General Fund                       |  | \$7,930,600      | \$7,970,000 | \$8,010,000     | \$8,050,100                    | \$8,090,400 | \$8,894,700        | \$8,939,200 |
| Active Member Fee Increase         |  |                  |             | 0               | 0                              | 760,000     | 0                  | 0           |
| % of Total Revenue                 |  | 66.4%            | 65.1%       | 63.3%           | 64.9%                          | 61.1%       | 66.2%              | 66.1%       |
| PROGRAM FEES:                      |  |                  |             |                 |                                |             |                    |             |
| Admissions                         |  | 705,985          | 805,875     | 750,000         | 750,000                        | 787,500     | 866,300            | 866,300     |
| CLE Seminars                       |  | 1,025,990        | 923,185     | 923,200         | 969,400                        | 969,400     | 969,400            | 969,400     |
| Legal Publications (print sales)   |  | 284,820          | 275,905     | 250,000         | 250,000                        | 200,000     | 200,000            | 200,000     |
| Lawyer Referral % Fees             |  | 600,000          | 785,000     | 785,000         | 785,000                        | 785,000     | 785,000            | 785,000     |
| All Other Programs                 |  | 1,036,106        | 1,086,500   | 1,108,200       | 1,130,400                      | 1,153,000   | 1,176,100          | 1,193,700   |
| Total Program Fees                 |  | 3,652,901        | 3,876,465   | 3,816,400       | 3,884,800                      | 3,894,900   | 3,996,800          | 4,014,400   |
| OTHER INCOME                       |  |                  |             |                 |                                |             |                    |             |
| PLF Contribution                   |  | 200,000          | 200,000     | 200,000         | 200,000                        | 200,000     | 200,000            | 200,000     |
| Investment & Other Income          |  | 157,550          | 204,732     | 225,500         | 260,000                        | 302,800     | 337,500            | 375,300     |
| Transfer from Reserves             |  | 0                | 0           | 400,000         | 0                              | 0           | 0                  | 0           |
| TOTAL REVENUE                      |  | 11,941,051       | 12,251,197  | 12,651,900      | 12,394,900                     | 13,248,100  | 13,429,000         | 13,528,900  |
| <b>EXPENDITURES</b>                |  |                  |             |                 |                                |             |                    |             |
| SALARIES TAXES & BENEFITS          |  |                  |             |                 |                                |             |                    |             |
| Salaries - Regular                 |  | 5,985,600        | 6,270,900   | 6,488,100       | 6,609,500                      | 6,733,000   | 6,858,700          | 6,986,600   |
| Benefits - Regular                 |  | 2,147,900        | 2,495,200   | 2,804,200       | 2,906,200                      | 3,004,300   | 3,111,800          | 3,215,300   |
| Salaries & Taxes - Temp            |  | 11,590           | 6,300       | 30,000          | 20,000                         | 30,000      | 20,000             | 30,000      |
| Total Salaries & Benefits          |  | 8,145,090        | 8,772,400   | 9,322,300       | 9,535,700                      | 9,767,300   | 9,990,500          | 10,231,900  |
| % of Total Revenue                 |  | 68.2%            | 71.6%       | 73.7%           | 76.9%                          | 73.7%       | 74.4%              | 75.6%       |
| DIRECT PROGRAM:                    |  |                  |             |                 |                                |             |                    |             |
| CLE Seminars                       |  | 388,990          | 360,455     | 364,100         | 367,700                        | 373,200     | 376,900            | 382,600     |
| Legal Publications                 |  | 74,199           | 70,271      | 75,000          | 75,000                         | 60,000      | 60,000             | 60,000      |
| All Other Programs                 |  | 2,036,621        | 2,264,644   | 2,386,600       | 2,469,300                      | 2,553,700   | 2,665,300          | 2,780,300   |
| Total Direct Program               |  | 2,499,810        | 2,670,370   | 2,825,700       | 2,912,000                      | 2,986,900   | 3,102,200          | 3,222,900   |
| GENERAL & ADMIN (incl offsets)     |  | 415,533          | 392,823     | 398,700         | 406,700                        | 414,800     | 427,200            | 440,000     |
| CONTINGENCY                        |  | 25,000           | 25,000      | 25,000          | 25,000                         | 25,000      | 25,000             | 25,000      |
| TOTAL EXPENSES                     |  | 11,085,433       | 11,860,593  | 12,571,700      | 12,879,400                     | 13,194,000  | 13,544,900         | 13,919,800  |
| NET REVENUE/(EXPENSE) - OPERATIONS |  | \$855,618        | \$390,604   | \$80,200        | (\$484,500)                    | \$54,100    | (\$115,900)        | (\$390,900) |

**2017 Budget**

**Five-Year Forecast**

**Fanno Creek Place**

| Fanno Creek Place                             | BUDGET             | BUDGET             | F O R E C A S T    |                    |                    |                    |                    |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
|   | 2016               | 2017               | 2018               | 2019               | 2020               | 2021               | 2022               |
| <b>REVENUE</b>                                |                    |                    |                    |                    |                    |                    |                    |
| RENTAL INCOME                                 |                    |                    |                    |                    |                    |                    |                    |
| PLF   | \$527,865          | \$535,783          | \$543,820          | \$551,977          | \$560,257          | \$568,661          | \$577,190          |
| First Floor Tenant - Suite 175 - Zip Realty   | 46,315             | 47,824             | 49,300             | 50,800             | 50,800             | 52,300             | 39,200             |
| First Floor Tenant - Suite 150 - Joffe        | 100,550            | 112,781            | 154,886            | 159,533            | 164,319            | 169,248            | 130,744            |
| First Floor Tenant - Suite 100 - Simpson Prop | 24,917             | 25,664             | 26,400             | 27,200             | 28,000             | 28,800             | 29,700             |
| First Floor Tenant - Suite 110 - Prof Prop Gp | 29,672             | 30,562             | 31,500             | 32,400             | 33,400             | 34,400             | 35,400             |
| First Floor Tenant - Suite 165 - ALA          | 47,378             | 48,811             | 50,250             | 51,758             | 53,311             | 54,900             | 56,500             |
| OLF   | 31,176             | 32,112             | 33,100             | 34,100             | 35,100             | 36,200             | 37,300             |
| Meeting Rooms                                 | 32,000             | 32,000             | 30,000             | 25,000             | 24,000             | 24,000             | 24,000             |
| Operating Expense Pass-through                | 0                  | 0                  | 3,000              | 3,100              | 3,200              | 3,300              | 3,400              |
| INTEREST                                      | 1,650              | 2,900              | 2,000              | 2,200              | 2,500              | 2,800              | 3,000              |
| <b>TOTAL REVENUE</b>                          | <b>841,523</b>     | <b>868,437</b>     | <b>924,256</b>     | <b>938,068</b>     | <b>954,886</b>     | <b>974,609</b>     | <b>936,435</b>     |
| <b>EXPENDITURES</b>                           |                    |                    |                    |                    |                    |                    |                    |
| OPERATING EXPENSE                             |                    |                    |                    |                    |                    |                    |                    |
| Salaries & Benefits                           | 122,200            | 122,700            | 125,200            | 129,000            | 132,900            | 136,900            | 141,000            |
| Operations                                    | 323,909            | 345,060            | 352,000            | 362,600            | 373,500            | 384,700            | 396,200            |
| Depreciation                                  | 512,600            | 514,900            | 514,900            | 519,900            | 519,900            | 529,900            | 529,900            |
| Other   | 16,059             | 18,500             | 18,500             | 18,500             | 18,500             | 18,500             | 18,500             |
| DEBT SERVICE                                  |                    |                    |                    |                    |                    |                    |                    |
| Interest                                      | 678,884            | 663,158            | 646,462            | 628,739            | 609,924            | 589,951            | 568,749            |
| <b>TOTAL OPERATING EXPENSES</b>               | <b>1,653,652</b>   | <b>1,664,318</b>   | <b>1,657,062</b>   | <b>1,658,739</b>   | <b>1,654,724</b>   | <b>1,659,951</b>   | <b>1,654,349</b>   |
| ICA to Operations                             | (160,459)          | (160,459)          | (165,300)          | (165,300)          | (165,300)          | (165,300)          | (169,400)          |
| <b>NET EXPENSES</b>                           | <b>1,493,193</b>   | <b>1,503,859</b>   | <b>1,491,762</b>   | <b>1,493,439</b>   | <b>1,489,424</b>   | <b>1,494,651</b>   | <b>1,484,949</b>   |
| <b>NET REVENUE/(EXPENSE) - FC Place</b>       | <b>(\$651,670)</b> | <b>(\$635,422)</b> | <b>(\$567,506)</b> | <b>(\$555,371)</b> | <b>(\$534,538)</b> | <b>(\$520,042)</b> | <b>(\$548,514)</b> |
| <b>ACCRUAL TO CASH ADJUSTMENT</b>             |                    |                    |                    |                    |                    |                    |                    |
| SOURCES OF FUNDS                              |                    |                    |                    |                    |                    |                    |                    |
| Depreciation Expense                          | 512,600            | 514,900            | 514,900            | 519,900            | 519,900            | 529,900            | 529,900            |
| Landlord Contingency Fund                     | 30,000             | 40,000             |                    |                    | 150,000            |                    |                    |
| Loan Proceeds                                 |                    |                    |                    |                    |                    |                    |                    |
| USES OF FUNDS                                 |                    |                    |                    |                    |                    |                    |                    |
| Assign PLF Subtenants' Leases (Net)           |                    |                    |                    |                    |                    |                    |                    |
| TI's - First Floor Tenants                    | (30,000)           | (40,000)           |                    |                    | (50,000)           |                    | (50,000)           |
| Principal Pmts - Mortgage                     | (255,424)          | (271,150)          | (287,846)          | (305,569)          | (324,384)          | (344,357)          | (365,559)          |
| <b>NET CASH FLOW - FC Place</b>               | <b>(\$394,494)</b> | <b>(\$391,672)</b> | <b>(\$340,452)</b> | <b>(\$341,040)</b> | <b>(\$239,022)</b> | <b>(\$334,499)</b> | <b>(\$434,173)</b> |

**2017 Budget**

**Five-Year Forecast**

**Funds Available/Reserve Requirement**

|   | BUDGET             | BUDGET             | F O R E C A S T    |                    |                    |                    |                    |
|---|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|
|   | 2016               | 2017               | 2018               | 2019               | 2020               | 2021               | 2022               |
| <b>FUNDS AVAILABLE</b>                        |                    |                    |                    |                    |                    |                    |                    |
| Funds Available - Beginning of Year           | \$ 1,456,000       | \$2,436,460        | \$2,406,932        | \$2,394,080        | \$1,917,740        | \$1,827,718        | \$1,367,719        |
| <b>SOURCES OF FUNDS</b>                       |                    |                    |                    |                    |                    |                    |                    |
| Net Revenue/(Expense) from operations         | 855,618            | 390,604            | 80,200             | (484,500)          | 54,100             | (115,900)          | (390,900)          |
| Depreciation Expense                          | 92,200             | 121,500            | 123,900            | 126,400            | 128,900            | 130,200            | 131,500            |
| Provision for Bad Debts                       | 49,000             | 45,200             | 40,000             | 40,000             | 40,000             | 40,000             | 40,000             |
| Increase in Investment Portfolio MV           | 53,000             | 41,000             | 47,000             | 48,000             | 0                  | 63,000             | 75,000             |
| Allocation of PERS Reserve                    | 0                  |                    | 108,500            | 217,000            | 108,500            |                    |                    |
| <b>Projected HIGHER Net Operating Revenue</b> | <b>0</b>           |                    |                    |                    |                    |                    |                    |
| <b>USES OF FUNDS</b>                          |                    |                    |                    |                    |                    |                    |                    |
| Capital Expenditures                          | (73,350)           | (33,260)           | (70,000)           | (80,000)           | (80,000)           | (120,000)          | (80,000)           |
| Capital Expenditures - Building               | 0                  | 0                  |                    |                    |                    |                    |                    |
| Capital Reserve - AMS Software                | 400,136            | (200,000)          |                    |                    |                    |                    |                    |
| Capital Reserve Expenditures - Building       |                    |                    |                    |                    | (100,000)          |                    |                    |
| Landlord Contingency Interest                 | (1,650)            | (2,900)            | (2,000)            | (2,200)            | (2,500)            | (2,800)            | (3,000)            |
| Net Cash Flow - Fanno Creek Place             | (394,494)          | (391,672)          | (340,452)          | (341,040)          | (239,022)          | (334,499)          | (434,173)          |
| Addition to PERS Reserve                      | 0                  |                    |                    |                    |                    | (120,000)          | (120,000)          |
| Projected LOWER Net Operating Revenue         | 0                  |                    |                    |                    |                    |                    |                    |
| <b>CHANGE IN FUNDS AVAILABLE</b>              | <b>980,460</b>     | <b>(29,528)</b>    | <b>(12,852)</b>    | <b>(476,340)</b>   | <b>(90,022)</b>    | <b>(459,999)</b>   | <b>(781,573)</b>   |
| <b>Funds Available - End of Year</b>          | <b>\$2,436,460</b> | <b>\$2,406,932</b> | <b>\$2,394,080</b> | <b>\$1,917,740</b> | <b>\$1,827,718</b> | <b>\$1,367,719</b> | <b>\$586,145</b>   |
| <b>RESERVE REQUIREMENT</b>                    |                    |                    |                    |                    |                    |                    |                    |
| Operating Reserve                             | 500,000            | 500,000            | 500,000            | 500,000            | 500,000            | 500,000            | 500,000            |
| Capital Reserve                               | 500,000            | 500,000            | 500,000            | 500,000            | 500,000            | 500,000            | 500,000            |
| <b>Total - Reserve Requirement</b>            | <b>\$1,000,000</b> |
| <b>RESERVE VARIANCE</b>                       |                    |                    |                    |                    |                    |                    |                    |
| Over/(Under) Reserve Requirement              | \$1,436,460        | \$1,406,932        | \$1,394,080        | \$917,740          | \$827,718          | \$367,719          | (\$413,855)        |
| <b>RECONCILIATION CASH to ACCRUAL</b>         |                    |                    |                    |                    |                    |                    |                    |
|   | BUDGET             | BUDGET             | F O R E C A S T    |                    |                    |                    |                    |
|   | 2016               | 2017               | 2018               | 2019               | 2020               | 2021               | 2022               |
| NET REVENUE/(EXPENSE) - Operations            | 855,618            | 390,604            | 80,200             | (484,500)          | 54,100             | (115,900)          | (390,900)          |
| NET REVENUE/(EXPENSE) - FC Place              | (651,670)          | (635,422)          | (567,506)          | (555,371)          | (534,538)          | (520,042)          | (548,514)          |
| NET REVENUE/(EXPENSE) - OSB                   | \$203,948          | (\$244,818)        | (\$487,306)        | (\$1,039,871)      | (\$480,438)        | (\$635,942)        | (\$939,414)        |

# Oregon State Bar Legislative Priorities for 2017

1. **Support Court Funding.** Support for adequate funding for Oregon's courts.
  - **Citizens Campaign for Court Funding.** Continue with efforts to institutionalize the coalition of citizen and business groups that was formed in 2012 to support court funding.
  - **eCourt Funding.** Support the Oregon Judicial Department's effort to fund Oregon eCourt.
  - **Court Facilities Funding.** Continue to work with the legislature and the courts to make critical improvements to Oregon's courthouses.
  
2. **Support legal services for low income Oregonians.**
  - **Civil Legal Services.**
    - Increase the current level of funding for low income legal services.
  - **Indigent Defense.**
    - **Public Defense Services.** Constitutionally and statutorily required representation of financially qualified individuals in Oregon's criminal and juvenile justice systems:
      - Ensure funding sufficient to maintain the current service level.
      - Support fair compensation for publicly funded attorneys in the criminal and juvenile justice systems.
      - Support reduced caseloads for attorneys representing parents and children.
  - **Child Welfare.**
    - Support a Judicial Conference resolution for increased funding for the child welfare system.
    - Support the Oregon Task Force on Dependency Representation proposal (LC 523, 2017) including appointment of attorneys in child dependency hearings.
  
3. **Support OSB 2017 Law Improvement Package and continue to engage with ongoing legislative work group and task force proposals.**

## **OSB Public Affairs Committee**

### **2017 Legislative Session Guidelines**

The Public Affairs Committee is committed to advancing the bar's mission to protect the public, improve the administration of justice, promote respect for the rule of law and increase access to justice. To that end, the Public Affairs Committee supports the following legislative goals:

1. Protect the public, the administration of justice and the rule of law.
2. Create meaningful access to justice and provide information about the law, legal issues, and the civil and criminal justice system.
3. Make Oregon laws more internally consistent and more uniform.
4. Improve the ability of attorneys to competently serve the interests of the citizens of the state.
5. Support a fair and effective criminal justice system.
6. Ensure efficient, competent and ethical delivery of legal services.
7. Promote the protection of privileged and confidential information while promoting access and education regarding public records.
8. Provide appropriate information and assistance regarding ethical issues to legislators, especially legally-trained legislators.
9. Improve the juvenile justice system and encourage better coordination between the different components of the system.
10. Foster diversity, equity and inclusion among legal service providers and in the justice system.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 Pro Bono Coverage 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 Pro Bono Coverage Plan (see attached). There are changes to the Plan.

### **Background**

Earlier this year, the Board of Governors approved changes to the 2017 PLF Primary and Excess Plans.

The revisions to the attached 2017 Pro Bono Plan are reflective of the changes made to those Plans.

Attachment: PLF 2017 Pro Bono Coverage Plan

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND**

**2017 PRO BONO PROGRAM  
CLAIMS MADE PLAN**

**INTRODUCTION**

The Professional Liability Fund (“PLF”) provides limited coverage regarding Oregon attorneys who claim exemption from PLF Primary coverage and who volunteer their time for Pro Bono Programs jointly certified by the Oregon State Bar and the Professional Liability Fund. Because this coverage is provided at no cost, it is intended to apply only to claims based on or arising from the actual or alleged conduct of volunteer attorneys when there is no other plan or insurance coverage that would apply to any such claim. The coverage provided under this Plan is not the same, in some respects, as the coverage provided under the PLF Primary Plan. The Pro Bono Program and its volunteers should review this Plan carefully in order to understand its restrictions, limitations, exclusions, conditions, and the applicable limit of coverage.

Throughout this Professional Liability Fund (“PLF”) Pro Bono Coverage Plan (“**Plan**”), issued to the Pro Bono Program, identified in the Declarations: **Pro Bono Program** refers to the Named Program 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, 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.

**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 these are defined and described in Section VIII, 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 the **Coverage Period** of this **Plan** 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 applicable **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 resolution 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 incorporated in this **Plan** by 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 a **Covered Activity** 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 either: (a) during the **Coverage Period**; or (b) before the **Coverage Period** if (i) on the effective date of this **Plan**, the **Covered Party** had no knowledge of any **Claim** having been asserted or of any facts or circumstances of which the **Covered Party** was aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity**; (ii) the actual or alleged error, omission negligent act or breach of duty on which the **Claim** is based occurred during a period in which a previous PLF pro bono Plan applied to the **Pro Bono Program**; and (iii) 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 UNDER THIS PRO BONO PLAN?

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

A. Individual Volunteer Attorneys

An individual **Volunteer Attorney** is a **Covered Party**, but only with respect to a **Claim** arising from **Covered Activities** rendered on behalf of the **Pro Bono Program**, and only if there is no other plan or insurance coverage that applies to such **Claim**.

**Volunteer Attorney** means an attorney who: (1) is not otherwise covered under a PLF Primary Plan; (2) provided pro bono **Professional Legal Services** or **Special Capacity Services** to clients of the **Pro Bono Program**; (3) is not employed or compensated in any way by the **Pro Bono Program**; and (4) was eligible to provide voluntary **Professional Legal Services** or **Special Capacity Services** under the applicable rules of the Oregon State Bar at the time such services were provided.

**Pro Bono Program** means the Pro Bono Program named in the Declarations.

B. The Pro Bono Program

The **Pro Bono Program** is also a **Covered Party** under this **Plan**, but only to the limited extent it is legally liable for any **Claim** based on or arising from a **Volunteer Attorney's Covered Activities**, and only provided the **Pro Bono Program** has no other applicable plan or insurance coverage for any such liability. In the event any **Claim** against a **Volunteer Attorney** also involves **Claims** against employees of the **Pro**

**Bono Program**, any defense or indemnity under this **Plan** is limited to that portion of the **Pro Bono Program's** legal liability that relates to a **Volunteer Attorney's Covered Activities**.

### SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this **Plan**, a **Covered Activity** is an error, omission, negligent act, or breach of duty by a **Volunteer Attorney** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services** to a client or clients of the **Pro Bono Program**, but only if such services are within the scope of duties assigned to the **Volunteer Attorney** by the **Pro Bono Program**.

**Professional Legal Services** and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year** and are subject to all the same limitations and conditions set forth in subsections B and C of Section III of the PLF Primary Plan for this **Plan Year**.

### 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 alternative dispute resolution 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 alternative dispute resolution 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 the **Pro Bono Program** did not have a PLF Pro Bono Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and the **Pro Bono Program** has 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** is determined using the method set forth in Section IV A.

## SECTION V – RELATED CLAIMS

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

Examples of **Related Claims** set forth in the PLF Primary Plan, in effect during this **Plan Year**, not intended to be exhaustive, illustrate the intended meaning of **Related Claims** under this Plan. These examples are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

## SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

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

## SECTION VII – PRO BONO PLAN ADDITIONAL EXCLUSIONS

1. Activities Outside Pro Bono Program Exclusion. This **Plan** does not apply to any **Claim** against a **Covered Party** arising from or related to work or services beyond the scope of activities assigned to the **Volunteer Attorney** by the **Pro Bono Program**.
2. 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.

## SECTION VIII – 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** against any **Covered Party** or against multiple **Covered Parties** 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 based on or 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**.

The shared single \$300,000 **Limit of Coverage** under this **Plan** applies both to **Claims** against any and all **Volunteer Attorneys** to whom this **Plan** applies and to **Claims** against the **Pro Bono Program** for any and all **Claims** based on or arising from the actual or alleged conduct of any and all such **Volunteer Attorneys**. Multiple **Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this \$300,000 single **Limit of Coverage**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Limit of Coverage** under this **Plan**, there is either no further coverage under this **Plan** for any **Covered Party**, or a reduced **Limit of Coverage**. This **Limit of Coverage** is also subject to Section VII C below regarding **Related Claims**.

#### B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this **Plan** also provides a single 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.

The shared single \$50,000 **Claims Expense Allowance** under this **Plan** applies both to **Claims** against any and all **Volunteer Attorneys** to whom this **Plan** applies and/or to **Claims** against the **Pro Bono Program**. Multiple **Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this single \$50,000 **Claims Expense Allowance**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Claims Expense Allowance**, there is either no further **Claims Expense Allowance** under this **Plan** for any **Covered Party**, or a reduced **Claims Expense Allowance**.

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

If a **Claim** against a **Covered Party** is **Related** to another **Claim** against that **Covered Party**, to any **Claim** against any other **Covered Party** under this **Plan**, or to a **Claim** against any other attorney, law entity, or pro bono program covered by the PLF under this or any other PLF **Plan**, then regardless of the number of claims, claimants, clients, attorneys, volunteer attorneys, pro bono programs 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 discretionary exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available for any **Claim** based on or arising from the actual or alleged conduct of a **Covered Party** cannot exceed the amount of the remaining limit available under this **Plan** for the applicable **Coverage Period**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on behalf of any **Covered Party** under this **Plan**, or on behalf of any other parties covered under any other PLF **Plans** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any **Related Claim** against any **Covered Party**.

Only one **Claims Expense Allowance** applies regarding **Related Claims** against any and all **Covered Parties** under this **Plan** and against any parties covered under any other PLF Plan. In the sole discretion of the PLF, however, it may grant separate **Claims Expense Allowances** when there are **Related Claims** against other parties covered under other PLF Plans.

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**.

## SECTION IX – 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. Other Duties of Cooperation

As a condition of coverage under this **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**.

## SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

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 – 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 Plan, the PLF will not be liable under this 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 Plan.

## **SECTION XII – 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 XIII — 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**.

## **SECTION XIV — TERMINATION**

This **Plan** will terminate immediately and automatically in the event the **Pro Bono Program** is no longer certified as a Pro Bono Program by the Oregon State Bar.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Budget

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### **Action Recommended**

Approve the 2017 Budget.

### **Background**

On an annual basis, the Board of Governors approves the PLF budget for the coming year. The attached materials contain the proposed budget.

Both the Executive Director of the Bar and the CEO of the PLF recommend a 3.0% salary pool. This salary pool is separate from reclassifications that are in the budget and occurs when individuals take on additional responsibilities and move to a new classification with tenure (e.g. Claims Attorney I to Claims Attorney II). After the budget was prepared and submitted to the PLF Board but before the Board voted, the PLF received the PERS employer contribution amounts for the July 2017 to June 2019 biennium. The increases were 40.59% and 47.47% on tiers 1 & 2, and OPSRP respectively. Additionally, an adjustment to the increase in medical benefits costs of 5% was recommended. These two adjustments increase budgeted expenses by \$35,525. The PLF Board voted to approve the Budget with the expectation that the increases to these expenses would be incorporated into the budget. The attached budget reflects those additions.

The June 30, 2016 actuarial rate study estimates a cost of \$2,730 per lawyer for new 2017 claims, remaining the same from 2016. But, as in the past, this budget includes a factor for adverse claims development. For 2017, we are projecting \$500,000 in adverse claim development, which equals approximately \$72 per attorney. In prior years, this amount has been closer to \$150. The reduction in the number of claims has allowed this number to decline. As in all previous years, an operational shortfall exists for 2017. This year it is \$871 per attorney. This shortfall is covered by the Fund's net position.

### **2017 PLF Budget**

#### **Number of Covered Attorneys**

We have provided the number of covered attorneys by period for both the Primary and Excess Programs. (The figures are found on pages 1 and 8 of the budget document.) These statistics illustrate the changes in the number of lawyers covered by each program and facilitate period-to-period comparisons.

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into "full pay" attorneys. We

project 6,950 “full-pay” attorneys for 2017. The actual number of covered parties in 2017 is expected to be approximately 7200.

The PLF Excess program anticipates continued growth. The number of covered attorneys is expected to increase by 8% to 2298. There is an expected increase to ceding commissions of 15%.

### **Allocation of Costs between the Excess and Primary Programs**

In 1991, the PLF established an optional underwritten plan to provide excess coverage above the existing mandatory plan. There is separate accounting for Excess Program assets, liabilities, revenues and expenses. The Excess Program reimburses the Primary Program for services so that the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. Salary and benefit allocations are based on an annual review of the time PLF staff spends on Excess Program activities. These allocations are reviewed and adjusted each year. The Excess program also pays for some direct costs, including printing and reinsurance related travel.

### **Primary Program Revenue**

Projected assessment revenue for 2017 is based upon the \$3,500 assessment paid by the estimated 6950 full pay attorneys.

Investment returns have been volatile for the PLF in the first 8 months of 2016. The first six months showed losses while the 7<sup>th</sup> and 8<sup>th</sup> month of the fiscal year have seen some recovery in the portfolio. 2017 is equally difficult to project with uncertainty around the impact of the United States election and the disengagement of the UK from the European union. Based on performance of the portfolio overall in 2016, we are conservatively projecting an overall portfolio return of 3.27% in 2017. A .5% change to the projected rate has a value of approximately \$267,815.

### **Primary Program Claims Expense**

By far the largest cost category for the PLF is claim costs for indemnity and defense. Since claims often don't resolve quickly, these costs are paid over several years after the claim is first made. The ongoing calculation of estimated claim costs, along with investment results are the major factors in determining the Primary Program's positive/negative in-year results.

For any given year, financial statement claims expense includes two factors: (1) the cost of new claims and (2) any additional upward (or downward) adjustments to the estimate of claims liabilities reflecting positive or adverse claims development for those pending at the beginning of the year. Factor 1 (new claims) is much larger and much more important than factor 2.

Our projections of claim costs for 2017 are based on a projected claim count for 2017 of 870 claims. At August 31, 2016 the PLF annualized claim count is at 871. The cost of each new claim has been budgeted in accordance with actuarial recommendations of \$22,500. The claims frequency anticipated for 2017 is 12.5%. A 5% difference in the estimated claim count from that budgeted equates to 43.5 claims or \$978,750.

**Full-Time Employee Statistics (Staff Positions)**

We have included “full-time equivalent” or FTE statistics to show PLF staffing levels from year to year. FTE statistics are given for each department on their operating expense schedule. The following table shows positions by department. Each department is indicated net of Excess staff allocations (explained below):

|                                 | <u>2016 Projections</u> | <u>2017 Budget</u> |
|---------------------------------|-------------------------|--------------------|
| Administration                  | 6.8 FTE                 | 6.8 FTE            |
| Claims                          | 19.96 FTE               | 19.46 FTE          |
| Loss Prevention (includes OAAP) | 13.79 FTE               | 13.50 FTE          |
| Accounting                      | 6.93 FTE                | 6.93 FTE           |
| Excess Allocations              | <u>3.75 FTE</u>         | <u>3.75 FTE</u>    |
| <b>Total</b>                    | <b>51.23 FTE</b>        | <b>50.44 FTE</b>   |

**Salary Pool for 2017**

In consultation with the Oregon State Bar, a three percent cost of living increase is recommended for 2017. The budget reflects planned reclassifications. Salary reclassification is done either for those employees who changed status (e.g. Claims Attorney I to Claims Attorney II) or to increase salaries for recently hired employees hired at “probationary salaries”<sup>1</sup> or to address a historical lack of parity between the salaries of employees in positions with equivalent responsibilities.

**Benefit Expense**

The employer cost of PERS and Medical/Dental insurance are the two major cost drivers for PLF benefits.

The employer contribution rates for PERS will remain the same as 2016 for the first six months of 2017. However, a new biennium commences on July 1, 2017. In the absence of any reliable indication from the State around the new biennium numbers, an increase of 20% from the first six months of 2017 rates has been budgeted for the second half of 2017.

Unlike most state and local employers, the PLF does not “pick up” the mandatory 6% employee contribution to PERS. PLF employees have the six percent employee contribution deducted from their biweekly remuneration.

The PLF covers the cost of medical and dental insurance for PLF employees. PLF employees pay about fifty percent of the additional cost of providing medical and dental insurance to dependents.

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<sup>1</sup> This practice has been discontinued in the last year.

### **Capital Budget Items**

The major capital purchases in 2017 will be functional furniture for claims attorneys. The anticipated cost of this furniture is approximately \$57,000. There are smaller amounts allocated to various leasehold updates and the purchase of computer peripherals.

### **Other Primary Operating Expenses with Changes from 2016 +/- 10%**

**Depreciation** will increase from 2016 due to the purchase of new desk tops for PLF staff and the purchase of two network servers.

**Loss Prevention Programs** have increases due to increased FTE, increased staff training, and web distribution of programming.

**Defense Panel Program** happens only bi-annually and there was no conference in 2016. Hence, the increase in 2017.

**Library** charges are decreasing at the discretion of the claims attorney responsible for stocking the library.

**Credit Card Fees** will continue to increase as the use of credit cards to pay primary assessments is expected to increase.

### **Excess Program Budget**

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the excess premium that the PLF retains. The commissions are based upon a percentage of the premium charged, with commissions varying depending on the coverage limits. Most of the excess premium is turned over to reinsurers who cover the costs of excess claims. We currently project ceding commission of \$876,300 for 2017. This represents an anticipated increase from the 2016 level of ceding commissions.

Excess investment earnings are calculated using a formula that allocates investment revenue based on contribution to cash flow from the Excess Program.

Attachments

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET**

Presented to PLF Board of Directors on October 14, 2016

|                                     | <u>2013<br/>ACTUAL</u> | <u>2014<br/>ACTUAL</u> | <u>2015<br/>ACTUAL</u> | <u>2016<br/>BUDGET</u> | <u>2016<br/>PROJECTIONS</u> | <u>2017<br/>BUDGET</u> |
|-------------------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------------|------------------------|
| <b>Revenue</b>                      |                        |                        |                        |                        |                             |                        |
| Assessments                         | \$25,042,533           | \$24,668,300           | \$24,326,360           | \$24,325,000           | \$24,300,000                | \$24,325,000           |
| Installment Service Charge          | 391,097                | 378,008                | 334,667                | 328,000                | 330,000                     | 330,000                |
| Investments and Other               | <u>4,364,988</u>       | <u>2,418,326</u>       | <u>(242,895)</u>       | <u>3,347,495</u>       | <u>3,000,000</u>            | <u>1,862,183</u>       |
| Total Revenue                       | <u>\$29,798,618</u>    | <u>\$27,464,633</u>    | <u>\$24,418,131</u>    | <u>\$28,000,495</u>    | <u>\$27,630,000</u>         | <u>\$26,517,183</u>    |
| <b>Expenses</b>                     |                        |                        |                        |                        |                             |                        |
| Provision for Claims                |                        |                        |                        |                        |                             |                        |
| New Claims                          | \$17,427,049           | \$19,595,940           | \$17,354,000           | \$18,765,000           | \$19,800,000                | \$19,575,000           |
| Pending Claims Development          | <u>\$664,998</u>       | <u>(\$987,534)</u>     | <u>\$307,272</u>       | <u>\$1,051,350</u>     | <u>\$0</u>                  | <u>\$500,000</u>       |
| Total Provision for Claims          | <u>\$18,092,047</u>    | <u>\$18,608,406</u>    | <u>\$17,661,272</u>    | <u>\$19,816,350</u>    | <u>\$19,800,000</u>         | <u>\$20,075,000</u>    |
| Expense from Operations             |                        |                        |                        |                        |                             |                        |
| Administration                      | \$2,266,674            | \$2,348,769            | \$2,570,407            | \$2,707,647            | \$2,576,287                 | \$2,654,538            |
| Accounting                          | 805,336                | 805,336                | 796,768                | 833,795                | 827,910                     | 882,349                |
| Loss Prevention                     | 2,016,547              | 2,016,547              | 2,117,267              | 2,241,396              | 2,207,634                   | 2,216,331              |
| Claims                              | <u>2,488,569</u>       | <u>2,488,569</u>       | <u>2,680,742</u>       | <u>2,724,229</u>       | <u>2,698,266</u>            | <u>2,919,190</u>       |
| Total Operating Expense             | \$7,577,126            | \$7,659,221            | \$8,165,184            | \$8,507,067            | \$8,310,097                 | \$8,672,408            |
| Contingency                         | 0                      | 0                      | 0                      | 127,606                | 0                           | 0                      |
| Depreciation                        | 166,575                | 164,678                | 157,777                | 141,776                | 137,571                     | 160,507                |
| Allocated to Excess Program         | <u>(1,135,160)</u>     | <u>(1,145,155)</u>     | <u>(965,396)</u>       | <u>(1,091,476)</u>     | <u>(1,040,447)</u>          | <u>(1,135,566)</u>     |
| Total Expenses                      | <u>\$24,700,588</u>    | <u>\$25,287,150</u>    | <u>\$25,018,837</u>    | <u>\$27,501,323</u>    | <u>\$27,207,221</u>         | <u>\$27,772,348</u>    |
| <b>Net Income (Loss)</b>            | <u>\$5,098,030</u>     | <u>\$2,177,484</u>     | <u>(\$600,705)</u>     | <u>\$499,172</u>       | <u>\$422,779</u>            | <u>(\$1,255,165)</u>   |
| <b>Number of Full Pay Attorneys</b> | 7,155                  | 7,048                  | 6,950                  | 6,950                  | 6,943                       | 6,950                  |

**CHANGE IN OPERATING EXPENSES:**

Increase from 2016 Budget 1.94%

Increase from 2016 Projections 4.36%

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
CONDENSED STATEMENT OF OPERATING EXPENSE  
Presented to PLF Board of Directors on October 14, 2016**

|                                     | <u>2013<br/>ACTUAL</u> | <u>2014<br/>BUDGET</u> | <u>2015<br/>ACTUAL</u> | <u>2016<br/>BUDGET</u> | <u>2016<br/>PROJECTIONS</u> | <u>2017<br/>BUDGET</u> |
|-------------------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------------|------------------------|
| <b><u>Expenses</u></b>              |                        |                        |                        |                        |                             |                        |
| Salaries                            | \$4,145,086            | \$4,189,074            | \$4,384,740            | \$4,608,094            | \$4,606,695                 | \$4,698,648            |
| Benefits and Payroll Taxes          | 1,457,187              | 1,486,255              | 1,610,449              | 1,590,316              | 1,576,099                   | 1,683,242              |
| Professional Services               | 331,128                | 325,775                | 372,283                | 387,892                | 283,400                     | 292,675                |
| Auto, Travel & Training             | 92,557                 | 109,931                | 114,350                | 166,750                | 117,600                     | 121,100                |
| Office Rent                         | 521,138                | 512,379                | 520,065                | 527,865                | 527,865                     | 535,783                |
| Office Expense                      | 133,569                | 155,121                | 167,049                | 150,000                | 148,000                     | 147,261                |
| Telephone (Administration)          | 48,675                 | 49,326                 | 50,453                 | 51,500                 | 51,500                      | 50,500                 |
| L P Programs                        | 373,908                | 483,532                | 438,699                | 503,906                | 449,113                     | 519,750                |
| OSB Bar Books                       | 200,000                | 200,000                | 200,000                | 200,000                | 200,000                     | 200,000                |
| Defense Panel Program               | 9,970                  | 1,915                  | 94,340                 | 0                      | 0                           | 98,448                 |
| Insurance                           | 71,471                 | 38,344                 | 42,106                 | 41,894                 | 41,894                      | 43,000                 |
| Library                             | 32,659                 | 31,741                 | 32,346                 | 31,500                 | 31,500                      | 27,000                 |
| Memberships & Subscriptions         | 21,458                 | 22,469                 | 24,275                 | 36,500                 | 36,500                      | 36,500                 |
| Bank Charges/Credit Card Fees       | 5,213                  | 56,088                 | 121,331                | 169,800                | 169,800                     | 190,500                |
| Promo, Wellness, Staff Functions    |                        |                        |                        |                        |                             | 28,000                 |
| Total Operating Expenses            | <u>\$7,444,018</u>     | <u>\$7,661,949</u>     | <u>\$8,172,484</u>     | <u>\$8,466,017</u>     | <u>\$8,239,966</u>          | <u>\$8,672,408</u>     |
| Allocated to Excess Program         | <u>(\$1,105,104)</u>   | <u>(\$1,120,789)</u>   | <u>(\$948,416)</u>     | <u>(\$1,073,329)</u>   | <u>(\$1,022,300)</u>        | <u>(\$1,114,708)</u>   |
| <b>Full Time Employees</b>          | 43.83                  | 49.53                  | 49.78                  | 51.23                  | 51.23                       | 51.73                  |
| <b>Number of Full Pay Attorneys</b> | 7,155                  | 7,048                  | 6,950                  | 7,009                  | 6,943                       | 6,950                  |
| <b>Non-personnel Expenses</b>       | \$1,841,746            | \$1,986,620            | \$2,177,296            | \$2,288,656            | \$2,057,172                 | \$2,290,517            |
| Allocated to Excess Program         | <u>(\$278,874)</u>     | <u>(\$270,406)</u>     | <u>(\$222,167)</u>     | <u>(\$290,900)</u>     | <u>(\$290,900)</u>          | <u>(\$294,605)</u>     |
| Total Non-personnel Expenses        | <u>1,562,872</u>       | <u>1,716,214</u>       | <u>1,955,129</u>       | <u>1,997,756</u>       | <u>1,766,272</u>            | <u>1,995,912</u>       |

**CHANGE IN OPERATING EXPENSES:**

Increase from 2016 Budget **2.44%**

Increase from 2016 Projections **5.25%**

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
ADMINISTRATION**

Presented to PLF Board of Directors on October 14, 2016

|                                      | <u>2013</u><br><u>ACTUAL</u> | <u>2014</u><br><u>ACTUAL</u> | <u>2015</u><br><u>ACTUAL</u> | <u>2016</u><br><u>BUDGET</u> | <u>2016</u><br><u>PROJECTIONS</u> | <u>2017</u><br><u>BUDGET</u> |
|--------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|-----------------------------------|------------------------------|
| <b><u>Expenses</u></b>               |                              |                              |                              |                              |                                   |                              |
| Salaries                             | \$641,274                    | \$684,773                    | \$731,111                    | \$756,436                    | \$755,046                         | \$793,860                    |
| Benefits and Payroll Taxes           | 238,566                      | 233,366                      | 259,873                      | 258,460                      | 258,732                           | 280,859                      |
| Staff Travel                         | 21,363                       | 37,354                       | 24,986                       | 46,000                       | 36,100                            | 16,100                       |
| Board of Directors Travel            | 35,514                       | 35,244                       | 54,138                       | 62,000                       | 44,500                            | 41,500                       |
| Training                             | 8,947                        | 13,651                       | 6,347                        | 7,500                        | 7,500                             | 7,500                        |
| Investment Services                  | 28,018                       | 28,095                       | 38,314                       | 40,000                       | 38,500                            | 44,000                       |
| Legal Services                       | 13,738                       | 11,461                       | 31,521                       | 10,000                       | 20,000                            | 10,000                       |
| Actuarial Services                   | 19,731                       | 24,209                       | 46,566                       | 34,300                       | 33,000                            | 30,000                       |
| Information Services                 | 136,221                      | 83,788                       | 42,660                       | 76,000                       | 82,000                            | 71,000                       |
| Electronic Record Scanning           | 47,086                       | 44,859                       | 36,008                       | 65,000                       | 8,000                             | 30,000                       |
| Other Professional Services          | 63,734                       | 110,564                      | 154,415                      | 139,592                      | 79,300                            | 84,675                       |
| OSB Bar Books                        | 200,000                      | 200,000                      | 200,000                      | 200,000                      | 200,000                           | 200,000                      |
| Office Rent                          | 521,138                      | 512,379                      | 520,065                      | 527,865                      | 527,865                           | 535,783                      |
| Equipment Rent & Maint.              | 38,672                       | 45,047                       | 49,075                       | 57,000                       | 57,000                            | 39,261                       |
| Dues and Memberships                 | 21,458                       | 22,469                       | 24,275                       | 36,500                       | 36,500                            | 36,500                       |
| Office Supplies                      | 51,661                       | 70,597                       | 76,145                       | 69,000                       | 69,000                            | 75,000                       |
| Insurance                            | 71,471                       | 38,344                       | 42,106                       | 41,894                       | 41,894                            | 43,000                       |
| Telephone                            | 48,675                       | 49,326                       | 50,453                       | 51,500                       | 51,500                            | 50,500                       |
| Printing                             | 7,629                        | 11,472                       | 10,813                       | 13,500                       | 13,500                            | 4,000                        |
| Postage & Delivery                   | 33,400                       | 27,482                       | 30,781                       | 31,550                       | 31,550                            | 26,500                       |
| NABRICO - Assoc. of Bar Co.s         | 10,959                       | 7,680                        | 13,819                       | 13,750                       | 15,000                            | 15,000                       |
| Bank Charges/Credit Card Fees        | 5,213                        | 56,088                       | 121,331                      | 169,800                      | 169,800                           | 189,000                      |
| Repairs                              | 2,207                        | 523                          | 235                          | 0                            | 0                                 | 2,500                        |
| Promo, Wellness, Staff Functions     | <u>0</u>                     | <u>0</u>                     | <u>5,372</u>                 | <u>0</u>                     | <u>0</u>                          | <u>28,000</u>                |
| Total Operating Expenses             | <u>\$2,266,674</u>           | <u>\$2,348,769</u>           | <u>\$2,570,407</u>           | <u>\$2,707,647</u>           | <u>\$2,576,287</u>                | <u>\$2,654,538</u>           |
| Allocated to Excess Program          | <u>(\$430,857)</u>           | <u>(\$461,595)</u>           | <u>(\$401,955)</u>           | <u>(\$495,421)</u>           | <u>(\$461,672)</u>                | <u>(\$509,451)</u>           |
| <br>                                 |                              |                              |                              |                              |                                   |                              |
| <b>Administration Department FTE</b> | 8.00                         | 8.00                         | 9.00                         | 9.00                         | 9.00                              | 9.00                         |
| <br>                                 |                              |                              |                              |                              |                                   |                              |
| <b>CHANGE IN OPERATING EXPENSES:</b> |                              |                              |                              |                              |                                   |                              |
| Decrease from 2016 budget            |                              | -1.96%                       |                              |                              |                                   |                              |
| Increase from 2016 Projections       |                              | 3.04%                        |                              |                              |                                   |                              |



**PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
LOSS PREVENTION (Includes OAAP)  
Presented to PLF Board of Directors on October 14, 2016**

|   | <u>2013<br/>ACTUAL</u>    | <u>2014<br/>ACTUAL</u>    | <u>2015<br/>ACTUAL</u>    | <u>2016<br/>BUDGET</u>    | <u>2016<br/>PROJECTIONS</u> | <u>2017<br/>BUDGET</u>    |
|---|---------------------------|---------------------------|---------------------------|---------------------------|-----------------------------|---------------------------|
| <b>Expenses</b>   |                           |                           |                           |                           |                             |                           |
| Salaries  | \$1,065,411               | \$1,111,996               | \$1,222,736               | \$1,264,141               | \$1,281,966                 | \$1,221,157               |
| Benefits and Payroll Taxes                                | 390,424                   | 423,748                   | 468,504                   | 461,349                   | 457,474                     | 473,924                   |
| In Brief  | 46,731                    | 66,468                    | 59,384                    | 70,000                    | 70,000                      | 75,000                    |
| PLF Handbooks   | 4,949                     | 45,758                    | 9,086                     | 9,000                     | 9,000                       | 5,100                     |
| Library   | 389                       | 997                       | 316                       | 1,000                     | 1,000                       | 1,200                     |
| Video and Audio Tapes                                     | 44,382                    | 33,193                    | 18,486                    | 30,000                    | 30,000                      | 22,000                    |
| Mail Distribution of Video and Audi                       | 14,607                    | 14,341                    | 10,177                    | 12,000                    | 12,000                      | 6,000                     |
| Web Distribution of Programs                              | 25,215                    | 58,940                    | 30,395                    | 35,000                    | 35,000                      | 60,000                    |
| Program Promotion   | 16,863                    | 16,452                    | 16,418                    | 22,000                    | 22,000                      | 22,500                    |
| Expense of Closing Offices                                | 3,691                     | 7,330                     | 22,781                    | 15,000                    | 15,000                      | 15,000                    |
| Facilities  | 42,828                    | 45,804                    | 46,781                    | 47,000                    | 47,000                      | 48,000                    |
| Speaker Expense   | 4,466                     | (1,362)                   | 8,581                     | 10,000                    | 10,000                      | 8,000                     |
| Accreditation Fees  | 1,205                     | 956                       | 1,371                     | 1,600                     | 1,600                       | 1,600                     |
| Beepers & Confidential Phone                              | 5,110                     | 6,430                     | 7,188                     | 7,000                     | 7,000                       | 7,500                     |
| Expert Assistance   | 0                         | 0                         | 500                       | 5,000                     | 5,000                       | 5,000                     |
| Bad Debts from Loans                                      | 0                         | 2,325                     | 0                         | 0                         | 0                           | 0                         |
| Memberships & Subscriptions                               | 10,517                    | 11,855                    | 12,018                    | 14,200                    | 13,100                      | 16,300                    |
| Travel  | 26,541                    | 30,792                    | 28,210                    | 35,750                    | 22,338                      | 35,350                    |
| Training  | 25,420                    | 29,571                    | 26,737                    | 44,000                    | 23,300                      | 52,900                    |
| Downtown Office   | 100,992                   | 110,893                   | 127,600                   | 141,856                   | 141,856                     | 134,800                   |
| Bank Charges/Credit Card Fees                             |                           |                           |                           | 12,000                    |                             | 1,500                     |
| Miscellaneous   | <u>0</u>                  | <u>60</u>                 | <u>_____</u>              | <u>3,500</u>              | <u>3,000</u>                | <u>3,500</u>              |
| <b>Total Operating Expenses</b>                           | <b><u>\$1,829,743</u></b> | <b><u>\$2,016,547</u></b> | <b><u>\$2,117,267</u></b> | <b><u>\$2,241,396</u></b> | <b><u>\$2,207,634</u></b>   | <b><u>\$2,216,331</u></b> |
| <b>Allocated to Excess Program</b>                        | <b><u>(\$209,540)</u></b> | <b><u>(\$225,930)</u></b> | <b><u>(\$110,811)</u></b> | <b><u>(\$124,960)</u></b> | <b><u>(\$126,900)</u></b>   | <b><u>(\$127,751)</u></b> |
| <b>Loss Prevention Department FTE<br/>(Includes OAAP)</b> | 11.83                     | 13.58                     | 14.08                     | 13.83                     | 13.83                       | 14.83                     |
| <b>CHANGE IN OPERATING EXPENSES:</b>                      |                           |                           |                           |                           |                             |                           |
| <b>Increase from 2016 Budget</b>                          |                           | <b>-1.12%</b>             |                           |                           |                             |                           |
| <b>Increase from 2016 Projections</b>                     |                           | <b>0.39%</b>              |                           |                           |                             |                           |

OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
CLAIMS DEPARTMENT

Presented to PLF Board of Directors on October 14, 2016

|                                      | <u>2013</u><br><u>ACTUAL</u> | <u>2014</u><br><u>ACTUAL</u> | <u>2015</u><br><u>ACTUAL</u> | <u>2016</u><br><u>BUDGET</u> | <u>2016</u><br><u>PROJECTIONS</u> | <u>2017</u><br><u>BUDGET</u> |
|--------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|-----------------------------------|------------------------------|
| <b><u>Expenses</u></b>               |                              |                              |                              |                              |                                   |                              |
| Salaries                             | \$1,853,764                  | \$1,815,952                  | \$1,872,069                  | \$1,980,789                  | \$1,962,964                       | \$2,044,777                  |
| Benefits and Payroll Taxes           | 628,388                      | 628,756                      | 668,475                      | 671,939                      | 666,802                           | 711,964                      |
| Training                             | 8,577                        | 4,620                        | 5,195                        | 31,000                       | 29,000                            | 28,000                       |
| Travel                               | 4,966                        | 5,584                        | 8,317                        | 9,000                        | 8,000                             | 9,000                        |
| Library & Information Systems        | 32,659                       | 31,741                       | 32,346                       | 31,500                       | 31,500                            | 27,000                       |
| Defense Panel Program                | <u>9,970</u>                 | <u>1,915</u>                 | <u>94,340</u>                | <u>0</u>                     | <u>0</u>                          | <u>98,448</u>                |
| <br>                                 |                              |                              |                              |                              |                                   |                              |
| Total Operating Expenses             | <u>\$2,538,325</u>           | <u>\$2,488,569</u>           | <u>\$2,680,742</u>           | <u>\$2,724,228</u>           | <u>\$2,698,266</u>                | <u>\$2,919,190</u>           |
| <br>                                 |                              |                              |                              |                              |                                   |                              |
| Allocated to Excess Program          | <u>(\$353,033)</u>           | <u>(\$343,000)</u>           | <u>(\$325,921)</u>           | <u>(\$337,169)</u>           | <u>(\$323,080)</u>                | <u>(\$353,265)</u>           |
| <br>                                 |                              |                              |                              |                              |                                   |                              |
| Claims Department FTE                | 18.10                        | 20.33                        | 20.50                        | 20.50                        | 20.40                             | 20.00                        |
| <br>                                 |                              |                              |                              |                              |                                   |                              |
| <b>CHANGE IN OPERATING EXPENSES:</b> |                              |                              |                              |                              |                                   |                              |
| Decrease from 2016 Budget            |                              | 7.16%                        |                              |                              |                                   |                              |
| Increase from 2016 Projections       |                              | 8.19%                        |                              |                              |                                   |                              |

OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2017 PRIMARY PROGRAM BUDGET  
CAPITAL BUDGET

Presented to PLF Board of Directors on October 14, 2016

|                                | <u>2013</u><br><u>ACTUAL</u> | <u>2014</u><br><u>ACTUAL</u> | <u>2015</u><br><u>ACTUAL</u> | <u>2016</u><br><u>BUDGET</u> | <u>2016</u><br><u>PROJECTIONS</u> | <u>2017</u><br><u>BUDGET</u> |
|--------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|-----------------------------------|------------------------------|
| <b><u>Capital Items</u></b>    |                              |                              |                              |                              |                                   |                              |
| Furniture and Equipment        | \$0                          | \$0                          | \$49,887                     | \$7,000                      | \$7,000                           | \$57,000                     |
| Telephone                      | 0                            | 0                            | 0                            |                              | 0                                 | 0                            |
| Copiers / Scanners             | 0                            | 0                            | 0                            | 5,000                        | 5,000                             | 0                            |
| Audiovisual Equipment          | 0                            | 0                            | 0                            | 0                            | 0                                 | 0                            |
| Data Processing                |                              |                              |                              |                              |                                   |                              |
| Hardware                       | 0                            | 0                            | 0                            | 25,000                       | 25,000                            | 20,000                       |
| Software                       | 0                            | 0                            | 0                            | 6,000                        | 6,000                             | 10,000                       |
| PCs, Ipads and Printers        | 0                            | 0                            | 12,810                       | 127,450                      | 127,450                           | 6,500                        |
| Leasehold Improvements         | <u>0</u>                     | <u>0</u>                     | <u>(42,560)</u>              | <u>10,000</u>                | <u>5,000</u>                      | <u>10,000</u>                |
| Total Capital Budget           | <u>\$0</u>                   | <u>\$0</u>                   | <u>\$20,137</u>              | <u>\$180,450</u>             | <u>\$175,450</u>                  | <u>\$103,500</u>             |
| <br>                           |                              |                              |                              |                              |                                   |                              |
| Decrease from 2016 Budget      |                              | -42.64%                      |                              |                              |                                   |                              |
| Decrease from 2016 Projections |                              | -41.01%                      |                              |                              |                                   |                              |

**OREGON STATE BAR  
PROFESSIONAL LIABILITY FUND  
2015 EXCESS PROGRAM BUDGET  
Presented to PLF Board of Directors on October 14, 2016**

|                                      | <u>2013</u><br><u>ACTUAL</u> | <u>2014</u><br><u>ACTUAL</u> | <u>2015</u><br><u>ACTUAL</u> | <u>2016</u><br><u>BUDGET</u> | <u>2016</u><br><u>PROJECTIONS</u> | <u>2017</u><br><u>BUDGET</u> |
|--------------------------------------|------------------------------|------------------------------|------------------------------|------------------------------|-----------------------------------|------------------------------|
| <b>Revenue</b>                       |                              |                              |                              |                              |                                   |                              |
| Ceding Commission                    | 747,993                      | 797,386                      | 762,929                      | 762,000                      | 762,000                           | 876,300                      |
| Profit Commission                    | 32,069                       | 22,021                       | 4,265                        | 0                            | 0                                 | 0                            |
| Installment Service Charge           | 41,433                       | 39,808                       | 40,447                       | 42,000                       | 45,000                            | 45,000                       |
| Other                                | 7,913                        | 21,393                       | 884                          | 6,900                        | 6,900                             | 6,900                        |
| Investment Earnings                  | <u>330,352</u>               | <u>218,440</u>               | <u>(23,272)</u>              | <u>170,879</u>               | <u>215,467</u>                    | <u>131,809</u>               |
| Total Revenue                        | <u>\$1,159,760</u>           | <u>\$1,099,049</u>           | <u>\$785,252</u>             | <u>\$981,779</u>             | <u>\$1,029,367</u>                | <u>\$1,060,009</u>           |
| <b>Expenses</b>                      |                              |                              |                              |                              |                                   |                              |
| Allocated Salaries                   | \$599,356                    | \$621,781                    | \$534,709                    | \$589,927                    | \$590,000                         | \$610,599                    |
| Direct Salaries                      | 73,078                       | 76,929                       | 0                            | 0                            | 0                                 | 0                            |
| Allocated Benefits                   | 226,874                      | 228,602                      | 191,540                      | 192,502                      | 193,000                           | 209,504                      |
| Direct Benefits                      | 24,120                       | 30,051                       | 0                            | 0                            | 0                                 | 0                            |
| Program Promotion                    | 3,922                        | 8,625                        | 23,169                       | 25,000                       | 7,500                             | 15,000                       |
| Investment Services                  | 1,982                        | 1,905                        | 1,686                        | 2,850                        | 2,500                             | 2,500                        |
| Allocation of Primary Overhead       | 278,874                      | 270,406                      | 222,167                      | 290,900                      | 285,000                           | 294,605                      |
| Reinsurance Placement Travel         | 369                          | 18,120                       | 12,770                       | 20,000                       | 20,000                            | 20,000                       |
| Training                             | 0                            | 0                            | 0                            | 500                          | 500                               | 1,000                        |
| Printing and Mailing                 | 4,035                        | 1,947                        | 6,120                        | 10,500                       | 7,500                             | 10,500                       |
| Other Professional Services          | 0                            | 16                           | 299                          | 2,000                        | 18,000                            | 17,000                       |
| Software Development                 | <u>0</u>                     | <u>0</u>                     | <u>18,641</u>                | <u>20,000</u>                | <u>38,250</u>                     | <u>40,000</u>                |
| Total Expense                        | <u>\$1,212,611</u>           | <u>\$1,258,383</u>           | <u>\$1,011,101</u>           | <u>\$1,154,179</u>           | <u>\$1,162,250</u>                | <u>\$1,220,708</u>           |
| <b>Allocated Depreciation</b>        | <u>\$30,056</u>              | <u>\$24,366</u>              | <u>\$16,980</u>              | <u>\$17,200</u>              | <u>\$16,980</u>                   | <u>\$18,000</u>              |
| <b>Net Income</b>                    | <u>(\$82,907)</u>            | <u>(\$183,700)</u>           | <u>(\$242,829)</u>           | <u>(\$189,600)</u>           | <u>(\$149,863)</u>                | <u>(\$178,699)</u>           |
| <b>Allocated Employee FTE</b>        | 3.74                         | 3.44                         | 3.48                         | 3.48                         | 3.75                              | 3.75                         |
| <b>Number of Covered Attorneys</b>   | 2,193                        | 2,395                        | 2,025                        | 2,125                        | 2,128                             | 2,298                        |
| <b>CHANGE IN OPERATING EXPENSES:</b> |                              |                              |                              |                              |                                   |                              |
| Increase from 2016 Budget            |                              | 5.76%                        |                              |                              |                                   |                              |
| Increase from 2016 Projections       |                              | 5.03%                        |                              |                              |                                   |                              |

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** Proposed Policy Revisions – Policies 7.300, 7.600 and 4.350

---

### Action Recommended

We are seeking three changes to the PLF Policies and Procedures. The first two relate to the Excess program and the third change relates to how we do reserves.

### Background

#### Excess Plan

1. Amendment to PLF Policy 7.300(E).

In 2015, the Board and the BOG approved changes to the PLF policies that flowed from a complete overhaul of the way we price excess. Before the 2016 plan year, the PLF priced excess essentially the same as primary with a single price (a limited number of lawyers with past claims that met a certain threshold and/or who practiced in high risk areas were charged a higher premium). Historically the BOD and then the BOG approved those rates. The change in our pricing eliminated standard rates. We now have a rate sheet that includes a base rate, but which applies numerous debits and credits based on a wide range of factors (generally outlined in PLF Policies 7.250 and 7.600).

In 2015, we amended PLF Policy 7.300(E) to read:

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

We are seeking to amend the policy to eliminate approval of the base rate. The new Policy 7.300(E) would read:

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

There are two reasons for requesting this change. First, the base rate is not particularly informative of what any given lawyer will pay. For the 2016 Plan Year the base rate was \$1150. By way of example, solo practitioners seeking an additional

\$700,000 in coverage paid anywhere from \$1200 - \$1700 for that coverage, depending on their risk profile.

The second reason for the change is because the base rate becomes part of the negotiations and the contract with our reinsurers. We need to have flexibility to work with them (through our broker, Aon) to adjust the base rate to meet the overall premium goals we have. Those negotiations occur between mid-September and October 1. If the BOD and BOG approve the base rate in August and early September (respectively), the subsequent negotiations with reinsurers may require an adjustment to that rate. Once we sign the contract with the reinsurers, if the BOD and/or BOG doesn't approve the base rate, we are arguably in breach of contract.

2. Amendment to PLF Policy 7.600(M)(1)

This request follows the preceding request. Policy 7.600(M)(1) currently reads:

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

~~(+) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms seeking coverage above the \$4.7 million standard excess coverage will be subject to the standard underwriting formulate and rate sheet and also subject to reinsurer approval and rating adjustment. will be charged for higher limits excess coverage at rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors. These rates are subject to reinsurer adjustment for firms meeting certain underwriting criteria.~~

(1) We are seeking to amend the policy to read as follows:

~~(+) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms seeking coverage above the \$4.7 million standard excess coverage will be subject to the standard underwriting formula and rate sheet and also subject to reinsurer approval and rating adjustment." will be charged for higher limits excess coverage at rates proposed by the PLF Board of Directors and approved by the OSB Board of Governors. These rates are subject to reinsurer adjustment for firms meeting certain underwriting criteria.~~

3. Amendment to PLF Policy 4.350(C)

We have discovered that the policy with respect to reserving for defense expenses is not consistent with our claims handling manual or actual practices (and in fact has not been the policy of the PLF for a significant amount of time). It therefore needs to be revised to comport with our actual practice.

PLF Policy 4.350(C) currently reads:

Expense reserves will be adjusted as payment of defense costs and attorneys fees are received and paid so as to keep the reserve a positive or zero balance. The carrying of excessive expense reserves is to be avoided.

This policy is a holdover from when the PLF was not fully funded. We are well past that now. We recommend deleting this policy as the other provisions of the policy describing the reserving policy and procedures applies equally to indemnity and loss. The new PLF Policy 4.350 would read as follows:

(A) It is the policy of the Professional Liability Fund to establish both loss and expense reserves as quickly and accurately as possible as part of the claim file set-up procedure. Consideration is to be given to the following factors in light of what is known at any given time:

- (1) The degree of potential liability of the Covered Party for negligent acts or omissions.
- (2) The nature and extent of the claimant's damages.
- (3) Coverage questions.
- (4) Defenses available to the Covered Party on the malpractice issue.
- (5) The nature of the underlying case.
- (6) Defenses available in the underlying case.
- (7) Jurisdiction in which the claim is or would be filed.
- (8) Mitigation efforts by claimant in the underlying case.
- (9) Opinion of defense counsel.
- (10) Character and reputation of the Covered Party and the claimant.
- (11) General assessment of the overall situation, both as to the underlying and malpractice cases.
- (12) Reports and assessments of liability received from outside experts.
- (13) Such other factors as may be deemed relevant to the claim.

(B) It is the PLF's policy that all loss and expense reserves will be reviewed by the Professional Liability Fund staff attorney assigned to the case at least every 90 days, and more often if new information is received which bears on file evaluation.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016

**Memo Date:** October 20, 2016

**From:** Carol J. Bernick, PLF CEO

**Re:** 2017 Excess Base Rate

---



### **Action Recommended**

The PLF Board of Directors (BOD) requests that the Board of Governors approve a base rate of \$1,322 for 2017 excess coverage.

### **Background**

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

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

As I have been reporting in my updates to the BOG, the PLF completely changed its excess pricing system for 2016. We have discontinued the two-rate model in favor of a fully underwritten approach that begins with a base rate. At the October 14, 2016 PLF Board meeting, the Board approved a base rate of \$1322. This rate was developed after extensive modeling provided by our broker in London, Aon, working closely with our largest reinsurer. The rates for our Excess Program will increase in 2017, generally between 15-20%. We have nearly \$9 million in loss development in the previous two years. Oregon's strict liability securities law has generated about 80% of that loss.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2016  
**Memo Date:** October 20, 2016   
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Investment Portfolio Reallocation – PLF Policy 5.200(I)

---

### **Action Recommended**

The PLF Board of Directors recommends that the Board of Governors approve the following:

Reallocation of investment portfolio assets as follows:  
-10% from Diversified Inflation Strategies  
+4% US Equity  
+2% International Equity  
+4% Core Fixed Income.

### **Background**

The need to protect the PLF's investment portfolio from deleterious inflationary effects is no longer required in this economic climate of relatively low inflation levels. Hence, in consultation with our outside investment advisors (RVK, Inc.), the Board recommends diversifying out of inflation protected assets and into existing, relatively well performing components of the portfolio.

Attachment: PLF Policy 5.200(I) - Tracked

allocation to deem that it is appropriate for the PLF investment objectives. Within each asset class, the Board of Directors shall adopt portfolio implementation strategies and investment styles to meet the overall investment objective of each asset class.

The following is intended to represent the current target mix of asset classes for long term investments:

| ASSET CLASS            | MINIMUM PERCENT      | TARGET PERCENT       | MAXIMUM PERCENT      |
|------------------------|----------------------|----------------------|----------------------|
| U.S. Equities          | <del>13.0%</del> 17% | <del>20.0%</del> 24% | <del>27.0%</del> 31% |
| International Equities | <del>10.0%</del> 12% | <del>19.0%</del> 21% | <del>28.0%</del> 30% |
| Fixed Income           | <del>16.0%</del> 20% | <del>22.0%</del> 26% | <del>28.0%</del> 32% |
| Real Estate            | 5.0%                 | 10.0%                | 15.0%                |
| Absolute Return        | 9.0%                 | 14.0%                | 19.0%                |
| Real Return Strategy   | <del>10.0%</del> 5%  | <del>15.0%</del> 5%  | <del>20.0%</del> 5%  |

(BOD 12/12/03; BOG 01/31/04; BOD 5/14/04; BOG 6/11/04; BOD 6/23/06; BOG 7/7/06; BOD 10/8/10; BOG 11/12/10)

(J) **Rebalancing:** The Chief Executive Officer and Chief Financial Officer, on an ongoing basis and in accordance with market fluctuations, shall rebalance the investment portfolio so it remains within the range of minimum and maximum allocations.

(BOD 5/17/91; BOG 10/1/91; BOD 8/14/92; BOG 9/22/92; BOD 12/3/93; 12/17/93; 2/18/94; BOG 3/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/15/97; BOG 9/25/97; BOD 2/12/99; BOG 4/3/99; BOD 1/28/00; BOG 6/3/00; BOD 8/9/01; BOG 11/17/01; BOD 4/19/02; BOG 8/3/02)

**5.250 AUDITING AND ACCOUNTING ASSISTANCE**

The Board of Directors hires the independent financial auditor subject to the requirements of the Oregon Secretary of State. Any audit report will be made directly to the Board of Directors. The Board of Directors may retain additional outside accounting advice whenever it deems necessary.

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

**5.300 CLAIMS RESERVES**

The estimated liability for claims is the major item in the Liabilities and Equity portion of the Professional Liability Fund’s Balance Sheet. The accuracy of this item is crucial when presenting the financial condition of the PLF. The Chief Executive Officer will periodically review the

case-by-case indemnity and expense reserves required under section 4.350 and will adjust these figures to present at all times as accurate a picture as possible of the total claims liabilities incurred by the PLF. The Chief Executive Officer will use consulting actuaries when appropriate. The method of calculating estimated liabilities will be reported in detail to the Board on at least an annual basis.

(BOD 7/16/93, BOG 8/13/93)

**5.350 BUDGET**

A budget for the Primary and Excess Programs will be as approved by the Board of Directors and the Board of Governors. The budget will reflect the PLF’s mission and goals as stated at Policy 1.250. The Excess Program will be allocated a portion of all common costs based upon the benefits received from PLF departments and programs. The budget will be prepared and submitted for approval of the Board of Governors in the same manner as budgets of other functions of the bar. The Primary Program budget will be presented to the Board of Governors in conjunction with the recommended Primary Program assessment for the coming year.

(BOD 10/2/91; BOG 12/13/91; BOD 10/25/02; BOG 11/16/02; BOD 5/14/04; BOG 6/11/04)

**Rules of Procedure**

*(As approved by the Supreme Court by order dated February 9, 1984 and as amended by Supreme Court orders dated April 18, 1984, May 31, 1984, July 16, 1984, July 27, 1984, November 1, 1984, June 25, 1985, July 8, 1985, July 22, 1985, November 29, 1985, January 2, 1986, January 24, 1986, March 20, 1986, September 10, 1986, June 30, 1987, September 24, 1987, October 1, 1987, November 10, 1987, November 24, 1987, December 10, 1987, January 5, 1988, February 22, 1988, February 23, 1988, July 8, 1988, March 13, 1989, March 31, 1989, June 1, 1989, March 20, 1990, October 1, 1990, January 10, 1991, April 4, 1991, July 22, 1991, August 2, 1991, January 17, 1992, December 22, 1992, June 29, 1993, December 13, 1993, December 28, 1993, October 10, 1994, May 15, 1995, November 6, 1995, December 14, 1995, September 30, 1996, June 5, 1997; August 19, 1997, effective October 4, 1997; October 3, 1997; July 10, 1998; November 30, 1999; February 5, 2001; June 28, 2001; September 6, 2001; June 17, 2003, effective July 1, 2003; July 9, 2003, effective August 1, 2003; June 17, 2003, effective, January 1, 2004; December 8, 2003, effective January 1, 2004; December 9, 2004, effective January 1, 2005; January 21, 2005; April 26, 2007; August 29, 2007; January 17, 2008; March 20, 2008; October 19, 2009; January 1, 2011; December 10, 2010, effective June 1, 2011; July 21, 2011; June 6, 2012; April 5, 2013; August 13, 2013, effective November 1, 2013); August 10, 2015.*

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## Title 1 — General Provisions

### **Rule 1.1 Definitions.**

In these rules, unless the context or subject matter requires otherwise:

*(a) “Accused” means an attorney charged with misconduct by the Bar in a formal complaint.*

*(a) “Adjudicator” means the Disciplinary Board statewide adjudicator, one or more of whom is appointed by the Supreme Court to chair all trial panels and any attorney appointed to serve in the Adjudicator’s role in a particular proceeding pursuant to BR 2.4(f)(2).*

*(b) “Applicant” means an applicant for reinstatement to the practice of law in Oregon.*

*(c) “Attorney” means a person who has been admitted to the practice of law in Oregon.*

*(d) “Bar” means Oregon State Bar created by the Bar Act.*

*(e) “Bar Act” means ORS Chapter 9.*

*(f) “Bar Counsel” means counsel appointed by the SPRB or the Board to represent the Bar.*

*(g) “BBX” means Board of Bar Examiners appointed by the Supreme Court.*

*(h) “Board” means Board of Governors of the Bar.*

*(i) “Client Assistance Office” means a department of the Bar that reviews and responds to inquiries from the public about the conduct of attorneys.*

*(j) “Complainant” means the person who inquires about the conduct of an attorney through the Client Assistance Office.*

*(k) [(i)] “Contested Admission” means a proceeding in which the BBX is objecting to the admission of an applicant to the practice of law after a character review proceeding.*

(l) [(j)] “Contested Reinstatement” means a proceeding in which the Bar is objecting to the reinstatement of an attorney or a former attorney to the practice of law.

(m) [(k)] “Disciplinary Board” means the board appointed by the Supreme Court to hear and decide disciplinary and contested reinstatement proceedings pursuant to these rules.

(n) [(l)] “Disciplinary Board Clerk” means the person or persons designated in General Counsel’s Office of the Bar to receive and maintain records of disciplinary and reinstatement proceedings on behalf of the Disciplinary Board.

(o) [(m)] “Disciplinary Counsel” means disciplinary counsel retained or employed by, and in the office of, the Bar and shall include such assistants as are from time to time employed by the Bar to assist disciplinary counsel.

(p) [(n)] “Disciplinary p[P]roceeding” means a proceeding in which the Bar is charging an attorney with misconduct in a formal complaint.

(q) [(o)] “Examiner” means a member of the BBX.

(r) [(p)] “Executive Director” means the chief administrative employee of the Bar.

(s) [(q)] “Formal c[C]omplaint” means the document that initiates a formal lawyer discipline proceeding alleging misconduct and violations of disciplinary rules or statutory provisions [instrument used to charge an attorney with misconduct].

(t) “General Counsel” means the General Counsel of the Bar.

(u) “Grievance” means an instance of alleged misconduct by an attorney that may be investigated by Disciplinary Counsel.

(v) “Inquiry” means a communication received by the Client Assistance Office pertaining to an attorney that may or may not allege professional misconduct.

*[(r) “LPRC” means a local professional responsibility committee appointed by the Board.]*

(w) [(s)] “Misconduct” means any conduct which may or does subject an attorney to discipline under the Bar Act or the rules of professional conduct adopted by the Supreme Court.

(x) “Respondent” means an attorney who is charged with misconduct by the Bar in a formal complaint or who is the subject of proceedings initiated pursuant to BR 3.1, BR 3.2, BR 3.3, BR 3.4, or BR 3.5.

(y) [(t)] “State Court Administrator” means the person who holds the office created pursuant to ORS 8.110.

(z) [(u)] “Supreme Court” and “court” mean the Oregon Supreme Court [of Oregon].

(aa) [(v)] “SPRB” means State Professional Responsibility Board *[created]*appointed by the *[Board]*Supreme Court.

(bb) [(w)] “Trial Panel” means a three-member panel of the Disciplinary Board.

(cc) “Unauthorized Practice of Law Committee” means the committee appointed by the Supreme Court to carry out the committee’s functions on behalf of the Bar pursuant to ORS 9.164.

*(Rule 1.1 amended by Order dated November 10, 1987.)*

*(Rule 1.1(c) amended by Order dated February 23, 1988.)*

*(Rule 1.1(i) and (k) amended by Order dated July 22, 1991.)*

*(Rule 1.1(l) through (w) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.1(b) and (i) amended by Order dated October 19, 2009.)*

**Rule 1.2 Authority.**

These “Rules of Procedure” are adopted by the Board and approved by the Supreme Court pursuant to ORS 9.005(8) and ORS 9.542, and govern exclusively the proceedings contemplated in these rules except to the extent that specific reference is made herein to other rules or statutes. These rules may be amended or repealed and new rules may be adopted by the Board at any regular meeting or at any special meeting called for that purpose. No amendment, repeal or new rule shall become effective until approved by the Supreme Court.

*(Rule 1.2 amended by Order dated June 5, 1997, effective July 1, 1997.)*

**Rule 1.3 Nature Of Proceedings.**

Disciplinary and contested reinstatement proceedings are neither civil nor criminal in nature but are sui generis, and are designed as the means to determine whether an attorney should be disciplined for misconduct, or whether an applicant’s conduct should preclude the applicant from being reinstated to membership in the Bar.

*(Rule 1.3 amended by Order dated October 19, 2009.)*

**Rule 1.4 Jurisdiction; Choice of Law.**

(a) Jurisdiction. An attorney admitted to the practice of law in Oregon, and any attorney specially admitted by a court or agency in Oregon for a particular case, is subject to the Bar Act and these rules, regardless of where the attorney’s conduct occurs. The Supreme Court’s jurisdiction over matters involving the practice of law by an attorney shall continue whether or not the attorney retains the authority to practice law in Oregon, and regardless of the residence of the attorney. An attorney may be subject to the disciplinary authority of both Oregon and another jurisdiction in which the attorney is admitted for the same conduct.

(b) Choice of Law. In any exercise of the disciplinary authority of Oregon, the rules of professional conduct to be applied shall be as follows:

(1) For conduct in connection with a proceeding in a court before which an attorney has been admitted to practice, either generally or for purposes of that proceeding, the rules to be applied shall be the rules of the jurisdiction in which the court sits, unless the rules of the court provide otherwise; and

(2) For any other conduct,

(A) If the attorney is licensed to practice only in Oregon, the rules to be applied shall be the Oregon Code of Professional Responsibility and the Bar Act; and

(B) If the attorney is licensed to practice in Oregon and another jurisdiction, the rules to be applied shall be the rules of the jurisdiction in which the attorney principally practices; provided, however, that if particular conduct clearly has its predominant effect in another jurisdiction in which the attorney is licensed to practice, the rules of that jurisdiction shall be applied to that conduct.

(c) Application. The provisions of BR 1.4 [shall] appl[y]ies to conduct occurring on or before December 31, 2004. Conduct occurring on or after January 1, 2005, is[shall be] governed by Rule of Professional Conduct 8.5.

*(Rule 1.4 amended by Order dated September 30, 1996.)*

*(New Rule 1.4(c) added by Order dated April 26, 2007.)*

**Rule 1.5 Effective Date.**

(a) These rules [shall] apply to all disciplinary and contested reinstatement proceedings initiated by the service of a formal complaint or statement of objections on a[n accused] respondent or an applicant on or after January 1, 1984.

(b) The provisions of BR 1.5(a) [shall] apply except to the extent that in the opinion of the Supreme C[c]ourt their application in a particular matter or proceeding would not be feasible or would work an injustice. U[f]in that [which] event, the former or current rule most consistent with the fair and expeditious resolution of the matter or proceeding under consideration shall be applied.

*(Rule 1.5(a) amended by Order dated July 22, 1991.)*

*(Rule 1.5(a) amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 1.6 Citation Of Rules.**

These Rules of Procedure may be referred to as Bar Rules and cited, for example, as BR 1.1(a).

**Rule 1.7 Bar Records.**

(a) Property of Bar. The records of the Bar and of its officers, governors, employees and committees, in contested admission, disciplinary and reinstatement proceedings are the property of the Bar.

(b) Public Records Status. Except as exempt or protected by law from disclosure, the records of the Bar relating to contested admission, disciplinary, and reinstatement proceedings are available for public inspection.

**Rule 1.8 Service Methods.**

(a) Except as provided in Rule 4.2 and Rule 8.9, any pleading or document required under these rules to be served on a[n accused] respondent, applicant, or attorney shall be

(1) sent to the [accused] respondent, applicant, or attorney, or his or her attorney if the [accused] respondent, applicant, or attorney is represented, by first class mail addressed to the intended recipient at the recipient's last designated business or residence address on file with the Bar, or

(2) served on the [accused] respondent, applicant, or attorney by personal or office service as provided in ORCP 7D(2)(a)-(c).

(b) Any pleading or document required under these rules to be served on the Bar shall be sent by first class mail addressed to Disciplinary Counsel at the Bar's business address or served by personal or office service as provided in ORCP 7D(2)(a)-(c).

(c) A copy of any pleading or document served on Bar Disciplinary Counsel shall also be provided to Bar Counsel, if one has been appointed, by first class mail addressed to his or her last designated business address on file with the Bar or by personal or office service as provided in ORCP 7D(2)(a)-(c).

(d) Service by mail shall be complete on deposit in the mail except as provided in BR 1.12.

(e) The parties may by mutual agreement serve any document other than the formal complaint and answer by email delivery to the email address identified in the Bar's membership records for the respondent, or his or her attorney if the respondent is represented.

*(Rule 1.8 amended by Order dated June 30, 1987.)*

*(Rule 1.8(a) amended by Order dated February 23, 1988.)*

*(Rule 1.8(a), (b) and (c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.8(d) amended by Order dated April 26, 2007.)*

*(Rule 1.8(a) amended by Order dated August 12, 2013, effective November 1, 2013.)*

**Rule 1.9 Time.**

In computing any period of time prescribed or allowed by these rules, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday or a legal holiday, in which event the period runs until the end of the next day that*[which]* is not a Saturday or legal holiday. As used in this rule, "legal holiday" means legal holiday as defined in ORS 187.010 and ORS 187.020.

**Rule 1.10 Filing.**

(a) Any pleading or document to be filed with the Disciplinary Board Clerk shall be delivered in person to the Disciplinary Board Clerk, Oregon State Bar, 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail to the Disciplinary Board Clerk, Oregon State Bar, P. O. Box 231935, Tigard, Oregon 97281-1935. Any pleading or document to be filed with the Supreme Court shall be delivered to the State Court Administrator, Appellate Courts Records Section, 1163 State Street, Salem, Oregon 97301-2563, consistently with the requirements of the Oregon Rules of Appellate Procedure, including Chapter 16 (filing and service by electronic means). Any pleading or document to be filed with the *[State Chair of the Disciplinary Board]*Adjudicator, a regional chair or a trial panel chair shall be delivered to the intended recipient at his or her last designated business or residence address on file with the Bar.

(b) Filing by mail is*[shall be]* complete on deposit in the mail in the following circumstances: All pleadings or documents, including requests for review, required to be filed within a prescribed time, if mailed on or before the due date by first class mail through the United States Postal Service.

(c) If filing is not done as provided in subsection (b) of this rule, the filing is*[shall]* not *[be]* timely unless the pleading or document is actually received by the intended recipient within the time fixed for filing.

(d) A copy of any pleading or document filed under these Rules must also be served by the party or attorney delivering it on other parties to the case. All service copies must include a certificate showing the date of filing. "Parties" for the purposes of this rule shall be the *[accused]*respondent or applicant, or his or her attorney if the *[accused]*respondent or applicant is represented; ;*[,]* Disciplinary Counsel; ;*[,]* and Bar Counsel, if any.

(e) Proof of service shall appear on or be affixed to any pleading or document filed. Such proof shall be either an acknowledg*[e]*ment of service by the person served or be in the form of a statement of the date of personal delivery or deposit in the mail and the names and addresses of the persons served, certified by the person who has made service.

*[(f) Any pleading or document to be filed with the Supreme Court pursuant to these rules of procedure may be filed electronically, rather than conventionally by paper, provided the filing complies with ORAP 16.]*

*(Rule 1.10 amended by Order dated June 30, 1987.)*

*(Rule 1.10(d) amended by Order dated February 23, 1988.)*

*(Rule 1.10(d) amended by Order dated February 5, 2001.)*

*(Rule 1.10(a), (b),(d) and (e) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 1.10(a) amended by Order dated April 26, 2007.)*

*(Rule 1.10(a) amended by Order dated March 20, 2008.)*

*(Rule 1.10(f) added by Order dated October 19, 2009.)*

**Rule 1.11 Designation of Contact Information.**

(a) All attorneys must designate, on a form approved by the *[Oregon State]* Bar, a current business address and telephone number, or in the absence thereof, a current residence address and telephone number. A post office address designation must be accompanied by a street address.

(b) All attorneys must also designate an e-mail address for receipt of bar notices and correspondence except (i) attorneys whose status is [are over the age of 65 and fully] retired [from the practice of law] and (ii) attorneys for whom reasonable accommodation is required by applicable law. [For purposes of this rule an attorney is "fully retired from the practice of law" if the attorney does not engage at any time in any activity that constitutes the practice of law including, without limitation, activities described in OSB bylaws 6.100 and 20.2.]

(c) An attorney seeking an exemption from the e-mail address requirement [for the reasons stated] in paragraph (b)(ii) must submit a written request to the Executive Director, whose decision on the request will be final.

(d) It is the duty of all attorneys promptly to notify the [Oregon State] Bar in writing of any change in his or her contact information. A new designation is [shall] not [become] effective until actually received by the [Oregon State] Bar.

*(Rule 1.11 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)*

*(Rule 1.11(a) and (b) amended by Order dated August 23, 2010, effective January 1, 2011.)*

*(Rule 1.11(a) amended, (b) and (c) added and former (b) now (d) redesignated by Order dated July 21, 2011.)*

**Rule 1.12 Service Of Bar Pleadings Or Documents on Out-of-State Attorney.**

(a) If an attorney, pursuant to BR 1.11, has designated an address that[which] is not located within the State of Oregon, a formal complaint filed under BR 4.1 or a statement of objections filed under BR 8.9 may be:

(1) personally served upon the attorney; or

(2) served on the attorney by certified mail, return receipt requested, to the attorney's last designated address on file with the Bar, in which case service shall be complete on the date on which the attorney signs a receipt for the mailing.

(b) If service under either BR 1.12(a)(1) or BR 1.12(a)(2) is attempted but cannot be completed, a formal complaint or a statement of objections may be served on the attorney by first class mail to the attorney's last designated address on file with the Bar, in which case service shall be complete seven days after such mailing. Proof of such service by mail shall be by certificate showing the date of deposit in the mail.

(c) Service of all other pleadings or documents on an attorney who has designated an address that[which] is not located within the State of Oregon shall comply with BR 1.8(a).

**Rule 1.13 Electronic Signature and Submission.**

(a) For purposes of this rule, "Form" means only a form made available by the Bar on its website for electronic filing through the Bar's website and "filer" means the attorney using the Form and self-identified in the completed Form.

(b) As to any Form obtainable or accessible only by means of a login, the use of a filer's login constitutes the signature of the filer for purposes of these rules and for any other purpose for which a signature is required. In lieu of a signature, the document shall include an electronic symbol intended to substitute for the signature, such as a scan of the filer's handwritten signature or a signature block that includes the typed name of the filer preceded by an "s" in the space where the signature would otherwise appear. Example of a signature block with "s/":

s/ Jane Q. Attorney  
 JANE Q. ATTORNEY  
 OSB # \_\_\_\_\_  
 Email address \_\_\_\_\_

(c) When a Form requires a signature under penalty of perjury, in addition to signing and submitting the Form electronically, the filer shall sign a printed version of the Form and retain the signed Form in its original paper form for no less 30 days.

(d) An attorney may submit a Form through the Bar's website at any time, except when the Bar's electronic filing system is temporarily unavailable.

(e) Filing a Form pursuant to this rule shall be deemed complete at the time of electronic submission.

*(Rule 1.12 amended by Order dated April 18, 1984, effective June 1, 1984. Amended by Order dated June 30, 1987.)  
(Rule 1.12 amended by Order dated April 26, 2007.)*

## Title 2 — Structure And Duties

### Rule 2.1 Qualifications of Counsel.

(a) Definition of [Accused]Respondent. Notwithstanding BR 1.1(a), for the purposes of this rule, "[accused]respondent" means an attorney who is the subject of an allegation of misconduct that is under investigation by the Bar, or who has been charged with misconduct by the Bar in a formal complaint.

(b) Bar Counsel. Any attorney admitted to practice law at least three years in Oregon may serve as Bar Counsel unless the attorney:

- (1) currently represents a [n accused]respondent or applicant;
- (2) is a current member of the Disciplinary Board[,] or has a firm member currently serving on the Disciplinary Board;
- (3) served as a member of the Disciplinary Board at a time when the formal complaint against the [accused]respondent was filed.

(c) Counsel for [Accused]Respondent. Any attorney admitted to practice law in Oregon may represent an [accused]respondent unless the attorney:

- (1) is a current member of the Board or the SPRB;
- (2) served as a member of the Board or the SPRB at a time when the allegations about which the [accused]respondent seeks representation were under investigation by the Bar or were authorized to be charged in a formal complaint;
- [(3) is a current member of an LPRC that investigated allegations about which the accused seeks representation;*
- [(4) served as a member of an LPRC that investigated allegations about which the accused seeks representation, at a time when such investigation was undertaken;]*
- ~~(3)~~[(5)] currently is serving as Bar Counsel;
- ~~(4)~~[(6)] is a current member of the Disciplinary Board[,] or has a firm member currently serving on the Disciplinary Board;
- ~~(5)~~[(7)] served as a member of the Disciplinary Board at a time when the formal complaint against the [accused]respondent was filed.

(d) Counsel for Applicant. Any attorney admitted to practice law in Oregon may represent an applicant unless the attorney:

(1) is a current member of the Board, the BBX, or the SPRB;

(2) served as a member of the Board, the BBX, or the SPRB at a time when the investigation of the reinstatement application was conducted by the Bar;

(3) currently is serving as Bar Counsel;

(4) is a current member of the Disciplinary Board[,] or has a firm member currently serving on the Disciplinary Board;

(5) served as a member of the Disciplinary Board at a time when the statement of objections against the applicant was filed.

(e) Vicarious Disqualification. The disqualifications contained in BR 2.1(b), (c), and (d) [shall] also apply to firm members of the disqualified attorney's firm.

(f) Exceptions to Vicarious Disqualification.

(1) Notwithstanding BR 2.1(b), (c), and (d), an attorney may serve as Bar Counsel or represent a[n accused]respondent or applicant even though a firm member is currently serving on the Disciplinary Board, provided the firm member recuses himself or herself from participation as a trial panel member[,] or regional chairperson [or state chairperson] in any matter in which a member of the firm is Bar Counsel or counsel for a[n accused]respondent or applicant.

(2) Subject to the provisions of RPC 1.7, and notwithstanding the provisions of BR 2.1(b), (c), and (d), an attorney may serve as Bar Counsel or represent a[n accused]respondent or applicant even though a firm member is currently serving as Bar Counsel or representing a[n accused]respondent or applicant, provided firm members are not opposing counsel in the same proceeding.

(3) Notwithstanding BR 2.1(b), (c), and (d), an attorney in a Board member's firm may represent a[n accused]respondent provided the Board member is screened from any form of participation or representation in the matter. [In order t]o ensure such screening:

(A) The Board member shall prepare and file an affidavit with the Executive Director attesting that, during the period his or her firm is representing a[n accused]respondent, the Board member will not participate in any manner in the matter or the representation and will not discuss the matter or representation with any other firm member;

(B) The Board member's firm shall also prepare and file an affidavit with the Executive Director attesting that all firm members are aware of the requirement that the Board member be screened from participation in or discussion of the matter or representation;

(C) The Board member and firm shall also prepare, at the request of the Executive Director, a compliance affidavit describing the Board member's and the firm's actual compliance with these undertakings;

(D) The affidavits required under subsections (A) and (B) of this rule shall be filed with the Executive Director no later than 14 days following the acceptance by a Board member's firm of a[n accused]respondent as a client, or the date the Board member becomes a member of the Board.

(g) Investigators. Disciplinary Counsel may, from time to time, appoint a suitable person or persons, to act as an investigator, or investigators, for the Bar with respect to grievances, allegations, or instances of alleged misconduct by attorneys, and matters of reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.

*(Rule 2.1(b) amended by Order dated May 31, 1984, July 27, 1984, nunc pro tunc May 31, 1984.)*

*(Rule 2.1 amended by Order dated June 30, 1987.)*

*(Rule 2.1 amended by Order dated October 1, 1990.)*

*(Rule 2.1(d) amended by Order dated November 6, 1995.)*

*(Rule 2.1 deleted and new Rule 2.1 added by Order dated October 3, 1997.)*

*(Rule 2.1(f)(2) amended by Order dated April 26, 2007.)*

*(Rule 2.1(d)(2), 2.1(f)(3), 2.1(f)(3)(A), and 2.1(f)(3)(D) amended by Order dated October 19, 2009.)*

**Rule 2.2 [Investigators]Disciplinary Counsel.**

*[Disciplinary Counsel may, from time to time, appoint a suitable person, or suitable persons, to act as an investigator, or investigators, for the Bar with respect to complaints, allegations or instances of alleged misconduct by attorneys and matters of reinstatement of attorneys. Such investigator or investigators shall perform such duties in relation thereto as may be required by Disciplinary Counsel.]*

(a) Appointment. Disciplinary Counsel is retained and employed by the Bar.

(b) Duties.

(1) Disciplinary Counsel shall review and investigate, as appropriate, allegations or instances of alleged misconduct on the part of attorneys, including grievances referred by the Client Assistance Office or the General Counsel and matters arising out of notifications from financial institutions that an instrument drawn against an attorney's Lawyer Trust Account has been dishonored. Disciplinary Counsel may initiate investigation of the conduct of an attorney in the absence of receipt of a complaint by the Client Assistance Office based upon reasonable belief that misconduct has occurred, that an attorney is disabled from continuing to practice law, or that an attorney has abandoned a law practice or died leaving no attorney who has undertaken the responsibility of either managing or winding down the law practice.

(2) Disciplinary Counsel has authority to issue and seek the enforcement of subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers, documents, and other records pertaining to the matter under investigation.

(3) For those grievances not dismissed pursuant to BR 2.6(b), Disciplinary Counsel may, in its discretion, offer diversion pursuant to BR 2.10.

(4) Disciplinary Counsel shall provide advice and counsel to the SPRB on the disposition of all grievances neither dismissed pursuant to BR 2.6(b) nor resolved by diversion pursuant to BR 2.10.

(5) Disciplinary Counsel shall seek, as appropriate, relief provided for in BR 3.1, 3.2, 3.3, 3.4, and 3.5.

(6) Disciplinary Counsel shall prosecute formal proceedings as directed by the SPRB, including any review or other proceeding before the Supreme Court.

(7) Disciplinary Counsel shall represent the Bar in all contested reinstatement proceedings.

(8) Disciplinary Counsel shall represent the Bar before the Supreme Court in all contested admission proceedings.

*(Rule 2.2 amended by Order dated October 19, 2009.)*

**Rule 2.3 [Local Professional Responsibility Committees And] State Professional Responsibility Board.**

*[(a) LPRCs.*

(1) *Appointment. The Board shall create a local professional responsibility committee for each of the districts into which the counties of the state are grouped by the Board for convenient administrative purposes. The size of each LPRC shall be as the Board determines and each LPRC may have a member of the public who is not an attorney. Members of LPRCs shall be appointed by the Board for one-year terms, and may be reappointed. The Board shall appoint a chairperson for each committee.*

(2) *Duties of LPRCs.*

(A) *Disciplinary Counsel shall refer complaints or allegations of misconduct to an LPRC, as necessary and appropriate, by assigning each matter to a specific LPRC member, with notice to the LPRC chairperson.*

(B) *Members of the LPRC serve as fact-finders, investigating those complaints or allegations of misconduct referred to them by the SPRB or Disciplinary Counsel. Upon the conclusion of an investigation by an LPRC member, the member shall submit a written report to Disciplinary Counsel with specific findings. The LPRC member also shall provide a copy of such report to the chairperson of the LPRC of which he or she is a member.*

(C) *LPRC members are to complete each investigation and submit a written report within 90 days of the receipt of the referral from Disciplinary Counsel. The SPRB may grant one extension of time for a maximum of 60 days for good cause shown. Thereafter, if the investigation is not complete, the LPRC shall refer the matter back to Disciplinary Counsel for completion.*

(D) *An LPRC chairperson shall monitor the progress of the investigations assigned to the members of his or her committee, and may assign additional committee members to an investigation if the principal investigator requests it or if the LPRC chairperson deems it appropriate.*

(E) *An LPRC member may request that the LPRC chairperson convene a meeting of the LPRC or otherwise solicit input from other LPRC members in those matters justifying such committee deliberation. However, an LPRC member need not obtain the approval of the LPRC as a whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel.*

(F) *LPRCs shall perform such other duties on behalf of the Bar as may be referred to such LPRCs by the SPRB or Disciplinary Counsel.*

(3) *Authority.*

(A) *LPRCs shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.*

(B) *A witness in an investigation conducted by an LPRC who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. LPRCs may enforce any subpoena issued pursuant to BR 2.3(a)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.*

(C) *A member of an LPRC may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(a)(3)(A).*

(b) *SPRB.]*

(a)[1] *Appointment. [The Board shall create for the state at large a state professional responsibility board and appoint its members.] Members of the SPRB are nominated by the Board and appointed by the Supreme Court.* The SPRB shall be composed of eight resident attorneys and two members of the public who are not attorneys. Two attorney members shall be from Board Region 5 and one attorney member

shall be from each of the remaining Board regions located within the state of Oregon. The public members shall be at-large appointees. Members of the SPRB shall be appointed for terms of not more than four years and shall serve not more than four years consecutively. Members are eligible for reappointment to a nonconsecutive term not to exceed four years. Each year the Board shall nominate and the court shall appoint one attorney member of the SPRB as chairperson. [*The chairperson shall be an attorney.*] In the event the chairperson is unable to carry out any responsibility given to him or her by these rules, the chairperson may designate another attorney member of the SPRB to do so.

(b)[(2)] Duties of SPRB. The SPRB shall supervise the investigation of grievances[complaints], allegations, or instances of alleged misconduct on the part of attorneys and act on such matters as it may deem appropriate. A grievance from[complaint by] a client or other aggrieved person shall not be a prerequisite to the investigation of alleged misconduct by attorneys or the institution of disciplinary proceedings against any attorney.

(c)[(3)] Authority.

(1)[(A)] The SPRB has[shall have] the authority to dismiss grievances[complaints], allegations, or instances of alleged misconduct against attorneys[,]; refer matters to Disciplinary Counsel [or LPRCs] for further investigation[,]; issue admonitions for misconduct[,]; refer [*matters*]attorneys to the State Lawyers Assistance Committee[,]; [*approve and supervise diversion agreements,*] direct Disciplinary Counsel to institute disciplinary proceedings against any attorney[,]; or take other action within the discretion granted to the SPRB by these rules.

(2)[(B)] The SPRB has[shall have] the authority to adopt rules dealing with the handling of its affairs, subject to the Board's approval [*by the Board*].

*(C) The SPRB shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the attorney being investigated, and the production of books, papers and documents pertaining to the matter under investigation.*

*(D) A witness in an investigation conducted by the SPRB who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The SPRB may enforce any subpoena issued pursuant to BR 2.3(b)(3)(A) by application to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.*

*(E) A member of the SPRB or Disciplinary Counsel may administer oaths or affirmations and issue any subpoena provided for in BR 2.3(b)(3)(C).*

(d)[c)] Resignation and Replacement. The [*Board*] court may remove, at its discretion, or accept the resignation of, any officer or member of the SPRB [*or an LPRC*] and appoint a successor who shall serve the unexpired term of the member who is replaced.

*(Rule 2.3(b)(3) amended by Order dated April 4, 1991, effective April 15, 1991.)*

*(Rule 2.3(b)(1) amended by Order dated April 4, 1991, effective October 7, 1991. Amended by Order dated June 5, 1997, effective July 1, 1997. Amended by Order dated February 5, 2001.)*

*(Rule 2.3(b)(1) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 2.3(b)(3) amended by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.3(a) amended by Order dated December 8, 2003, effective January 1, 2004.)*

*(Rule 2.3(b)(1) amended by Order dated August 23, 2010, effective January 1, 2011.)*

## **Rule 2.4 Disciplinary Board.**

(a) Composition. [A] The Supreme Court appoints members of the D[d]isciplinary B[b]oard [shall be appointed by the Supreme Court]. The Disciplinary Board shall consist of [*a state chairperson*]the Adjudicator, 7 regional chairpersons, and 6 additional members for each Board region located within the state of Oregon, except for

Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, and Region 6 which shall have 11 additional members. The regional chairpersons shall be attorneys. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board, including the Adjudicator, shall be resident attorneys admitted to practice in Oregon for at least 3 years. Except for the *[state chairperson who shall be an at-large appointee]* Adjudicator, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of the Adjudicator, [2] 1 additional attorney[s], and 1 public member, except as provided in BR 2.4(f)(3). *[The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.]*

(b) Term.

(1) The Adjudicator shall serve pursuant to appointment of the court. Disciplinary Board members other than the Adjudicator shall serve terms of 3 years and may be reappointed. *[State and r]* Regional chairpersons shall serve in that capacity for terms of 1 year, subject to reappointment by the *[Supreme C]* court.

(2) Notwithstanding BR 2.4(a) and 2.4(b)(1), the powers, jurisdiction and authority of Disciplinary Board members other than the Adjudicator shall continue beyond the expiration of their appointment or after their relocation to another region for the time required to complete the cases assigned to them during their term of appointment or prior to their relocation, and until a replacement appointment has been made by the *[Supreme C]* court. The *[state chairperson and the]* regional chairpersons shall serve until a replacement appointment has been made by the *[Supreme C]* court.

(c) Resignation and Replacement. The court may remove, at its discretion, or accept the resignation of, any member of the Disciplinary Board and appoint a successor. Any person so appointed to serve in a position that has term [who] shall serve the unexpired term of the member who is replaced.

(d) Disqualifications and Suspension of Service.

(1) The disqualifications contained in the Code of Judicial Conduct *[shall]* apply to members of the Disciplinary Board.

(2) The following individuals shall not serve on the Disciplinary Board:

(A) A member of the Board[, ] or the SPRB[, *or an LPRC*] shall not serve on the Disciplinary Board during the member's term of office. This disqualification *[shall]* also preclude an attorney or public member from serving on the Disciplinary Board while any member of his or her firm is serving on the Board[, ] or the SPRB[, *or an LPRC*].

(B) No member of the Disciplinary Board shall sit on a trial panel with regard to a subject matter considered by the Board[, ] or the SPRB[, *or an LPRC*] while he or she was a member thereof or with regard to subject matter considered by any member of his or her firm while a member of the Board[, ] or the SPRB[, *or an LPRC*].

(3) A member of the Disciplinary Board against whom charges of misconduct have been approved for filing by the SPRB is suspended from service on the Disciplinary Board until those charges [filed against the member] have been resolved by final decision or order. If a Disciplinary Board member is suspended from the practice of law as a result of a final decision or order in a disciplinary proceeding, the member may not resume service on the Disciplinary Board until the member is once again authorized to practice law. For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint pursuant to BR 4.1, the determination by the SPRB to admonish an attorney pursuant to BR 2.6(c)(1)(B) or BR 2.6(d)(1)(B), which admonition is thereafter refused by the attorney, *[authorization*

*by the SPRB to notify*]Disciplinary Counsel's notification to the [*Supreme C*]court of a criminal conviction pursuant to BR 3.4(a), and [*authorization by the SPRB to notify*] Disciplinary Counsel's notification to the [*Supreme C*]court of an attorney's discipline in another jurisdiction pursuant to BR 3.5(a).

(e) Duties of [*State Chairperson*]Adjudicator.

(1) The [*state chairperson*]Adjudicator shall coordinate and supervise the activities of the Disciplinary Board[, *including the monitoring of timely preparation and filing of trial panel opinions*].

(2) The [*state chairperson*]Adjudicator shall serve as trial panel chairperson for each trial panel adjudicating a formal proceeding, a contested reinstatement proceeding, or a proceeding brought pursuant to BR 3.5; and shall preside in every proceeding brought pursuant to BR 3.1 or 3.4 unless disqualified after a challenge for cause pursuant to BR 2.4(g)[*not be required to, but may, serve on trial panels during his or her term of office*]. Upon the stipulation of the Bar and a respondent, the Adjudicator shall serve as the sole adjudicator in a disciplinary proceeding and shall have the same duties and authority under these rules as a three-member trial panel. In the event the Adjudicator is disqualified or otherwise unavailable to serve as trial panel chairperson, the regional chairperson shall appoint another attorney member of the Disciplinary Board to serve on the trial panel, with all the duties and responsibilities as the Adjudicator as to that proceeding from the date of appointment forward.

(3) The Adjudicator shall rule on all motions for default filed pursuant to BR 5.8.

(4)[(3)] The [*state chairperson*]Adjudicator shall determine the timeliness of and, as appropriate, grant or deny peremptory challenges and resolve all challenges for cause to the qualifications of all trial panel members other than the Adjudicator appointed pursuant to BR 2.4(e)(2), BR 2.4(e)(9), and BR 2.4(f) [*regional chairpersons under BR 2.4(g) and all challenges to the qualifications of trial panels appointed in contested reinstatement proceedings*].

(5)[(4)] Upon receipt of written notice from the Disciplinary Board Clerk of a Supreme Court referral pursuant to BR 8.8[*Disciplinary Counsel of service of a statement of objections*], the [*state chairperson*]Adjudicator shall appoint an attorney member and a public member[a trial panel and trial panel chairperson] from an appropriate region to serve on the trial panel with the Adjudicator. The [*state chairperson*]Adjudicator shall give written notice to Disciplinary Counsel, Bar Counsel, and the applicant of such appointments and a copy of the notice shall be filed with the Disciplinary Board Clerk.

(6)[(5)] The [*state chairperson*]Adjudicator shall appoint an attorney member of the Disciplinary Board to conduct pre[-]hearing conferences as provided in BR 4.6.

(7)[(6)] The [*state chairperson*]Adjudicator may appoint Disciplinary Board members from any region to [*serve on trial panels or to*] conduct pre[-]hearing conferences pursuant to BR 4.6, to participate with the Adjudicator in a show cause hearing pursuant to BR 6.2(d), [*as may be necessary*] to serve on trial panels to resolve [*the*] matters submitted to the Disciplinary Board for consideration by the court, or when a sufficient number of members is unavailable within a region for a particular proceeding.

(8) Upon receiving notice from the Disciplinary Board Clerk of a regional chairperson's appointment of an attorney member and a public member pursuant to BR 2.4(f)(1), and upon determining that either no timely challenge pursuant to BR 2.4(g) was filed or that a timely-filed challenge pursuant to BR 2.4(g) has either been denied or resulted in the appointment of a substitute member or members, the Adjudicator shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify, in writing, the Disciplinary Board Clerk and the parties of the date and place of hearing. The Disciplinary Board Clerk shall provide to the trial panel members a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the respondent or applicant.

(9) The Adjudicator shall rule on all questions of procedure and discovery except as specifically provided elsewhere in these rules. The Adjudicator may convene the parties or their counsel before the hearing, to

discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The Adjudicator may thereafter issue an order regarding agreements or rulings made at such prehearing meeting.

(10) The Adjudicator shall convene the trial panel hearing, oversee the orderly conduct of the same and timely file with the Disciplinary Board Clerk the written opinion of the trial panel. In all trial panels in which the Adjudicator is a member of the majority, the Adjudicator shall author the trial panel opinion.

(11)(7) In matters involving final decisions of the Disciplinary Board under BR 10.1, the [state chairperson]Adjudicator shall review statements of costs and disbursements and objections thereto and shall fix the amount of actual and necessary costs and disbursements to be recovered by the prevailing party.

(12)(8) The Adjudicator shall preside i[/]n all matters involving the filing of a petition for suspension pursuant to BR 7.1[ the state chairperson shall promptly review the petition for immediate suspension, the attorney's response, if any, and any reply from Disciplinary Counsel. Upon such review the state chairperson shall promptly issue an order pursuant to BR 7.1(d)].

(f) Duties of Regional Chairperson.

(1) Upon receipt of written notice from Disciplinary Counsel [of service of a formal complaint]pursuant to BR 4.1(e) or written notice from the Adjudicator pursuant to BR 3.5(g) or 5.8(a), the regional chairperson shall appoint an attorney member and a public member to serve with the Adjudicator on the trial panel from the members of the regional panel[ and a chairperson thereof]. The regional chairperson shall give written notice to Disciplinary Counsel, Bar Counsel, and the [accused]respondent of such appointments, and a copy of the notice shall be filed with the Disciplinary Board Clerk. In the event a member is disqualified pursuant to BR 2.4(g) or becomes unavailable to serve, the regional chairperson shall appoint a replacement member, giving written notice of such appointment as is given of initial appointments.

(2) [Except as provided in BR 2.4(e)(3), t]The regional chairperson shall rule on all challenges for cause to the Adjudicator [qualifications of members of the trial panels in his or her region] or to any attorney appointed to the role of Adjudicator pursuant to this paragraph brought pursuant to [under] BR 2.4(g). In the event the Adjudicator is disqualified for cause or is otherwise unavailable to chair a trial panel, the regional chairperson shall appoint an attorney member from within the region to serve in place of the Adjudicator who has all the duties and responsibilities of the Adjudicator in that proceeding. In the event no attorney member from within the region is available to serve in place of the Adjudicator, the regional chairperson shall so notify the Disciplinary Board Clerk, who will ask another regional chairperson to appoint an attorney member pursuant to the authority granted the Adjudicator in BR 2.4(e)(9). The attorney member so appointed shall have all the duties and responsibilities of the Adjudicator in that proceeding.

[(3) Upon the stipulation of the Bar and an accused, the regional chairperson shall appoint one attorney member from the regional panel to serve as the sole adjudicator in a disciplinary proceeding. In such case, the member appointed shall have the same duties and authority under these rules as a three member trial panel.]

(3)(4) The regional chairperson may serve on trial panels during his or her term of office.

[(5) The regional chairperson shall rule on all questions of procedure and discovery that arise prior to the appointment of a trial panel and trial panel chairperson.]

(g) Challenges. The Bar and a[n accused] respondent or applicant shall be entitled to one peremptory challenge of either the attorney member who is not the Adjudicator or the public member [and an unlimited number of challenges for cause as may arise under the Code of Judicial Conduct or these rules]. A[ny such]

peremptory challenge[s] shall be timely if filed in writing within ten [seven] days [of written notice of an] following that member's appointment [of a] to the trial panel with the Disciplinary Board Clerk, *[with copies to the regional chairperson for disciplinary proceedings or to the state chairperson for contested reinstatement proceedings or for challenges to a regional chairperson]*. A challenge for cause as may arise under the Code of Judicial Conduct may be filed by the Bar, the respondent, or an applicant as to any member of the trial panel. A c[C]hallenge[s] for cause shall state the reason for the challenge and is timely if filed in writing within ten days following the date of the member's appointment to the trial panel or the date the trial panel member discloses to the parties information raising a disqualification issue, whichever is later. For purposes of this paragraph, the Adjudicator is deemed appointed to the trial panel on the same date that the regional chairperson appoints the other two members of the trial panel pursuant to BR 2.4(f)(1). The written ruling on a challenge shall be filed with the Disciplinary Board Clerk, *[and the regional chairperson or the state chairperson, as the case may be,]* who shall serve copies of the ruling on all parties. *[These provisions shall apply to all substitute appointments, except that neither the Bar nor an accused or applicant shall have more than 1 peremptory challenge.]* The Bar and a [n accused] respondent or applicant may waive a disqualification of a member in the same manner as in the case of a judge under the Code of Judicial Conduct.

*[(h) Duties of Trial Panel Chairperson. The Disciplinary Board Clerk shall mail to the trial panel finally selected a copy of the formal complaint or statement of objections and, if one has been filed, the answer of the accused or applicant. Upon receipt of the pleadings from Disciplinary Board Clerk, the trial panel chairperson shall promptly establish the date and place of hearing pursuant to BR 5.4 and notify in writing the Disciplinary Board Clerk and the parties of the date and place of hearing. The trial panel chairperson shall rule on all pre-hearing matters, except for challenges under BR 2.4(e)(3). The trial panel chairperson may convene the parties or their counsel prior to the hearing to discuss the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, the preparation of trial exhibits, and other issues that may facilitate an efficient hearing. The trial panel chairperson may thereafter issue an order regarding agreements or rulings made at such pre-hearing meeting. The trial panel chairperson shall convene the hearing, oversee the orderly conduct of the same, and timely file with the Disciplinary Board Clerk the written opinion of the trial panel.]*

(h)[(i)] Duties of Trial Panel.

(1) Trial. *[It shall be the duty of a trial panel to which a disciplinary or contested reinstatement proceeding has been referred, promptly to try the issues. The trial panel shall pass on all questions of procedure and admission of evidence.]* The trial panel to which a disciplinary or contested reinstatement proceeding has been referred has a duty to promptly try the issues.

(2)

(A) Opinions. The trial panel shall issue [render] a written opinion [signed by] identifying the concurring members of the trial panel. A dissenting member shall be identified [note the dissent] and may file a dissenting opinion attached to the majority opinion *[of the trial panel]*. The majority opinion shall include specific findings of fact, conclusions of law, and a disposition. In any matter in which the Adjudicator is not a member of the majority, the other attorney member shall author the trial panel opinion. The *[trial panel chairperson]* Adjudicator shall file the original opinion with the Disciplinary Board Clerk[,] and serve copies on the parties *[and the State Court Administrator]*. The opinion [It] shall be filed within 28 days after the conclusion of the hearing, the settlement of the transcript if required under BR 5.3(e), or the filing of briefs if requested by the [trial panel chairperson] Adjudicator pursuant to BR 4.8, whichever is later.

(B) Extensions of Time to File Opinions. If the trial panel requires additional time [is required by the trial panel] to issue [render] its opinion, the [trial panel chairperson] Adjudicator may so notify the parties, indicating the anticipated date by which an opinion shall be issued, not to exceed 90 days after the date originally due. If no opinion has been issued within 90 days after the date originally due, either party may file a motion with the Disciplinary Board, seeking issuance of an opinion. Upon

the filing of such a motion, the Adjudicator shall enter an order establishing a date by which the opinion shall be issued, not to exceed 120 days after the date it was originally due. If no opinion has been issued by 120 days after the date originally due, either party may petition the court to enter an order compelling the Disciplinary Board to issue an opinion by a date certain [file a request for an extension of time with the Disciplinary Board Clerk and serve a copy on the state chairperson prior to the expiration of the applicable 28 day period. Disciplinary Counsel, Bar Counsel, and the accused or applicant shall be given written notice of such request. The state chairperson shall file a written decision on the extension request with the Disciplinary Board Clerk and shall serve copies on all parties].

(3) Record. The trial panel shall keep a record of all proceedings before it, including a transcript of the evidence and exhibits offered and received, and shall promptly file the[such] record with the Disciplinary Board Clerk, after the hearing concludes.

(4) Notice. The Disciplinary Board Clerk shall promptly notify the parties of receipt of the trial panel opinion[ from the trial panel].

(i)[(j)] Publications.

(1) Disciplinary Counsel shall cause to be prepared, on a periodic basis, a reporter service containing the full text of all Disciplinary Board decisions not reviewed by the Supreme Court. *[ The reporter service shall be distributed to all state and county law libraries and members of the Disciplinary Board.]*

(2) Disciplinary Counsel shall have printed in the Bar Bulletin, on a periodic basis, summaries of Supreme Court disciplinary proceeding, contested admission, and contested reinstatement [and disciplinary] decisions, and summaries of all Disciplinary Board decisions not reviewed by the [Supreme C]court.

*(Rule 2.4(a) amended by Order dated January 2, 1986, further amended by Order dated January 24, 1986 effective January 2, 1986, nun pro tunc.)*

*(Rule 2.4(d)(2) amended by Order dated September 10, 1986, effective September 10, 1986.)*

*(Rules 2.1, 2.6, 2.7 and 2.8 amended by Order dated June 30, 1987.)*

*(Rule 2.4(j) amended by Order dated October 1, 1987, effective October 1, 1987.)*

*(Rule 2.4(f)(1) amended by Order dated February 22, 1988.)*

*(Rule 2.4(d), (h) and (i) amended by Order dated February 23, 1988.)*

*(Rule 2.4(e) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

*(Rule 2.4(i)(3) amended by Order dated March 20, 1990, effective April 2, 1990.)*

*(Rule 2.4(a) amended by Order dated January 10, 1991.)*

*(Rule 2.4(d), (e) and (i) amended by Order dated July 22, 1991.)*

*(Rule 2.4(b) amended by Order dated December 22, 1992.)*

*(Rule 2.4(a), (e) and (f) amended by Order dated December 13, 1993.)*

*(Rule 2.4(i)(3) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 2.4 (a) amended by Order dated July 10, 1998.)*

*(Rule 2.4(e), (f), (g), (h), (i) and (j) amended by Order dated February 5, 2001.)*

*(Rule 2.4(b)(2) and (i)(2)(a) and (b) amended by Order dated June 28, 2001.)*

*(Rule 2.4(b)(1) and (2);(e)(4); (f)(1); (g); (h); and (i)(2)(a) and (b), (3) and (4) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 2.4(d)(3) added by Order dated January 21, 2005.)*

*(Rule 2.4(b)(2) amended by Order dated April 26, 2007.)*

*(Rule 2.4(g) and 2.4(h) amended by Order dated October 19, 2009.)*

*(Rule 2.4(a) amended by Order dated August 23, 2010, effective January 1, 2011.)*

*(Rule 2.4(e)(8) added by Order dated August 12, 2013, effective November 1, 2013.)*

**Rule 2.5 Intake and Review of Inquiries [ and Complaints] by Client Assistance Office.**

(a) Client Assistance Office. The Bar [will]shall maintain a Client Assistance Office, separate from that of Disciplinary Counsel. The Client Assistance Office [will]shall, to the extent possible and resources permitting, receive, review, and respond to all inquiries from the public concerning the conduct of attorneys and may

refer inquirers to other resources. *[The Client Assistance Office will also receive and review all complaints about the conduct of attorneys.]* The Client Assistance Office will consider [complaints]inquiries submitted in person, by telephone or by e-mail, but may require the complainant to submit the matter in writing before taking any action. The Client Assistance Office will determine the manner and extent of review required for the appropriate disposition of any [complaint]inquiry.

(b) Disposition by Client Assistance Office.

(1) If the Client Assistance Office determines that, even if true, an inquiry[ complaint] does not allege misconduct, it [will]shall dismiss the inquiry[complaint] with written notice to the complainant and to the attorney named in the inquiry[complaint].

(2) If the Client Assistance Office determines, after reviewing the inquiry[ complaint] and any other information deemed relevant, that there is sufficient evidence to support a reasonable belief that misconduct may have occurred, the inquiry[complaint will] shall be referred to Disciplinary Counsel as a grievance. Otherwise, the inquiry[complaint will] shall be dismissed with written notice to the complainant and the attorney.

(3) The Client Assistance Office may, at the request of the complainant, contact the attorney and attempt to assist the parties in resolving the complainant's concerns, but the provision of such assistance does not preclude a referral to Disciplinary Counsel of any matter brought to the attention of the Client Assistance Office.

(c) Review by General Counsel. Any inquiry[complaint] dismissed by the Client Assistance Office may be reviewed by General Counsel upon written request of the complainant. General Counsel may request additional information from the complainant or the attorney[,] and, after review, [will]shall either affirm the Client Assistance Office dismissal or refer the inquiry[complaint] to Disciplinary Counsel[*'s Office*] as a grievance. The decision of General Counsel is final.

*(Rule 2.5 amended by Order dated January 17, 1992.)*

*(Rule 2.5(g) amended by Order dated October 10, 1994.)*

*(Rule 2.5(c), (f), (g), and (h) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 2.5(a), (b), (c), (d), (f), (h) and (i) amended by Order dated February 5, 2001.)*

*(Rule 2.5(a) and (b) added and former Rule 2.5(b) through (i) renumbered 2.6 by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.5(a) and (b) amended and 2.5(c) added by Order dated August 29, 2007.)*

## **Rule 2.6 Investigations**

(a) Review of Grievance by Disciplinary Counsel.

(1) For grievances [disciplinary complaints] referred to Disciplinary Counsel by the C[c]lient A[a]ssistance O[o]ffice pursuant to BR 2.5(a)(2), Disciplinary Counsel shall, within 14 days after receipt of the grievance[complaint], mail a copy of the grievance[said complaint] to the attorney, if the C[c]lient A[a]ssistance O[o]ffice has not already done so, and notify the attorney that he or she must respond to the grievance[complaint] in writing to Disciplinary Counsel within 21 days of the date Disciplinary Counsel requests such a response. Disciplinary Counsel may grant an extension of time to respond for good cause shown upon the written request of the attorney. An attorney need not respond to the grievance[complaint] if he or she provided a response to the C[c]lient A[a]ssistance O[o]ffice and is notified by Disciplinary Counsel that further information from the attorney is not necessary.

(2) If the attorney fails to respond to Disciplinary Counsel or to provide records requested by Disciplinary Counsel within the time allowed, *[or fails to reply to a subpoena issued pursuant to BR 2.3(b)(3)(C) or BR 2.3(b)(3)(E),]* Disciplinary Counsel may file a petition with the Disciplinary Board to suspend the attorney from the practice of law, pursuant to the procedure set forth in BR 7.1. Notwithstanding the

filing of a petition under this rule, Disciplinary Counsel may investigate the grievance[*complaint or refer the complaint to an appropriate LPRC pursuant to the procedure set forth in BR 2.3(a)*].

(3) Disciplinary Counsel may, if appropriate, offer to enter into a diversion agreement with the attorney pursuant to BR 2.10. If Disciplinary Counsel chooses not to offer a diversion agreement to the attorney pursuant to BR 2.10 and does not dismiss the grievance pursuant to BR 2.6(b), Disciplinary Counsel shall refer the grievance to the SPRB at a scheduled meeting.

(b) Dismissal of Grievance by Disciplinary Counsel. If, after considering a [*disciplinary*] grievance[*complaint*], the response of the attorney, and any additional information deemed relevant, Disciplinary Counsel determines that probable cause does not exist to believe misconduct has occurred, Disciplinary Counsel shall dismiss the grievance[*complaint shall be dismissed*]. Disciplinary Counsel shall notify t[*he*] complainant and the attorney [*shall be notified in writing by Disciplinary Counsel*] of the dismissal in writing. A complainant may contest in writing the action taken by Disciplinary Counsel in dismissing his or her grievance[*complaint*], in which case Disciplinary Counsel shall submit a report on the grievance[*complaint*] to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate[ *on such complaint*].

(c) Review of Grievance by SPRB.

(1) [*If Disciplinary Counsel determines that misconduct may be involved, the complaint shall be referred by Disciplinary Counsel to an appropriate LPRC for further investigation, or referred by Disciplinary Counsel to the SPRB at a scheduled meeting. If the complaint is referred to an LPRC by Disciplinary Counsel, the procedure specified in BR 2.3(a) shall be followed. Otherwise, t*]The SPRB shall evaluate [*the*]a grievance[*complaint*] based on the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the grievance[*complaint*], [*refer it to an LPRC,*] admonish the attorney, [*authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10,*] direct Disciplinary Counsel to file [*approve the filing of*]a formal complaint by the Bar against the attorney, or take action within the discretion granted to the SPRB by these rules.

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the SPRB shall dismiss the grievance[ *complaint*], and Disciplinary Counsel shall notify[ *shall be dismissed and*] the complainant and the attorney [*shall be notified*] of the dismissal in writing[ *by Disciplinary Counsel*].

(B) If the SPRB determines that the attorney should be admonished, Disciplinary Counsel shall so notify the attorney [*such procedure shall be initiated*] within 14 days of the SPRB's meeting. If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, Disciplinary Counsel shall file a formal complaint [*shall be filed by the Bar*] against the attorney on behalf of the Bar. Disciplinary Counsel shall notify the complainant[ *and the attorney*] in writing of the admonition of the attorney[ *this action*].

(C) If the SPRB determines that the complaint should be investigated further, Disciplinary Counsel shall conduct the investigation and[*or submit the complaint to the appropriate LPRC within 14 days of the SPRB's meeting. Disciplinary Counsel shall*] notify the complainant and the attorney in writing of such[*this*] action.

[(d) Review of LPRC Reports by SPRB.

(1) *Disciplinary Counsel shall submit an LPRC's report to the SPRB at a scheduled meeting. The SPRB shall evaluate the complaint based on the LPRC's report and the report of Disciplinary Counsel to determine whether probable cause exists to believe misconduct has occurred. The SPRB shall either dismiss the complaint, have it investigated further, admonish the attorney, authorize Disciplinary Counsel to negotiate and enter into a diversion agreement pursuant to BR 2.10, approve the filing of a formal complaint against the attorney, or take action within the discretion granted to the SPRB by these rules.*

(A) If the SPRB determines that probable cause does not exist to believe misconduct has occurred, the complaint shall be dismissed and the complainant and the attorney shall be notified of the dismissal in writing by Disciplinary Counsel.

(B) If the SPRB determines that the attorney should be admonished, such action shall be initiated within the time set forth in BR 2.6(c)(1)(B). If an attorney refuses to accept the admonition within the time specified by Disciplinary Counsel, a formal complaint shall be filed by the Bar against the attorney. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action.

(C) If the SPRB determines that further investigation is needed, Disciplinary Counsel shall conduct the investigation or, within 14 days of the SPRB's meeting, refer the matter to the appropriate LPRC member who shall conduct a further investigation in accordance with BR 2.3(a). The further investigation by an LPRC shall be completed and a report shall be filed with Disciplinary Counsel within 30 days after the date of the referral. Disciplinary Counsel shall notify the complainant and the attorney in writing of this action. The report of the further investigation shall be submitted to the SPRB at a scheduled meeting, at which the SPRB shall take action in accordance with BR 2.6(d)(1).]

(d)[(e)] Reconsideration; Discretion to Rescind.

(1) An SPRB decision [by the SPRB] to dismiss a grievance[complaint] or allegation of misconduct against an attorney shall not preclude reconsideration or further proceedings on such grievance[complaint] or allegation, if evidence that is not available or submitted at the time of such dismissal justifies, in the judgment of not less than a majority of SPRB, such reconsideration or further proceedings.

(2) The SPRB may rescind a[A] decision [by the SPRB] to file a formal complaint against an attorney [for misconduct may be rescinded by the SPRB] only when, to the satisfaction of a majority of the entire SPRB, good cause exists. Good cause is:

(A) new evidence that[which] would have clearly affected the SPRB's decision to file a formal complaint; or

(B) legal authority, not known to the SPRB at the time of its last consideration of the matter, that[which] establishes that the SPRB's decision to file a formal complaint was incorrect.

(e)[(f)] Approval of Filing of Formal Complaint[Charges].

(1) If the SPRB determines that a formal complaint should be filed against an attorney, or if an attorney rejects an admonition offered by the SPRB, Disciplinary Counsel may appoint Bar Counsel. Disciplinary Counsel shall notify t[7]he attorney and the complainant [shall be notified] in writing [by Disciplinary Counsel] of such action.

(2) Notwithstanding an SPRB determination [by the SPRB] that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to direct that the Bar take no further action on a grievance[complaint] or allegation of misconduct [be taken by the Bar] if one or more of the following circumstances exist:

(A) the attorney is no longer an active member of the Bar or is not engaged in the practice of law, and is required under BR 8.1 to demonstrate good moral character and general fitness to practice law before resuming active membership status or the practice of law in Oregon;

(B) other disciplinary proceedings are pending that are likely to result in the attorney's disbarment;

(C) other disciplinary charges are authorized or pending and the anticipated sanction, should the Bar prevail on those charges, is not likely to be affected by a [guilty] finding of misconduct in the new matter or on an additional charge; or

(D) formal disciplinary proceedings are impractical in light of the circumstances or the likely outcome of the proceedings.

An exercise of discretion under this rule to take no further action on a grievance[complaint] or allegation of misconduct shall not preclude further SPRB consideration or proceedings *[by the SPRB]* on such grievance[complaint] or allegation in the future.

(3) Notwithstanding an SPRB determination *[by the SPRB]* that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a grievance[complaint] or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice and would not be harmful to the interests of clients or the public. Factors the SPRB may take into account in exercising *[its]that* discretion *[under this rule]* include, but are not limited to:

(A) the attorney's mental state;

(B) whether the misconduct is an isolated event or part of a pattern of misconduct;

(C) the potential or actual injury caused by the attorney's misconduct;

(D) whether the attorney fully cooperated in the investigation of the misconduct; and

(E) whether the attorney previously was admonished or disciplined for misconduct.

Misconduct that adversely reflects on the attorney's honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

(f)[(g)] Investigation of Complaints Against Disciplinary Counsel, General Counsel or other Bar agents. Complaints of misconduct concerning D[d]isciplinary C[c]ounsel or G[g]eneral C[c]ounsel of the *[Oregon State]* Bar, or complaints that Bar Counsel *[or members of an LPRC]* has<sup>[ve]</sup> engaged in misconduct while acting on the Bar's behalf, shall be referred to the chairperson of the *S[tate ]P[rofessional ]R[esponsibility ]B[oard]* within seven days of their receipt by the B[b]ar.

(1) If the SPRB chairperson determines that probable cause does not exist to believe misconduct has occurred, the SPRB chairperson[complaint] shall *[be]* dismiss<sup>[ed]</sup> the inquiry and notify the parties *[shall be notified]* of the dismissal in writing *[ by the SPRB chairperson]*. A complainant may contest the dismissal in writing *[ the dismissal]*, in which case the matter shall be submitted to the SPRB at a scheduled meeting. The SPRB shall thereafter take such action as it deems appropriate *[ on the complaint]*.

(2) If the SPRB chairperson determines the inquiry[complaint] should be investigated, the SPRB chairperson may appoint *[ a local professional responsibility committee or]* an investigator of his or her choice to investigate the matter and to report on the matter directly to the SPRB. The same procedure shall, as far as practicable, apply to the investigation of such grievances[complaints] as apply to members of the *[Oregon State ]*Bar generally.

*(Rule 2.6 amended and 2.6(g)(3) added by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.6 amended by Order dated December 8, 2003, effective January 1, 2004.)*

*(Rule 2.6(g)(1) amended by Order dated March 20, 2008.)*

*(Rule 2.6(f)(2) amended by Order dated October 19, 2009.)*

*(Rule 2.6(a)(2) amended by Order dated August 12, 2013, effective November 1, 2013.)*

### **Rule 2.7 Investigations Of Alleged Misconduct Other Than By Complaint.**

Allegations or instances of alleged misconduct that are brought or come to the attention of the Bar other than through the receipt of a written inquiry[complaint] shall be evaluated using the procedure specified in BR 2.6

except as that rule may be inapplicable due to the lack of a written grievance[*complaint*] or a complainant with whom[*which*] to communicate.

*(Rule amended and renumbered by Order dated July 9, 2003, effective August 1, 2003.)*

### **Rule 2.8 Proceedings Not To Stop On Compromise.**

Neither unwillingness nor neglect of the complainant to [*sign or to*] pursue a grievance[*complaint*] or to participate as a witness, nor settlement, compromise or restitution of any civil claim, shall, in and of itself, justify any failure to undertake or complete the investigation or the formal resolution of a disciplinary or contested reinstatement matter or proceeding.

*(Rule 2.7 amended by Order dated July 22, 1991.)*

*(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)*

### **Rule 2.9 Requests For Information And Assistance.**

The Bar may request a complainant[*person complaining against an attorney*] or applicant to supply and disclose to the investigating authorities of the Bar all documentary and other evidence in his or her possession, and the names and addresses of witnesses relating to his or her inquiry[*complaint*], and may otherwise request the complainant to assist such investigating authorities in obtaining evidence in support of the facts surrounding his or her inquiry[*complaint*].

*(Rule renumbered by Order dated July 9, 2003, effective August 1, 2003.)*

### **Rule 2.10 Diversion.**

(a) Diversion Offered by Disciplinary Counsel[*SPRB*]. As an alternative to seeking authority from the SPRB to offer an attorney[*issuing*] an admonition or to file[*approving the filing of*] a formal complaint[*against an attorney, or prosecuting a formal complaint that has been filed, the SPRB may authorize*], Disciplinary Counsel may offer to an attorney to divert a grievance on the condition that the attorney[*to*] enter into a diversion agreement in which the attorney agrees to participate in a remedial program as set forth in the agreement.[*Subject to the provisions of this rule, the SPRB has the discretion to determine whether to authorize diversion of a complaint or allegation of misconduct.*] An attorney does not have a right to have a grievance[*complaint or allegation of misconduct*] diverted under this rule.

(b) Diversion Eligibility. [*The SPRB*]Disciplinary Counsel may consider diversion of a grievance[*complaint or allegation of misconduct*] if:

- (1) The misconduct does not involve the misappropriation of funds or property; fraud, dishonesty, deceit or misrepresentation; or the commission of a misdemeanor involving moral turpitude or a felony under Oregon law;
- (2) The misconduct appears to be the result of inadequate law office management, chemical dependency, a physical or mental health condition, negligence, or a lack of training, education or other similar circumstance; and
- (3) There appears to be a reasonable likelihood that the successful completion of a remedial program will prevent the recurrence of conduct by the attorney similar to that under consideration for diversion.

(c) Offer of Diversion.

- (1) If, after investigation, [*by Disciplinary Counsel or an LPRC, the SPRB*] Disciplinary Counsel determines that an attorney may have committed misconduct and that the matter is appropriate for diversion under this rule, [*the SPRB, through*] Disciplinary Counsel[*,*] may offer a diversion agreement to the attorney. The

attorney has~~[shall have]~~ 30 days from the date diversion is offered to accept and enter into the diversion agreement. Disciplinary Counsel may grant an extension of time to the attorney for good cause shown.

(2) An attorney may decline to enter into a diversion agreement, in which case Disciplinary Counsel shall refer the grievance~~[complaint or allegation of misconduct shall be referred back]~~ to the SPRB for review pursuant to Rule 2.6~~[ or, if a formal complaint has been filed, proceed to hearing]~~.

(d) Diversion Agreement.

(1) A diversion agreement shall require the attorney to participate in a specified remedial program to address the apparent cause of the misconduct. Such a remedial program may include, but is not limited to: appointment of a diversion supervisor; assistance or training in law office management; chemical dependency treatment; counseling or peer support meetings; oversight by an experienced practicing attorney; voluntary limitation of areas of practice for the period of the diversion agreement; restitution; or a prescribed course of continuing legal education. The attorney shall pay~~[bear]~~ the costs of a remedial program.

(2) A diversion agreement~~[ further]~~ shall require the attorney to stipulate to a set of facts concerning the complaint or allegation of misconduct being diverted~~[,]~~ and to agree that, in the event the attorney fails to comply with the terms of the diversion agreement, the stipulated facts shall be deemed true in any subsequent disciplinary proceeding.

(3) A diversion agreement may be amended at any time ~~[with the consent of the SPRB]~~by agreement between Disciplinary Counsel and the attorney. ~~[The SPRB]~~Disciplinary Counsel is not obligated to amend a diversion agreement to incorporate additional complaints or allegations of misconduct made against the attorney subsequent to the date of the original agreement.

(4) The term of a diversion agreement shall be no more than 24 months following the date of the last amendment to the agreement.

(5) In a diversion agreement, the attorney shall agree that a diversion supervisor, treatment provider or any other person to whom the attorney has been referred pursuant to the remedial program specified in the agreement shall report to Disciplinary Counsel any failure by the attorney to comply with the terms of the agreement.

(6) If a~~[A]~~ diversion agreement is entered into between~~[ prepared by]~~ Disciplinary Counsel and ~~[signed by an]~~the attorney~~[ is not effective until approved by the SPRB. If approved by the SPRB]~~, Disciplinary Counsel shall so notify the complainant~~[ and the attorney]~~ in writing.

(e) Compliance and Disposition.

(1) If it appears to Disciplinary Counsel that an attorney has failed to comply with the terms of a diversion agreement~~[, Disciplinary Counsel shall inform the SPRB. If the SPRB]~~and Disciplinary Counsel determines that the allegation of noncompliance, if true, warrants the termination of the diversion agreement, ~~[the SPRB]~~Disciplinary Counsel shall provide the attorney an opportunity to be heard, through written submission, concerning the alleged noncompliance. Thereafter, ~~[the SPRB]~~Disciplinary Counsel shall determine whether to terminate the diversion agreement and, if so, ~~[take action deemed appropriate under]~~shall then refer the matter to the SPRB for review pursuant to BR 2.6.

(2) If an attorney fulfills the terms of a diversion agreement, Disciplinary Counsel thereafter shall dismiss the grievance~~[complaint or allegation of misconduct]~~ with written notice to the complainant and the attorney. The dismissal of a grievance~~[complaint or allegation of misconduct]~~ after diversion shall not be considered a prior disciplinary offense in any subsequent proceeding against the attorney.

(f) Public Records Status. The Bar shall[will] treat records relating to a grievance[complaint or allegation of misconduct] diverted under this rule, a diversion agreement, or a remedial program as official records of the Bar, subject to the Oregon Public Records Law, and also subject to any applicable exemption[ *thereunder*].

*(Rule 2.10 added by Order dated July 9, 2003, effective August 1, 2003.)*

*(Rule 2.10(a), 2.10(c)(2), and 2.10(d)(4) amended by Order dated October 19, 2009.)*

### Title 3 — Special Proceedings

#### **Rule 3.1 Interlocutory[Temporary] Suspension During Pendency Of Disciplinary Proceedings.**

(a) Petition for Interlocutory[Temporary] Suspension. [*If it appears to the SPRB, upon the affirmative vote of two-thirds of its membership, that the continuation of the practice of law by an attorney during the pendency of disciplinary proceedings will, or is likely to, result in substantial harm to any person or the public at large, Disciplinary Counsel shall directly, or through Bar Counsel, petition the Supreme Court on behalf of the Bar for an order suspending the attorney from practice until further order of the court. A petition under this rule may be filed by the Bar at any time after the SPRB has approved the filing of a formal complaint by the Bar against the attorney.*] At any time after Disciplinary Counsel has determined probable cause exists that an attorney has engaged in misconduct, has evidence sufficient to establish a probable violation of one or more rules of professional conduct or the Bar Act, and reasonably believes that clients or others will suffer immediate and irreparable harm by the continued practice of law by the attorney, Disciplinary Counsel shall petition the Adjudicator for an order for interlocutory suspension of the attorney's license to practice law pending the outcome of the disciplinary proceeding.

(b) Contents of Petition; Contents of Notice to Answer; Service[; Answer by Attorney]. A petition[ *to the Supreme Court*] for the suspension of an attorney under this rule shall set forth the acts and violations of the rules of professional conduct or statutes submitted by the Bar[ *as grounds for the attorney's suspension*], together with an explanation of why interlocutory suspension is warranted under BR 3.1(a). If a formal complaint has been filed against the attorney, a copy shall be attached. [*The petition shall have attached as an exhibit a copy of the Bar's formal complaint against the attorney, if one has been filed by the Bar.*] The petition may be supported by documents or affidavits. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 14 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice of answer, on the attorney pursuant to BR 1.8. [*A copy of the petition, along with a notice to answer, shall be served on the attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons. The attorney shall file an answer to the Bar's petition with the Supreme Court within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and Bar Counsel, if any, and file proof of mailing with the court.*]

(c) Answer by Attorney. The attorney shall file an answer to the Bar's petition with the Disciplinary Board Clerk within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(d) Default; Entry of Order. The failure of the attorney to answer the Bar's petition within the time provided in BR 3.1(c) constitutes a waiver of the attorney's right to contest the Bar's petition, and all factual allegations contained in the petition shall be deemed true. Not earlier than 14 days after service of the petition and in the absence of an answer filed by the attorney named in the petition, the Adjudicator shall review the sufficiency of the petition and, if it establishes a probable violation of one or more rules of professional conduct or the Bar Act, and a reasonable belief that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney, shall enter an appropriate interlocutory order suspending the attorney's license to practice law until further order of the Adjudicator or the Supreme Court.

(e)[(c)] Setting; h[H]earing on interlocutory suspension;[,] answer filed. Upon the timely filing of the attorney's answer pursuant to BR 3.1(c), the Adjudicator[court] shall hold a hearing on the Bar's petition not less than 30 days nor more than 60 days after the date the answer is filed. The Disciplinary Board Clerk shall promptly notify Disciplinary Counsel and the attorney named in the petition of the date, time, and location of the hearing. The hearing shall take place consistently with BR 5.3(a), (b), (c), and (d). [The hearing date shall be set by the court and notice thereof shall be mailed to Disciplinary Counsel, Bar Counsel and the attorney by the State Court Administrator.] At the hearing, the Bar must prove by clear and convincing evidence that one or more rules of professional conduct or provision of the Bar Act has been violated by the attorney named in the petition and that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney. Proof that clients or others will suffer immediate or irreparable harm by the continued practice of law by the attorney may include, but is not limited to, establishing within the preceding 12-month period: (1) theft of conversion of funds held by the attorney in any fiduciary capacity, including but not limited to funds that should have been maintained in a lawyer trust account; (2) three or more instances of failure to appear in court on behalf of a client notwithstanding having notice of the setting; or (3) abandoning a practice with no provision of new location or contact information to 3 or more clients. If the attorney, having been notified of the date, time, and location of the hearing, fails to appear, the Adjudicator may enter an order finding the attorney in default, deeming the allegations contained in the petition to be true, proceed on the basis of that default consistent with BR 3.1(d), and enter an appropriate order.

*[(d) Hearing, default. The failure of the attorney to answer the Bar's petition within the time granted by this rule for an answer shall constitute a waiver of the attorney's right to contest the Bar's petition. The court shall then enter the order provided in BR 3.1(e) either upon the record before it, or at the discretion of the court, after a hearing ordered by the court.]*

(f)[(e)] Order of [Court]Adjudicator; Suspension; Restrictions on Trust Account; Notice to Clients; Custodian; Other Orders. The Adjudicator[court], [after the hearing provided in BR 3.1(c) or] upon the record pursuant to BR 3.1(d) or after the hearing provided in 3.1(e)[(d)], shall enter an appropriate order. If the Adjudicator[court] grants the Bar's petition and interlocutorily suspends the attorney's license to practice law, the order of suspension shall state an effective date [for the attorney's suspension shall be stated therein]. The suspension shall remain in effect until further order of the Adjudicator or the court. The Adjudicator may enter such other orders as appropriate to protect the interests of the suspended attorney, the suspended attorney's clients, and the public, including, but not limited to:

*[(f) Duties upon Suspension. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).]*

*(g) Immediate Suspension; Restrictions on Trust Account; Other Orders. The court may enter such other orders as it deems appropriate to protect the interests of the suspended attorney, the suspended attorney's clients and the public including, but not limited to:*

*(1) an order for the immediate suspension of the attorney prior to the hearing required by BR 3.1(c), in which event the hearing on the Bar's petition shall be held no later than 60 days following the attorney's suspension and the order of the court contemplated by BR 3.1(e) shall be entered no later than 30 days after the hearing. The time limitations in this subsection of the rule shall not apply if the attorney is in default;]*

(1)[(2)] an order that[which], when served upon a financial institution, [shall] serves as an injunction prohibiting withdrawals from the attorney's trust account or accounts except in accordance with restrictions set forth in the Adjudicator's[court's] order.

(2) an order directing the attorney to notify current clients and any affected courts of the attorney's suspension; and to take such steps as are necessary to deliver client property, withdraw from pending matters, and refund any unearned fees.

(3) an order appointing another attorney as custodian to take possession of and inventory the files of the suspended attorney and take such further action as necessary to protect the interests of the suspended attorney's clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the Adjudicator[court].

(g)[(h)] Costs and Expenses. The Adjudicator[court] may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as *[far as]* practicable.

(h) Duties of Attorney. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b). An attorney whose suspension under this rule exceeds 6 months must comply with BR 8.1 in order to be reinstated. An attorney whose suspension under this rule is 6 months or less must comply with BR 8.2 in order to be reinstated.

(i) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.1.

(j)[(i)] Accelerated Proceedings Following Interlocutory[Temporary] Suspension. When an attorney has been interlocutorily[temporarily] suspended by order [of the court under]entered pursuant to BR 3.1(f)[(e)], the related formal complaint filed by the Bar shall thereafter proceed and be determined as an accelerated case, without unnecessary delay. The interlocutory suspension shall expire 45 days after date of entry, unless the SPRB authorizes the filling of a formal complaint against the attorney for one or more acts described in the petition as a basis for seeking the interlocutory petition. Unless extended by stipulation of the Bar and the attorney, and approved by the Adjudicator[court], the further order [of the court] contemplated by BR 3.1[(e)][(f)] shall be entered not later than 270 days following the entry of the order of interlocutory[temporary] suspension, subject to continuance for an additional period not to exceed 90 days upon motion filed by the Bar, served upon the attorney, and granted by the Adjudicator[Supreme Court].

(k) Supreme Court Review. No later than 14 days after the entry of an order pursuant to BR 3.1(f), Disciplinary Counsel or the attorney who is the subject of an order entered pursuant to BR 3.1(f) may request the Supreme Court to review the Adjudicator's order, including conducting a *de novo* review on the record, on an expedited basis. Unless otherwise order by the court, an interlocutory order of suspension, if entered, shall remain in effect until the court issues its decision.

(l)[(j)] Termination of Interlocutory[Temporary] Suspension. In the event the further order of the court contemplated by BR 3.1(f)[(e)] is not entered within the time provided by BR 3.1(j)[(h)], the order of interlocutory[temporary] suspension shall automatically terminate without prejudice to any pending or further disciplinary proceeding against the attorney.

*(Rule 3.1(h) amended by letter dated December 10, 1987.)*

*(Rule 3.1 amended by Order dated February 23, 1988.)*

*(Rule 3.1(f) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

*(Rule 3.1(a) and (g) amended by Order dated May 15, 1995.)*

*(Rule 3.1(g)(3) added and 3.1(h)-3.1(j) amended by Order dated October 19, 2009.)*

### **Rule 3.2 Mental Incompetency Or Addiction— Involuntary Transfer To Inactive Membership Status.**

(a) Summary Transfer to Inactive Status.

(1) The Supreme Court may summarily order, upon ex parte application by the Bar, that an attorney be placed on inactive membership status until reinstated by the court if the attorney has been adjudged by a court of competent jurisdiction to be mentally ill or incapacitated.

(2) A copy of the court's order shall be personally served on the[*such*] attorney in the same manner as provided by the Oregon Rules of Civil Procedure for service of summons and mailed to his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding.

(b) Petition by Bar.

(1) The Bar may petition the court to determine whether an attorney is disabled from continuing to practice law due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) diminished capacity[*senility*]; or
- (iv) addiction to drugs, narcotics or intoxicants.

The Bar's petition shall be mailed to the attorney and to his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding.

(2)

(A) On the filing of such a petition, the court may take or direct such action as it deems necessary or proper to determine whether an [*such*] attorney is disabled. Such action may include, but is not limited to, examination of the [*such*] attorney by such qualified experts as the court shall designate.

(B) A copy of an order requiring an attorney to appear, for examination or otherwise, shall be mailed by the State Court Administrator to the attorney and to his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(C) In the event of a failure by the attorney to appear at the appointed time and place for examination, the court may place the attorney on inactive membership status until further order of the court.

(D) If, upon consideration of the reports of the designated experts or otherwise, the court finds that probable cause exists that the attorney is disabled under the criteria set forth in BR 3.2(b)(1) from continuing to practice law, the court may order the attorney to appear before the court or its designee to show cause why the attorney should not be placed by the court on inactive membership status until reinstated by the court. *[A copy of such show cause order shall be mailed by t]*The State Court Administrator shall mail such a show cause order to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding and to Disciplinary Counsel.

(E) After any[*such*] show cause hearing as the court deems appropriate, if the court finds that the[*such*] attorney is disabled from continuing to practice law, the court may order the attorney placed on inactive membership status. The State Court Administrator shall mail a[A] copy of an order placing the attorney on inactive membership status *[shall be mailed by the State Court Administrator]* to the attorney and his or her guardian, conservator and attorney of record in any guardianship or conservatorship proceeding, and to Disciplinary Counsel.

(3) Any disciplinary investigation or proceeding pending against an attorney placed by the court on inactive membership status under this rule shall *[thereupon]* be suspended and held in abeyance until further order of the court.

(c) Disability During Disciplinary Proceedings.

(1) The court may order that an attorney be placed on inactive membership status until reinstated by the court if, during the course of a disciplinary investigation or disciplinary proceeding, the respondent[accused] files a petition with the court, with notice to Disciplinary Counsel [*and Bar Counsel*], alleging that he or she is disabled from understanding the nature of the proceeding against him or her [*the accused*], assisting and cooperating with his or her attorney, or from participating in his or her defense due to:

- (i) a personality disorder; or
- (ii) mental infirmity or illness; or
- (iii) diminished capacity[senility]; or
- (iv) addiction to drugs, narcotics or intoxicants.

(2) The court shall take or direct such action as it deems necessary or proper as provided in BR 3.2(b) to determine if the[such] attorney is disabled.

(3) A copy of the court's order [*in the matter*] shall be mailed by the State Court Administrator to Disciplinary Counsel, Bar Counsel, and the attorney and his or her guardian, conservator, and attorney of record in any guardianship or conservatorship proceeding, and the attorney of record in the Bar's disciplinary proceeding.

(4) Any disciplinary investigation or proceeding against an attorney who the court places on inactive membership status under this rule shall be suspended and held in abeyance until further order by the court.

(5)[(4)] If the court determines that the attorney is not disabled under the criteria set forth in BR 3.2(c)(1), it may take such action as it deems necessary or proper, including the issuance of an order that any disciplinary investigation or proceeding against the attorney that[which] is pending or held in abeyance be continued or resumed.

(d) Appointment of Attorney. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to represent the attorney if he or she is without representation.

(e) Custodians. In any proceeding under this rule, the court may, on such notice as the court shall direct, appoint an attorney or attorneys to inventory the files of the attorney and to take such action [*as seems*] necessary to protect the interests of his or her clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the court.

(f) Costs and Expenses. The court may direct that the costs and expenses associated with any proceeding under this rule be paid by the attorney or his or her estate, including compensation fixed by the court to be paid to any attorney or medical expert appointed under this rule. The court may order such hearings as it deems necessary or proper to determine the costs and expenses to be paid under this rule.

(g) Waiver of Privilege.

(1) Under this rule, a respondent's claim of disability [*by an accused*] in a disciplinary investigation or disciplinary proceeding, or the filing of an application for reinstatement as an active member by an attorney placed on inactive membership status under this rule for disability, shall be deemed a waiver of any privilege existing between such respondent[accused] or attorney and any doctor or hospital treating him or her during the period of the alleged disability.

(2) The[Such] respondent[accused] or attorney shall, in his or her claim of disability or in his or her application for reinstatement, disclose the name of every doctor or hospital by whom he or she has been

treated during his or her disability or since his or her placement on inactive membership status and shall furnish written consent to divulge all such information and all such doctor and hospital records as *[ may be requested by]* the Bar or the court may request.

(h) Application of Other Rules.

(1) The Rules of Procedure that apply to the resolution of a formal complaint or statement of objections do not apply to transfers from active to inactive membership status under BR 3.2. *[Nor does t]*The placement of an attorney on inactive membership status under BR 3.2 does not preclude the Bar from filing a formal complaint against the attorney. An attorney placed on inactive membership status under BR 3.2 must comply with the applicable provisions of Title 8 of these rules to obtain reinstatement to active membership status.

(2)

(i) An attorney transferred to inactive status under this rule shall not practice law after the effective date of the transfer. This rule shall not preclude the*[such an]* attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(ii) *[It shall also be the duty of a]*An attorney transferred to inactive status under this rule shall*[to]* immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(iii) Notwithstanding BR 3.2(b)(3) and BR 3.2(c)(4), Disciplinary Counsel may petition the Supreme Court to hold an attorney transferred to inactive status under this rule in contempt for failing to comply with the provisions of BR 3.2(h)(2)(i) and (ii). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

*(Rule 3.2(h) amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

**Rule 3.3 Allegations Of Criminal Conduct Involving Attorneys.**

(a) *If**[n the event]* the SPRB directs the filing of a formal complaint *[causes disciplinary charges to be filed against an attorney]* that*[which]* alleges acts*[charges]* involv[e]ing the possible commission of a crime that do not appear to have been the subject of a criminal prosecution, *[the SPRB shall direct]* Disciplinary Counsel shall*[to]* report the possible crime to the appropriate investigatory authority*[district attorney]*.

(b) On the filing of an accusatory instrument against an attorney for the commission of a misdemeanor that*[which]* may involve moral turpitude or of a felony, *[the SPRB shall forthwith direct an investigation by]* Disciplinary Counsel *[ or an LPRC to]* shall determine whether a disciplinary investigation*[proceeding]* should be initiated*[instituted]* against such attorney.

*(Rule 3.3 amended by Order dated March 31, 1989.)*

**Rule 3.4 Conviction Of Attorneys.**

(a) *[Referral of Convictions to Court.]*Petition; Interlocutory Suspension; Notice to Answer. *[Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after]*Upon learning *[receiving notice]* that an attorney has been convicted in any jurisdiction of an offense that is a misdemeanor that*[which]* may involve moral turpitude, *[or is]* a felony under the laws of this state, or a crime *[is]* punishable by death or imprisonment under the laws of the United States~~[.]~~, and determining that immediate and irreparable harm to the attorney's clients or the public is likely to result if a suspension of the attorney's license to practice law is not ordered. Disciplinary Counsel shall *[file]*petition the Disciplinary Board to interlocutorily suspend the attorney's license to practice law. The petition shall describe the conviction and

explain the basis upon Disciplinary Counsel believes that immediate and irreparable harm to the attorney's clients or the public is likely to result if a suspension is not ordered. The petition shall include a copy of the documents that[which] show the conviction and may be supported by documents or affidavits[ and a statement of the SPRB's recommendation regarding the imposition of a suspension with the court, with written notice to the attorney]. A "conviction" for [the] purposes of this rule shall be considered to have occurred upon entry of a plea of guilty or no contest or upon entry of a finding or verdict of guilty. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 14 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice to answer, on the attorney pursuant to BR 1.8.

(b) [Response of Attorney. Any written material the attorney wishes the court to consider in the matter must be filed with the court within 14 days of the filing of the Bar's statement, with proof of service on Disciplinary Counsel.]Answer by Attorney. The attorney shall file an answer to the Bar's petition with the Disciplinary Board Clerk within 14 days of service. The attorney shall mail a copy of the answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk.

(c) [Response of Bar. The Bar shall have 7 days from the filing of written material by the attorney with the court to file with the court a response thereto. The Bar shall submit to the court proof of service of its response on the attorney.]Default; Entry of Order. The failure of the attorney to answer the Bar's petition within the time provided in BR 3.4(b) constitutes a waiver of the attorney's right to contest the Bar's petition, and all factual allegations contained in the petition shall be deemed true. Not earlier than 14 days after service of the petition and in the absence of an answer filed by the attorney named in the petition, the Adjudicator shall review the sufficiency of the petition and, if it establishes the attorney's conviction of a category of offense described in BR 3.4(a) and a reasonable belief that clients or others will suffer immediate or irreparable harm by the attorney's continued practice of law, shall enter an appropriate interlocutory order suspending the attorney's license to practice law until further order of the Adjudicator or the Supreme Court.

(d) [Suspension. Upon review of the documents showing the conviction and the material filed by the attorney and the Bar, the court may suspend the attorney from the practice of law until further order of the court. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(e) Hearing. Whether or not the court suspends the attorney, the court may refer the matter to the Disciplinary Board for the scheduling of a hearing before a trial panel. The hearing shall be to determine what discipline, if any, should be imposed for the attorney's conviction. The referral shall be made in writing to the Disciplinary Board Clerk, with copies to Disciplinary Counsel and the attorney. Upon receipt of notice of a referral of a conviction matter to the Disciplinary Board, Disciplinary Counsel shall file a formal complaint regarding the conviction. The same rules as apply in a disciplinary proceeding shall apply in a conviction proceeding.]Setting: Hearing on interlocutory suspension; Answer filed. Upon the timely filing of the attorney's answer pursuant to BR 3.4(b), the Adjudicator shall hold a hearing on the Bar's petition not less than 30 days nor more than 60 days after the date the answer is filed. The Disciplinary Board Clerk shall promptly notify Disciplinary Counsel and the attorney of the date, time, and location of the hearing. The hearing shall take place consistently with BR 5.3(a), (b), (c), and (d). At the hearing, the Bar must prove by clear and convincing evidence that the attorney has been convicted of a category of offense described in BR 3.4(a) and that clients or others will suffer immediate or irreparable harm by the attorney's continued practice of law. Proof that clients or others will suffer immediate or irreparable harm by the attorney's continued practice of law may include, but is not limited to, establishing that a period of incarceration was imposed on the attorney as a result of the conviction. If the attorney, having been notified of the date, time, and location of the hearing, fails to appear, the Adjudicator may enter an order finding the attorney in default, deeming the allegations contained in the petition to be true, proceed on the basis of that default consistent with BR 3.4(c), and enter an appropriate order.

(e) Order of Adjudicator; Suspension; Restrictions on Trust Account; Notice to Clients; Custodian; Other Orders. The Adjudicator, upon the record pursuant to BR 3.4(c) or after the hearing provided in BR 3.4(d), shall

enter an appropriate order. If the Adjudicator grants the Bar's petition and interlocutorily suspends the attorney's license to practice law, the order of suspension shall state an effective date. The suspension shall remain in effect until further order of the Adjudicator or the court. The Adjudicator may enter such other orders as appropriate to protect the interests of the suspended attorney, the suspended attorney's clients, and the public, including, but not limited to:

(1) an order that, when served upon a financial institution, serves as an injunction prohibiting withdrawals from the attorney's trust account or accounts except in accordance with restrictions set forth in the Adjudicator's order.

(2) an order directing the attorney to notify current clients and any affected courts of the attorney's suspension; and to take such steps as are necessary to deliver client property, withdraw from pending matters, and refund any unearned fees.

(3) an order appointing an attorney as custodian to take possession of and inventory the files of the suspended attorney and take such further action as necessary to protect the interests of the suspended attorney's clients. Any attorney so appointed by the court shall not disclose any information contained in any file without the consent of the affected client, except as is necessary to carry out the order of the Adjudicator.

(f) Costs and Expenses. The Adjudicator may direct that the costs and expenses associated with any proceeding under this rule be allowed to the prevailing party. The procedure for the recovery of such costs shall be governed by BR 10.7 as practicable.

(g) Duties of Attorney. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b). An attorney whose suspension under this rule exceeds 6 months must comply with BR 8.1 in order to be reinstated. An attorney whose suspension under this rule is 6 months or less must comply with BR 8.2 in order to be reinstated.

(h) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.4.

(i) Supreme Court Review. No later than 14 days of the entry of an order pursuant to BR 3.4(e), Disciplinary Counsel or the attorney who is the subject of an order entered pursuant to BR 3.4(e) may request the Supreme Court to review the Adjudicator's order, including conducting a *de novo* review on the record, on an expedited basis. Unless otherwise ordered by the court, an interlocutory order of suspension, if entered, shall remain in effect until the court issues its decision.

~~(j)~~~~(f)~~ Independent Charges; Consolidated Proceedings]. Whether or not interlocutory suspension is sought pursuant to BR 3.4(a), [T]he SPRB may direct Disciplinary Counsel to file a formal complaint [cause disciplinary charges to be filed] against the attorney based upon [independent of ]the fact of the attorney's conviction or the underlying conduct. [ In such case those charges shall be consolidated for hearing with the conviction matter, if the conviction matter has been referred to the Disciplinary Board by the court.]

~~(g)~~ Review by Court. The trial panel's decision shall be subject to review by the court as is authorized in Title 10 of these rules.

~~(h)~~ Reinstatement Rules Apply. The rules on reinstatement shall apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.4(e), (f) and (g).]

~~(k)~~~~(i)~~ Relief From Suspension. If an attorney's conviction is reversed on appeal, and such reversal is[has become a final order] not subject to further appeal or review, or the attorney has been granted a new trial and the[which] order granting new trial has become final, a suspension or discipline previously ordered based solely on the conviction shall be vacated upon the Disciplinary Board's[court's] receipt of the judgment of reversal or order granting the attorney a new trial. Reversal of the attorney's conviction on appeal or the

granting of a new trial does not require the termination of any disciplinary proceeding based upon the same facts which gave rise to the conviction.

*(Rule 3.4(d) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 3.4(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 3.4(e) amended by Order dated October 19, 2009.)*

### **Rule 3.5 Reciprocal Discipline.**

(a) Petition; Notice to Answer[*Notice to Court*]. [*Disciplinary Counsel, after reporting on the matter to the SPRB, shall promptly notify the court after*] Upon learning [*receiving notice*] that an attorney has been disciplined for misconduct in another jurisdiction[.], not predicated upon a prior discipline of the attorney pursuant to these rules, Disciplinary Counsel shall file with the Disciplinary Board Clerk a petition seeking reciprocal discipline of the attorney. The petition shall include a copy of the judgment, order or determination of discipline in the other jurisdiction[*with the court,*]; may be supported by other documents or affidavits; and shall contain a recommendation as to the imposition of discipline in Oregon, based on the discipline in the jurisdiction whose action is reported, and such other information as the Bar deems appropriate[ *with written notice to the attorney*]. A plea of no contest, a stipulation for discipline or a resignation while formal charges are pending is [*shall be*] considered a judgment or order of discipline for the purposes of this rule. [*The judgment or order or determination of discipline shall be accompanied by a recommendation of the SPRB as to the imposition of discipline in Oregon based on the discipline in the jurisdiction whose action is reported to the court, and such other information as the Bar deems appropriate to file with the court.*] If the Bar seeks imposition of a sanction greater than that imposed in the other jurisdiction, it shall state with specificity the sanction sought and provide applicable legal authority to support its position. The notice to answer shall provide that an answer to the petition must be filed with the Disciplinary Board Clerk within 21 days of service and that, absent the timely filing of an answer with the Disciplinary Board Clerk, the relief sought can be obtained. Disciplinary Counsel shall file the petition with the Disciplinary Board Clerk and shall serve a copy, along with the notice to answer, on the attorney pursuant to BR 1.8.

(b) Order of Judgment; Sufficient Evidence of Misconduct; Rebuttable Presumption. A copy of the judgment, order or determination of discipline shall be sufficient evidence for the purposes of this rule that the attorney committed the misconduct so described[ *therein*]. There is a rebuttable presumption that the sanction to be imposed shall be equivalent, to the extent reasonably practicable, to the sanction imposed in the other jurisdiction.

(c) Answer of Attorney. The attorney has[*shall have*] 21 days from [*the filing of the judgment, order, or determination of discipline with the court*]service to file with the Disciplinary Board[*court*] an answer discussing whether[*the following issues*]:

(1) [*Was t*] The procedure in the jurisdiction which disciplined the attorney was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;[*?*]

(2) The conduct for which the attorney was disciplined in the other jurisdiction is conduct that should subject the attorney to discipline in Oregon; and [*Should the attorney be disciplined by the court?*]

(3) The imposition of a sanction equivalent to the sanction imposed in the other jurisdiction would result in grave injustice or be offensive to public policy.

The attorney shall mail a copy of his or her answer to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk[*court*].

(d) [*Reply of Bar*]. The Bar shall have 14 days from the expiration of the time specified in BR 3.5(c) in which to file a reply to the attorney's answer with the court. The Bar shall mail a copy to the attorney and file proof of mailing with the court.

(e) Review by Court; Default; Referral for Hearing. If no answer is timely filed, the Adjudicator may proceed to the entry of an appropriate judgment based upon its review of the record before it. If an answer is timely filed that asserts a defense pursuant to BR 3.5(c)(1), (2), or (3), the Adjudicator, in his or her discretion, based upon a review of the petition, answer, and any supporting documents filed by either the Bar or the attorney, may either *[Upon review of the judgment, order or determination of discipline and the response and answer filed by the attorney and the Bar, and after oral argument if ordered by the court, the court shall]* determine on the basis of the record whether the attorney should be disciplined in Oregon for misconduct in another jurisdiction and if so, in what manner, or may determine that testimony will be taken solely on the issues set forth in the answer pertaining to BR 3.5(c)(1), (2), and (3). The Adjudicator shall enter an appropriate order. *[The court, in its discretion, may refer the matter to the Disciplinary Board for the purpose of taking testimony on the issues set forth in BR 3.5(c)(1) and (2). The referral shall be made in writing to the Disciplinary Board Clerk with copies to Disciplinary Counsel and the attorney. Upon receipt of a notice of referral to the Disciplinary Board, Disciplinary Counsel may appoint Bar Counsel to file a formal complaint regarding the issues before the Disciplinary Board. The same rules as apply in a disciplinary proceeding shall apply in a reciprocal discipline proceeding.]*

(f) Burden of Proof. The attorney has*[shall have]* the burden of proving in any hearing held pursuant to BR 3.5(e) that due process of law was not afforded the attorney in the other jurisdiction.

(g) Hearing by Trial Panel; Review by Supreme Court. If the Adjudicator decides to take testimony pursuant to BR 3.5(e), the Adjudicator shall request the regional chairperson to appoint an attorney member and a public member to serve on the trial panel. Upon receiving notice from the Disciplinary Board Clerk of a regional chairperson's appointment of an attorney member and a public member pursuant to BR 2.4(f)(1), and upon determining that either no timely challenge pursuant to BR 2.4(g) was filed or that a timely filed challenge pursuant to BR 2.4(g) has either been denied or resulted in the appointment of a substitute member or members, the Adjudicator shall promptly establish the date and place of the evidentiary hearing no less than 21 days and no more than 42 days thereafter. BR 5.1 and BR 5.3 apply to the evidentiary hearing. The *[A]* trial panel *[appointed by the state chairperson]* shall make a decision concerning the issues submitted to it. The trial panel's decision shall be subject to review by the Supreme C*[c]*ourt as is authorized in Title 10 of these rules. On review by the court, the sanction imposed in the other jurisdiction may be a factor for consideration but does not operate as a rebuttable presumption.

(h) Application of Other Rules. Except as specifically provided herein, Title 4, Title 5, and Title 6 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 3.5.

(i)*[(h)]* Suspension or Disbarment. *[The court may suspend an attorney from the practice of law in this state at the time it approves a referral of the matter to the Disciplinary Board for hearing. The suspension shall remain in effect until otherwise ordered by the court.]* An attorney suspended or disbarred under this rule shall comply with the requirements of BR 6.3(a) and (b).

(j)*[(i)]* Reinstatement Rules Apply. The rules on reinstatement *[ shall]* apply to attorneys suspended or disbarred pursuant to the procedure set forth in BR 3.5(e), (f), and (g).

(k)*[(j)]* Independent Charges. Nothing in this rule *[ shall]* preclude the Bar from filing *[of]* a formal complaint *[disciplinary charges by the Bar]* against an attorney for misconduct in any jurisdiction.

*(Rule 3.5 amended by Order dated July 16, 1984, effective August 1, 1984.)*

*(Rule 3.5(h) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 3.5(e) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

### **Rule 3.6 Discipline By Consent.**

(a) Application. Any allegation of misconduct that is neither dismissed nor disposed of pursuant to BR 2.10 may be disposed of by a no contest plea, or by a stipulation for discipline, entered into at any time after the SPRB finds probable cause that misconduct has occurred.

(b) No Contest Plea. A plea of no contest to all causes or any cause of a formal complaint, or to allegations of misconduct if a formal complaint has not been filed, shall be verified by the respondent[accused] and shall include:

- (i) A statement that the respondent freely and voluntarily makes the plea *[ has been freely and voluntarily made by the accused]*;
- (ii) A statement that the respondent[accused] does not desire to defend against the formal complaint or any designated cause thereof, or against an allegation of misconduct not yet pled;
- (iii) A statement that the respondent[accused] agrees to accept a designated form of discipline in exchange for the no contest plea; and
- (iv) A statement of the respondent's[accused's] prior record of reprimand, suspension, or disbarment, or absence of such record.

(c) Stipulation for Discipline. A stipulation for discipline shall be verified by the respondent[accused] and shall include:

- (i) A statement that the respondent has freely and voluntarily entered into the stipulation *[ has been freely and voluntarily made by the accused]*;
- (ii) A statement that explains the particular facts and violations to which the Bar and the respondent[accused] are stipulating;
- (iii) A statement that the respondent[accused] agrees to accept a designated form of discipline in exchange for the stipulation; and
- (iv) A statement of the respondent's[accused's] prior record of reprimand, suspension or disbarment, or absence of such record.

(d) Approval of SPRB. Pleas of no contest and stipulations shall be approved as to form by Disciplinary Counsel and approved in substance by the chairperson of the SPRB or a member of the SPRB designated by the chairperson. If the plea or stipulation[,] is acceptable to the respondent and the SPRB chairperson or designated member *[ and the accused]*, and if the full term of the discipline agreed upon does not exceed a 6-month suspension, Disciplinary Counsel shall *[file it with]* submit it to the Disciplinary Board Clerk for review by the Adjudicator, acting on behalf of the Disciplinary Board *[ and provide copies to the state chairperson and the appropriate regional chairperson of the Disciplinary Board if the full term of the discipline agreed upon does not exceed a 6-month suspension;]*. Otherwise, Disciplinary Counsel shall file the stipulation *[ otherwise it shall be filed]* with the State Court Administrator for review by the Supreme C*[c]*ourt.

(e) Review by Adjudicator*[Disciplinary Board]* or Supreme Court. The Adjudicator*[Disciplinary Board]* or the court, as the case may be, shall review the plea or stipulation. *[ If the matter is submitted to the Disciplinary Board, it shall be reviewed by the state chairperson and the regional chairperson in the region the accused maintains his or her principal place of business. If the accused does not maintain a place of business in Oregon, the plea or stipulation shall be reviewed by the regional chair for Region 5. The state chairperson and regional chairperson shall have the authority to act on the matter for the Disciplinary Board.]* If the Adjudicator*[Disciplinary Board]* or the court approves the plea or stipulation, an order *[ decision]* shall be issued so stating. The Adjudicator, acting on behalf of the Disciplinary Board, shall file a written decision in that regard *[ The written decision of the Disciplinary Board shall be filed by the state chairperson]* with the Disciplinary Board Clerk, and the Clerk shall provide *[ shall be provided]* copies to Disciplinary Counsel and the respondent[accused]. If the plea or stipulation is rejected by the Adjudicator*[Disciplinary Board]* or the court it may not be used as evidence of misconduct against the respondent[accused] in the pending or in any subsequent disciplinary proceeding.

(f) Costs. In matters submitted under this rule that are resolved by a decision of the Disciplinary Board, the Bar may file a cost bill with the Disciplinary Board Clerk within 21 days of the filing of the decision of the Disciplinary Board[, *accompanied by proof of service on the state chairperson and the accused*]. The Bar must serve a copy of the cost bill on the attorney pursuant to BR 1.8. To contest the Bar's statement of costs, t[7]he respondent[accused][, if he or she desires to contest the Bar's statement of costs,] must file an [verified] objection[s] supported by a declaration under penalty of perjury with the Disciplinary Board Clerk within 7 days from the date of service[*the filing of the Bar's cost bill, accompanied by proof of service on the state chairperson and Disciplinary Counsel*]. The attorney shall mail a copy of the objection to Disciplinary Counsel and file proof of mailing with the Disciplinary Board Clerk. If the matter is resolved by a decision of the court, the Bar's cost bill and the respondent's[*accused's*] objections must be filed with the court within the same time period, accompanied by proof of service on the other party. The Adjudicator[*state chairperson of the Disciplinary Board*] or the court, as the case may be, may fix the amount of the Bar's actual and necessary costs and disbursements incurred in the proceeding to be paid by the respondent[*accused*].

(g) Supplementing Record. If the Adjudicator[*Disciplinary Board*] or the court concludes that facts are not set forth in sufficient detail to enable [it to] forming an opinion as to the propriety of the discipline agreed upon, the Adjudicator[*Disciplinary Board*] or the court may request that additional stipulated facts be submitted or it may disapprove the plea or stipulation.

(h) Confidentiality. A plea or stipulation prepared for the Adjudicator's[*Disciplinary Board*] or the court's consideration shall not be subject to public disclosure:

(i) prior to Adjudicator[*Disciplinary Board*] or court approval of the plea or stipulation; or

(ii) if rejected by the Adjudicator[*Disciplinary Board*] or court.

*(Rule 3.6(d) and (e) amended by Order dated February 23, 1988.)*

*(Rule 3.6(d) amended by Order dated December 13, 1993. Amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 3.6(a), (b), (d) and (e) amended by Order dated February 5, 2001.)*

*(Rule 3.6(d), (e) and (f) amended by Order dated June 17, 2003, effective July 1, 2003.)*

## Title 4 — Prehearing Procedure

### Rule 4.1 Formal Complaint.

(a) Designation of Counsel and Region. If [ *it shall appear to*] the SPRB determines that probable cause exists to believe an attorney has engaged in misconduct and that formal proceedings are warranted, it shall refer the matter to Disciplinary Counsel with instructions to file [*specified charges*]a formal complaint against the attorney. Disciplinary Counsel, being so advised, may appoint Bar Counsel[ *and, upon the service of a formal complaint upon an accused, request that the Disciplinary Board appoint a trial panel in the appropriate region selected pursuant to BR 5.3(a)*].

(b) Filing. Disciplinary Counsel[ *or Bar Counsel*] shall prepare and file with the Disciplinary Board Clerk a formal complaint against the attorney on behalf of the Bar. [*Proceedings thereon shall then be had as herein provided.*] The formal complaint shall be in substantially the form set forth in BR 13[2].1.

(c) Substance of Formal Complaint. A formal complaint shall be signed by Disciplinary Counsel, or his or her designee, and shall set forth succinctly the acts or omissions of the respondent[*accused*], including the specific statutes or rules of professional conduct[*disciplinary rules*] violated, so as to enable the respondent[*accused*] to know the nature of the charge or charges against the respondent[*accused*]. When more than one act or transaction is relied upon, the allegations shall be separately stated and numbered. The formal complaint need not be verified.

(d) Amendment of Formal Complaint. Disciplinary Counsel may amend the formal complaint on behalf of the Bar subject to the requirements of BR 4.4(b) as to any grievance the SPRB has instructed Disciplinary Counsel to file a formal complaint pursuant to BR 4.1(a) and BR 4.1(e).

(e)[(d)] Consolidation of Charges and Proceedings. The Bar, at the SPRB's direction[ of the SPRB], may consolidate in a formal complaint two or more causes of complaint against the same attorney or attorneys, but shall file a separate formal complaint against each respondent[accused]. The findings and conclusions thereon may be either joint or separate, as the trial panel, in its discretion, may determine. The Bar, at the discretion of the SPRB, may also consolidate formal complaints against two or more attorneys for hearing before one trial panel.

(f) Appointment of Trial Panel. Within 30 days following respondent's timely filing of an answer pursuant to BR 4.3, Disciplinary Counsel shall file a request with the Disciplinary Board Clerk that the regional chairperson appoint an attorney and a public member to serve on the trial panel with the Adjudicator.

*(Rule 4.1(a) amended by Order dated January 5, 1988. Amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 4.1(b) amended by Order dated February 23, 1988.)*

*(Rule 4.1(a) and (c) amended by Order dated February 5, 2001.)*

*(Rule 4.1(b) amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 4.2 Service Of Formal Complaint.**

(a) Manner of Service of Formal Complaint. A copy of the formal complaint, accompanied by a notice to file an answer[ it] within 14 days, may be personally served on the respondent[accused] or as otherwise permitted by B[ar ]R[ule] 1.12. The notice to answer shall be substantially the form set forth in BR 12.2.

(b) Alternative Service of Formal Complaint. The Bar may request the Adjudicator[Supreme Court] to authorize the service of a formal complaint and notice to answer on the respondent[Accused] pursuant to ORCP 7.D(6).

(c) Proof of Service of Complaint. Proof of personal service shall be made in the same manner as in a case pending in a circuit court.

(d) Service of Amended Formal Complaint. An amended formal complaint may be served by mail, provided the original formal complaint was served [up]on the respondent[accused] in the manner provided by BR 4.2(a) or (b).

(e) Disregard of Error. Failure to comply with any provision of this rule or BR 1.12 shall not affect the validity of service if the respondent[Accused] received actual notice of the substance and pendency of the disciplinary proceedings.

*(Rule 4.2 amended by Order dated June 30, 1987.)*

*(Rule 4.2(d) added by Order dated February 5, 2001.)*

*(Rule 4.2(a) amended by Order dated April 26, 2007.)*

#### **Rule 4.3 Answer.**

(a) Time to Answer. The respondent[accused] shall answer the formal complaint within 14 days of service of the formal complaint.

(b) Extensions. The respondent[accused] may, in writing, request an extension of time to file his or her answer from the Adjudicator[Disciplinary Counsel]. The request for extension must be received by the Adjudicator[Disciplinary Counsel] within the time the respondent[accused] is required to file an answer. The Adjudicator[Disciplinary Counsel] shall respond to the request in writing and shall file a copy of the response with the Disciplinary Board Clerk.

*[(c) Trial Panel Authority. Upon application of either the Bar or the accused, the trial panel chairperson to which the matter is assigned, or the regional chairperson if a trial panel chairperson has not been appointed, may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.]*

*[(d)] Form of Answer. The respondent's[*accused's*] answer shall be responsive to the formal complaint filed. General denials are are[*shall*] not be allowed. The answer shall be substantially in the form set forth in BR 12.3 and shall be supported by a declaration under penalty of perjury[*verified*] by the respondent[*accused*]. The original shall be filed with the Disciplinary Board Clerk with proof of service on Disciplinary Counsel[ *and Bar Counsel, if one has been appointed*].*

*(Rule 4.3(b) and (c) amended by Order dated February 5, 2001.)*

*(Rule 4.3(b) and (d) amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 4.4 Pleadings And Amendments.**

(a) Pleadings. The only permissible pleadings shall be a formal complaint and an answer, and amendments thereto, except for a motion to require a formal complaint to comply with BR 4.1(c) and an answer to comply with BR 4.3(d).

(b) Amendments.

(1) Disciplinary Counsel may amend a[A] formal complaint [*can be amended*] at any time after filing, subject to any limitations that may be imposed by the Adjudicator as to timing or content in any prehearing order entered pursuant to BR 4.7, in amplification of the original charges, to add new charges, or to withdraw charges. If an[*In case of*] amendment is made, [*however,*] the respondent[*accused*] shall be given a reasonable time, set by the Adjudicator[*trial panel chairperson or the regional chairperson if a trial panel chairperson has not been appointed*], to answer the amended formal complaint, to procure evidence and to prepare to meet the matters raised by the amended formal complaint.

(2) The respondent may amend a[A]n answer [*can be amended*] at any time after filing, subject to any limitations that may be imposed by the Adjudicator as to timing or content in any prehearing order entered pursuant to BR 4.7. If an answer is amended[*In the case of amendment, however*], the Bar shall be given a reasonable time, set by the Adjudicator[*trial panel chairperson or the regional chairperson if a trial panel chairperson has not been appointed*], to procure evidence and to prepare to meet the matters raised by the amended answer.

(c) Adjudicator Authority. Upon application of either the Bar or the respondent, the Adjudicator may extend the time for filing any pleading or for filing any document required or permitted to be submitted to the trial panel, except as otherwise provided in these rules.

*(Rule 4.4(b) amended by Order dated February 5, 2001.)*

#### **Rule 4.5 Discovery.**

(a) General. Discovery in disciplinary proceedings is intended to promote identification of issues and a prompt and fair hearing on the charges. Discovery shall be conducted expeditiously by the parties[*Bar and the accused,*] and shall be completed within 14 days prior to the date of hearing, unless the Adjudicator extend[*ed*]s the time for good cause shown[*by the trial panel chairperson*].

(b) Permitted Discovery.

(1) Requests for admission, requests for production of documents, and depositions may be utilized in disciplinary proceedings.

(2) The manner of taking depositions shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Subpoenas may be issued when necessary by the Adjudicator[*trial panel chairperson*], Bar Counsel, Disciplinary Counsel, the respondent[*accused*] or his or her attorney of record. Depositions may be taken any time after service of the formal complaint.

(3) Transcripts of depositions in disciplinary proceedings shall comply with the Oregon Rules of Appellate Procedure[ *of the Supreme Court*] as to form. A person who is deposed may request at the time of deposition to examine the person's transcribed testimony. In such case, the procedure set forth in the Oregon Rules of Civil Procedure shall be followed as[ *far as*] practicable.

(4) The manner of making requests for the production of documents shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for production may be served any time after service of the formal complaint with responses due within 21 days.

(5) The manner of making requests for admission shall conform as nearly as practicable to the procedure set forth in the Oregon Rules of Civil Procedure. Requests for admission may be served any time after service of the formal complaint with responses due within 21 days.

(c) Discovery Procedure. The Adjudicator shall resolve a[A]ll discovery questions[ *shall be resolved by the trial panel chairperson on motion, or by the regional chairperson if a trial panel chairperson has not been appointed*]. Discovery motions, including motions for limitation of discovery, shall be in writing. All such motions, and any responses, shall be filed with the Disciplinary Board Clerk with proof of service on the[ *trial panel chairperson and on the*] other party[*ies*]. The Bar or the respondent[*accused*] has[*shall have*] 7 days from the filing of a motion in which to file a response, unless the Adjudicator shortens the time[ *is shortened by the trial panel chairperson*] for good cause shown. [ *The response shall be filed with the Disciplinary Board Clerk with proof of service on the trial panel chairperson and the other parties.*] Upon expiration of the time for response, the Adjudicator[*trial panel chairperson*] shall promptly rule on the motion, with or without argument at the Adjudicator's discretion[ *of the trial panel chairperson*]. Argument on any motion may be heard by conference telephone call. The Adjudicator shall file [R]ulings on discovery motions[ *shall be filed*] with the Disciplinary Board Clerk, and the Clerk shall mail[ *with*] copies[ *mailed*] to the parties.

(d) Limitations on Discovery. In the exercise of his or her discretion, the Adjudicator[*trial panel chairperson*] shall impose such terms or limitations on the exercise of discovery as may appear necessary to prevent undue delay or expense in bringing the matter to hearing and to promote the interests of justice.

(e) Discovery Sanctions. For failure to provide discovery as required under BR 4.5, the Adjudicator[*trial panel chairperson*] may make such rulings as are just, including, but not limited to, the following:

(1) A ruling that the matters regarding which the ruling was made or any other designated fact are[*shall be*] taken to be established for the purposes of the proceeding in accordance with the claim of the party[*litigant*] obtaining the ruling; or

(2) A ruling refusing to allow the disobedient party[*litigant*] to support or oppose designated claims or defenses, or prohibiting the disobedient party[*litigant*] from introducing designated matters in evidence.

[*In addition, a*]Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena[,] is[*shall be*] subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to this rule[*BR 4.5*] may be enforced by application of the Bar or the respondent[*accused*] to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(f) Rulings Interlocutory. Discovery rulings are interlocutory.

(*Rule 4.5(c) amended by Order dated February 23, 1988. Rule 4.5(b) amended by Order April 4, 1991, effective April 15, 1991.*)

(*Rule 4.5(a) and (c) amended by Order dated February 5, 2001.*)

*(Rule 4.5(c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 4.6 Pre[-]hearing Issue Narrowing and Settlement Conference[s] and Order.**

(a) Within 28[seven] days of written notice that the [pleadings were mailed to the trial panel under BR 2.4(h)] Adjudicator has set the date and place of the hearing pursuant to BR 2.4(e)(8), either party[the Bar or the accused] may file with the Disciplinary Board Clerk a request for a single pre[-]hearing issue narrowing and settlement conference pursuant to this rule. [A copy of the request shall be served on the state chairperson, who] Upon notification from the Disciplinary Board Clerk that a timely request for a BR 4.6 conference has been filed, the Adjudicator shall appoint a member of the Disciplinary Board to serve as a presiding member and conduct the[a pre-hearing] BR 4.6 conference. A conference shall be held no later than 21 days before the scheduled hearing date in a disciplinary proceeding and shall not exceed one business day in length. The[ Bar and the] respondent[accused],[ and] counsel for the respondent[accused], if any, and Disciplinary Counsel must attend. The purpose of the conference is[shall be] to narrow factual and legal issues in dispute for trial and to facilitate discussion regarding discipline by consent under BR 3.6, if appropriate. Except for those facts admitted and denied in the pre[-]hearing order, under BR 4.7, no oral or written statements or admissions made at or in connection with the pre[-]hearing conference shall be admitted as evidence in this or any subsequent B[b]ar disciplinary proceeding. No member of the trial panel appointed in the proceeding shall conduct or participate in the pre[-]hearing conference.

(b) At the conclusion of the BR 4.6 conference, the presiding member shall enter an order setting forth agreed and disputed facts and elements of the violations alleged. In the absence of any agreement, the presiding member shall enter an order indicating that the BR 4.6 conference was held and that no agreements resulted. The presiding member shall file the order with the Disciplinary Board Clerk, with copies to be served by the Disciplinary Board Clerk on the parties. Agreed facts shall be deemed admitted and need not be proven at the hearing before the trial panel.

*(Rule 4.6 added by Order dated December 13, 1993.)*

*(Rule 4.6 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 4.7 Pre[-]hearing Conference and Orders.**

(a) At any time after the Adjudicator has set the time and place of the hearing pursuant to BR 2.4(e)(8) but not later than 56 days prior to the date of the hearing, the Adjudicator may schedule and convene a prehearing conference that may be conducted by telephone or in person and shall be attended by the respondent, respondent's counsel, if any, and Disciplinary Counsel, upon notice sent by the Disciplinary Board Clerk not less than 14 days prior to the scheduled date and time. Such prehearing conference is intended to facilitate the efficient conduct of the proceeding and may include discussing the parties' respective estimates of time necessary to present evidence, the availability and scheduling of witnesses, and the preparation of trial exhibits; and the scheduling of pleading amendment and discovery deadlines.

(b) At the conclusion of a pre[-]hearing conference, the Adjudicator[presiding member] shall enter an order setting forth all matters discussed and addressed, including any deadlines imposed[ agreed and disputed facts and elements of the violations alleged]. The Adjudicator shall file the[ original] order[ shall be filed] with the Disciplinary Board Clerk, and the Disciplinary Board Clerk shall serve [with] copies [served] on the parties.[Agreed facts shall be deemed admitted and need not be proven at the hearing before the trial panel.]

*(Rule 4.7 added by Order dated December 13, 1993.)*

*(Rule 4.7 amended by Order dated November 6, 1995. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

**Rule 4.8 Briefs.**

Briefs, if any, shall be filed with the Disciplinary Board Clerk with copies served on the trial panel no later than 7 days prior to the hearing. Where new or additional issues have arisen, [provided that] the Adjudicator[trial

panel chairperson] may[, in his or her discretion, where new or additional issues have arisen,] grant 7 days additional time for the filing of briefs on those issues.

*(Rule 4.8 (former Rule 2.4(i)(2)) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 4.9 Mediation**

(a) Mediation. The parties[*An accused and the Bar*] may employ the services of a mediator, other than a member of the Disciplinary Board, to determine the potential for, and to assist the parties in, negotiating[,] a settlement of issues in dispute. Mediation is voluntary; both parties must agree to participate in the mediation. The SPRB shall decide for the Bar whether to mediate.

(b) Time of Mediation. Mediation may occur at any time after the filing of the formal complaint, provided that the mediation shall not delay a hearing before a trial panel scheduled in accordance with BR 5.4. After a trial panel issues[*renders*] a written opinion in the proceeding pursuant to BR 2.4(i)(2), mediation may occur only if authorized by the Adjudicator[*State Chairperson of the Disciplinary Board*].

(c) Discipline by Consent. A stipulation for discipline or no contest plea negotiated through mediation is subject to approval by the SPRB, and the Disciplinary Board or the Supreme Court, as the case may be, as set forth in BR 3.6, before it is effective.

(d) Costs. The expense of mediation shall be shared equally by[ *an accused and*] the parties[*Bar*], unless the parties agree otherwise.

(e) Confidentiality. Mediation communications, as defined in ORS 36.110, are confidential and may not be disclosed or admitted as evidence in subsequent adjudicatory proceedings, except as provided by ORS 36.226.

*(Rule 4.9 added by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 4.9(a) and (e) amended by Order dated April 26, 2007.)*

### **Title 5 — Disciplinary Hearing Procedure**

#### **Rule 5.1 Evidence And Procedure.**

(a) Rules of Evidence. Trial panels may admit and give effect to evidence that[*which*] possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. Incompetent, irrelevant, immaterial, and unduly repetitious evidence should be excluded at any hearing conducted pursuant to these rules.

(b) Harmless Error. No error in procedure, in admitting or excluding evidence, or in ruling on evidentiary or discovery questions shall invalidate a finding or decision unless upon a review of the record as a whole, a determination is made that a denial of a fair hearing to either the Bar or the respondent[*accused*] has occurred.

*(Rule 5.1(a) amended by Order dated February 23, 1988.)*

#### **Rule 5.2 Burden Of Proof.**

The Bar has[*shall have*] the burden of establishing misconduct by clear and convincing evidence.

#### **Rule 5.3 Location Of Hearing; Subpoenas; Testimony.**

(a) Location. [*In t*]The trial panel hearing of any D[*d*]isciplinary P[*p*]roceeding in which the respondent maintains an office or residence in Oregon[, *the hearing*] shall be held either in the county in which the respondent[*person charged*] maintains his or her office for the practice of law or other business, in which he or she resides, or in which the offense is alleged to have been committed, at[*in*] the Adjudicator's discretion[

*of the trial panel chairperson*]. With the respondent's consent*[ of the accused]*, the hearing may be held elsewhere. For any proceeding brought pursuant to these rules other than pursuant to Title 4 in which the attorney the subject of the proceeding maintains an office or residence in Oregon, and for any proceeding brought pursuant to these rules in which the attorney the subject of the proceeding does not maintain an office or residence in Oregon, the Adjudicator shall designate a location for the hearing.*[ In the trial of a disciplinary proceeding involving an accused who does not maintain an office or residence in Oregon and the alleged misconduct either did not occur in Oregon or occurred in more than one county in Oregon, or in the trial of any contested reinstatement matter, the hearing shall be held at a location designated by the state chairperson of the Disciplinary Board.]*

(b) Subpoenas. The Executive Director, the Adjudicator*[state chairperson]*, or regional chairpersons of the Disciplinary Board,*[ trial panel chairpersons,]* Bar Counsel, Disciplinary Counsel and the attorney*[of record]* for the respondent*[accused]*, or the respondent*[accused]*, if appearing without an attorney, shall have the authority to issue subpoenas. Subpoenas shall be issued and served in accordance with the Oregon Rules of Civil Procedure in the same manner as in a case pending in a circuit court. Any witness who testifies falsely, fails to appear when subpoenaed, or fails to produce any documents pursuant to subpoena, is*[shall be]* subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to this rule*[BR 4.5]* may be enforced by application of either party*[the Bar or an accused]* to any circuit court. The circuit court shall determine what sanction to impose, if any, for noncompliance.

(c) Board Members as Witnesses. Current members of the Board of Governors shall not testify as witnesses in any Bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

(d) Testimony. Witnesses shall testify under oath or affirmation administered by any member of the Disciplinary Board or by any person authorized by law to administer an oath.

(e) Transcript of Proceedings; Correction of Errors; Settlement Order. Every disciplinary hearing shall be transcribed and shall comply with the Oregon Rules of Appellate Procedure as to form. The transcription shall be certified by the person preparing it. The reporter shall give written notice to Disciplinary Counsel, Bar Counsel, and the respondent*[accused]* of the filing of the transcripts with the Disciplinary Board Clerk, who shall provide copies to the Adjudicator*[trial panel chairperson]*. Within 14 days after the transcript is filed, the Bar or the respondent*[accused]* may move the Adjudicator*[trial panel chairperson]* for an order to correct any errors appearing in the transcript, by filing a motion*[. A copy of such motion shall be filed]* with the Disciplinary Board Clerk and serving*[ed on]* the *[trial panel chairperson and the]* other party*[ies]*. Within 7 days, the Bar or the respondent*[accused]*, as the case may be, may file a response to the motion with the Disciplinary Board Clerk, *[and]* serving a copy*[ies]* on the *[trial panel chairperson and the]* other party*[ies]*. The Adjudicator*[trial panel chairperson]* shall thereafter either deny the motion or direct the making of such corrections as may be appropriate. Upon the denial of the*[a]* motion *[ to correct the transcript]* or *[upon]* the making of such corrections *[ as may be directed by the trial panel chairperson]*, the Adjudicator*[trial panel chairperson]* shall file with the Disciplinary Board Clerk an order settling the transcript and the Disciplinary Board Clerk shall serve copies on the parties.

*(Rule 5.3(b) amended by Order dated April 4, 1991, effective April 15, 1991.)*

*(Rule 5.3(a) amended by Order dated July 22, 1991.)*

*(Rule 5.3 (c), (d), and (e) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 5.3(a) and (e) amended by Order dated February 5, 2001.)*

*(Rule 5.3(e) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 5.3(a) amended by Order dated April 26, 2007.)*

#### **Rule 5.4 Hearing Date; Continuances.**

Except in matters of default pursuant to BR 5.8, t[7]he Adjudicator shall establish the hearing date, which [shall be established by the trial panel chairperson and] shall not be less than 91[63] days nor more than 182 days following[ from] the date the [pleadings are received by the trial panel chairperson pursuant to BR 2.4(h)] Adjudicator notifies the parties of the date and time for hearing pursuant to BR 2.4(e)(5). The Adjudicator may

grant c[C]ontinuances of the hearing date[ *may be granted by the trial panel chairperson*] at any time prior to the hearing, or[ *by*], upon a showing of compelling necessity therefor, the trial panel[,] may grant continuances at the time of the hearing[, *only upon a showing of compelling necessity therefor*].; but i]In no event shall continuances[ *granted the Bar or the accused*] exceed 56 days in the aggregate.

*(Rule 5.4 amended by Order dated October 10, 1994.)*

*(Rule 5.4 amended by Order dated February 5, 2001.)*

#### **Rule 5.5 Prior Record.**

(a) Defined. "Prior record" means any contested admission, disciplinary or reinstatement decision of the Disciplinary Board or the Supreme Court that[*which*] has become final.

(b) Restrictions on Admissibility. At the fact finding hearing in a disciplinary proceeding, a[n *accused's*] respondent's prior record or lack thereof shall not be admissible to prove the character of a[n *accused*] respondent or to impeach his or her credibility.

#### **Rule 5.6 Evidence Of Prior Acts Of Misconduct.**

Evidence of prior acts of misconduct on the part of a[n *accused*] respondent is admissible in a disciplinary proceeding for such purposes as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

#### **Rule 5.7 Consideration Of Sanctions.**

Trial panels may receive evidence relating to the imposition of a sanction during a hearing, but are not to consider that evidence until after a determination is made that the respondent[*accused*] is in violation of a rule of professional conduct[*disciplinary rule*] or statute. Only when the Adjudicator[*trial panel chairperson*] considers it appropriate because of the complexity of the case or the seriousness of the charge or charges, the trial panel may be reconvened to consider evidence in aggravation or mitigation of the misconduct found to have occurred.

*(Rule 5.7 amended by Order dated February 23, 1988.)*

#### **Rule 5.8 Default.**

(a) Failure to Answer or Appear. If a[n *accused lawyer*] respondent fails to resign or file an answer to a formal complaint within the time allowed by these rules, or if a[n *accused lawyer*] respondent fails to appear at a hearing set pursuant to BR 2.4(h), the Adjudicator[*trial panel chairperson, or the regional chairperson if a trial panel has not been appointed,*] may file with the Disciplinary Board Clerk an order finding the respondent[*accused*] in default under this rule and, if so, shall request the regional chairperson to appoint an attorney member and a public member to serve on the trial panel. The Disciplinary Board Clerk shall serve c[C]opies of the order of default [ *shall be served*] on the parties. The trial panel shall thereafter deem the allegations in the formal complaint to be true[.] and [The trial panel shall thereafter ]proceed to issue[*render*] its written opinion based on the formal complaint, or, at the trial panel's discretion[ *of the trial panel,*] after considering evidence or legal authority limited to the issue of sanction. Following entry of an order of default, the [*accused*]respondent is not [ *shall not be* ]entitled to further notice in the disciplinary proceeding under consideration, except as may be required by these rules or by statute. The trial panel shall not, absent good cause, continue or delay proceedings due to a[n *accused's*] respondent's failure to answer or appear.

(b) Setting Aside Default. At any time prior to a trial panel's issuing[ *rendering*] its written opinion, the trial panel may set aside an order of default upon a showing by the respondent[*accused*] that the respondent's[*accused's*] failure to resign, answer, or appear timely was the result of mistake, inadvertence, surprise, or excusable neglect. If[*After*] a trial panel has issued its opinion[ *is rendered*], a respondent must file any motion to set aside an order of default [ *must be filed*] with the Supreme Court.

*(Rule 5.8 amended by Order dated June 29, 1993.)*

*(Rule 5.8(a) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 5.8(a) amended by Order dated October 19, 2009.)*

### **Rule 5.9 Attorney Assistance Evidence.**

(a) Definition. For the purposes of this rule, an "attorney assistance program" is any treatment, counseling, training or remedial service, created under ORS 9.568 or otherwise, designed to provide assistance to attorneys who are suffering from impairment or other circumstances which may adversely affect their professional competence or conduct, or to provide advice and training to attorneys in practice management.

(b) Use of Evidence by Respondent[*Accused*]. Subject to the provisions of BR 5.1(a) and this rule, the respondent[*accused*] may offer evidence at a disciplinary hearing concerning the respondent's[*accused's*] participation in or communication with an attorney assistance program. If the respondent[*accused*] fails to provide timely notice to Disciplinary Counsel as required under BR 5.9(c), the respondent[*accused*] may not offer evidence of the respondent's[*accused's*] participation in or communication with an attorney assistance program at the hearing.

(c) Prior Notice. If the respondent[*accused*] intends to offer evidence at a hearing concerning the respondent's[*accused's*] participation in or communication with an attorney assistance program, the respondent[*accused*] shall file with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel, written notice of such intent, not less than 63 days prior to the date the hearing is scheduled to commence. For good cause shown, the Adjudicator[*trial panel chairperson*] may permit the respondent[*accused*] to give the notice within a shorter period of time. The notice shall specify the identity of the attorney assistance program, the nature of the evidence that will be offered, the names of the service providers with whom the respondent[*accused*] dealt, and the names and addresses of witnesses the respondent[*accused*] intends to call to present the evidence. The notice shall also include the consent or waiver required by BR 5.9(d). The respondent[*accused*] shall provide a copy of the notice to the attorney assistance program.

(d) Discovery. In the event the respondent[*accused*] provides a notice to Disciplinary Counsel under BR 5.9(c), Disciplinary Counsel may conduct discovery concerning the respondent's[*accused's*] participation in or communication with the attorney assistance program. The respondent[*accused*] shall provide any consent or waiver necessary to permit Disciplinary Counsel to obtain discovery from the attorney assistance program or its service providers at the time the respondent[*accused*] provides the notice required by BR 5.9(c). Questions regarding the permissible scope of discovery under this rule shall be resolved by the Adjudicator[*trial panel chairperson*] on motion pursuant to BR 4.5(c).

(e) Discovery not Public. Records and information obtained by Disciplinary Counsel through discovery under this rule are[*shall*] not be subject to public disclosure pursuant to BR 1.7(b), consistent with ORS 9.568(3), and may[*shall*] be disclosed by the parties only in the disciplinary proceeding.

(f) Use of Evidence by Bar. The Bar shall have the right to introduce evidence obtained through discovery under this rule only if the respondent[*accused*] introduces evidence of participation in or communication with an attorney assistance program.

(g) Enforcement. The Adjudicator[*trial panel chairperson*] may issue a protective order and impose sanctions to enforce this rule pursuant to BR 4.5(d) and (e).

*(Rule 5.9 added by Order dated November 30, 1999.)*

*(Rule 5.9(a) amended by Order dated February 5, 2001.)*

*(Rule 5.9(c) amended by Order dated June 17, 2003, effective July 1, 2003.)*

## Title 6 — Sanctions And Other Remedies

### Rule 6.1 Sanctions.

(a) Disciplinary Proceedings. The dispositions or sanctions in disciplinary proceedings or matters brought pursuant to BR 3.4 or 3.5 are

- (i) dismissal of any charge or all charges;
- (ii) public reprimand;
- (iii) suspension for periods from 30 days to five years;
- (iv) a suspension for any period designated in BR 6.1(a)(iii), which may be stayed in whole or in part on the condition that designated probationary terms are met; or
- (v) disbarment.

In conjunction with a disposition or sanction referred to in this rule, a[n *accused*] respondent may be required to make restitution of some or all of the money, property, or fees received by the respondent[*accused*] in the representation of a client, or reimbursement to the Client Security Fund.

(b) Contested Reinstatement Proceedings. In contested reinstatement cases a determination shall be made whether the applicant shall be

- (i) denied reinstatement;
- (ii) reinstated conditionally, subject to probationary terms; or
- (iii) reinstated unconditionally.

(c) Time Period Before Application and Reapplication. The Supreme C[c]ourt may require an applicant whose admission or reinstatement has been denied to wait a period of time designated by the court before reapplying for admission or reinstatement.

(d) Effect of Disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996, may not apply for reinstatement until five years have[s] elapsed from the effective date of his or her disbarment. An attorney disbarred as a result of a disciplinary proceeding commenced by formal complaint after December 31, 1995, shall never be eligible to apply and shall not be considered for admission under ORS 9.220 or reinstatement under Title 8 of these rules.

*(Rule 6.1(a) amended by Order dated May 31, 1984, effective July 1, 1984. Rule 6.1(d) amended by Order dated November 29, 1985, effective December 1, 1985. Rule 6.1(a) amended by Order dated December 14, 1995. Rule 6.1(d) amended by Order dated December 14, 1995. Rule 6.1(e) added by Order dated December 14, 1995. Rule 6.1(a) amended by Order dated June 5, 1997, effective July 1, 1997.)*

*(Rule 6.1(a) amended by Order dated February 5, 2001.)*

*(Rule 6.1(a)(iii) – 6.1(a)(v) and 6.1(b) – 6.1(d) amended by Order dated October 19, 2009.)*

### Rule 6.2 Probation.

(a) Authority in Disciplinary Proceedings. Upon determining that a[n *accused*] respondent should be suspended, the trial panel may decide to stay[*that the*] execution of the suspension[ *shall be stayed*], in whole or in part, and place[*that*] the respondent[*accused shall be placed*] on probation for a period no longer than three years. The imposition of a probationary term shall not affect the criteria established by statute and these rules for Supreme Court [*the*] review of trial panel decisions[ *of trial panels by the Supreme Court*]. Probation, if ordered, may be under such conditions as the trial panel or the [Supreme C]court considers appropriate. Such conditions may include, but are not limited to, requiring alcohol or drug treatment;

requiring medical care; requiring psychological or psychiatric care; requiring professional office practice or management counseling; and requiring periodic audits or reports. In any case where an attorney is placed on probation pursuant to this rule, the Adjudicator[*state chairperson of the Disciplinary Board*] or the [*Supreme C*]court may appoint a suitable person or persons to supervise the probation. Cooperation with any person[ *or persons*] so appointed shall be a condition of the probation.

(b) Authority in Contested Reinstatement Proceedings. Upon determining that an applicant should be readmitted to membership in the Oregon State Bar, the trial panel may decide to place the applicant on probation for a period no longer than three years. The probationary terms may include, but are not limited to, those provided in BR 6.2(a). The [*Supreme C*]court may adopt, in whole or in part, the trial panel's decision[ *of the trial panel*] regarding probation and enter an appropriate order upon a review of the proceeding. The court may appoint a suitable person or persons to supervise the probation. Cooperation with any person[ *or persons*] so appointed shall be a condition of the probation. An attorney placed on probation pursuant to this rule may have his or her probation revoked for a violation of any probationary term by petition of Disciplinary Counsel in accordance with the procedures set forth in BR 6.2(d). An attorney whose probation is revoked shall be suspended from the practice of law until further order of the court.

(c) Disciplinary Board. In all cases where the trial panel determines that the respondent[*accused*] should be suspended and the determination is not reviewed by the [*Supreme C*]court, thereby resulting in such determination becoming final, the decision that the respondent[*accused*] be placed on probation under the conditions specified in the trial panel's opinion shall be deemed adopted and made a part of the determination.

(d) Revocation Petition; Service; Trial Panel; Setting; Hearing. Disciplinary Counsel may petition the Adjudicator[*state chairperson of the Disciplinary Board*] or the [*Supreme C*]court, as the case may be, to revoke the probation of any attorney for violation of any probationary term imposed by a trial panel or the [*Supreme C*]court, serving the attorney with a copy of the petition pursuant to BR 1.8. The Adjudicator or the court, as the case may be, may order the attorney to appear and show cause why probation should not be revoked and the original sanction imposed; the court also may refer the matter to the Disciplinary Board for hearing.[ *The state chairperson or court may order the attorney to appear and show cause, if he or she has any, why the attorney's probation should not be revoked and the original sanctions imposed.*] When revocation of a trial panel probation is sought or the court has referred the matter to the Disciplinary Board for hearing, t[ 7]he Adjudicator[*state chairperson or the court, as the case may be, may*] shall appoint [a] trial panel members pursuant to BR 2.4(e)(7) [of the Disciplinary Board ]to serve with the Adjudicator on a trial panel that will conduct the show cause hearing and, where applicable, report back to the[ *state chairperson or*] the court. The Disciplinary Board Clerk shall notify the attorney and Disciplinary Counsel in writing of the members to serve on the trial panel. BR 2.4(g) applies. After any timely filed challenges have been ruled upon and any substitute members have been appointed, the Adjudicator shall promptly enter an order that the attorney appear and show cause why probation should not be revoked and the original sanction imposed, and that establishes the date, place, and time of the show cause hearing, which must be held not less than 21 days later. The Disciplinary Board Clerk shall send the parties a copy of the show cause order. At the hearing, Disciplinary Counsel has the burden of proving by clear and convincing evidence that the attorney has violated a material term of probation. If the attorney, after being served with a copy of the petition and sent a copy of the show cause order, fails to appear at the hearing, the trial panel shall deem the allegations in the petition to be true and proceed to issue its written opinion based on the petition.[ *The state chairperson or the court, as the case may be, shall thereafter rule on the petition.*] If the revocation matter is within the jurisdiction of the Disciplinary Board, the [*petition, the order to appear and show cause, the order appointing a trial panel and the*] trial panel's decision[ *of the trial panel*] shall be filed with the Disciplinary Board Clerk and the Disciplinary Board Clerk shall serve[ *and*] copies[ *shall be served*] on the [*other*] parties. If the revocation matter is within the court's jurisdiction, the trial panel appointed to conduct the show cause hearing shall report back to the court, and the court shall thereafter rule on the petition. A petition for revocation of an attorney's probation shall not preclude the Bar from filing independent disciplinary charges based on the same conduct as alleged in the petition.

(e) Application of Other Rules. Except as specifically provided herein, Title 4 and Title 5 of the Rules of Procedure do not apply to proceedings brought pursuant to BR 6.2(d).

*(Rule 6.2(b) amended by Order dated July 22, 1991.)*

*(Rule 6.2(d) amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

### **Rule 6.3 Duties Upon Disbarment Or Suspension.**

(a) Attorney to Discontinue Practice. A disbarred or suspended attorney shall not practice law after the effective date of disbarment or suspension. This rule shall not preclude a disbarred or suspended attorney from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of a disbarred or suspended attorney to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Notice; Return of Client Property. When, as a result of the disbarment or suspension, any active client matter will be left for which no other active member of the Bar, with the consent of the client, has agreed to resume responsibility, the disbarred or suspended attorney shall give written notice of the cessation of practice to the affected clients, opposing parties, courts, agencies, and any other person or entity having reason to be informed of the cessation of practice. Such notice shall be given no later than 14 days after the effective date of the disbarment or suspension. In the case of a disbarment or a suspension of more than 60 days, client property pertaining to any active client matter shall be delivered to the client or an active member of the Bar designated by the client as substitute counsel.

(d)[(c)] Contempt. Disciplinary Counsel may petition the Supreme Court to hold a disbarred or suspended attorney in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

*(Rule 6.3 amended by Order dated March 13, 1989, effective April 1, 1989.)*

### **Rule 6.4 Ethics School.**

(a) An attorney sanctioned under BR 6.1(a)(ii), (a)(iii) or (a)(iv) shall successfully complete a one-day course of study developed and offered by the Bar on the subjects of legal ethics, professional responsibility and law office management. Successful completion requires that the attorney attend in person the course offered by the Bar and pay the attendance fee established by the Bar.

(b) An attorney reprimanded under BR 6.1(a)(ii) who does not successfully complete the course of study when the course is next offered by the Bar following the effective date of the reprimand may be suspended from the practice of law upon the order of the Adjudicator[Supreme Court] until the attorney successfully completes the course.

(c) An attorney suspended under BR 6.1(a)(iii) or (a)(iv) shall not be reinstated until the attorney successfully completes the course of study, unless the course is not offered before the attorney's term of suspension expires, in which case the attorney may be reinstated if otherwise eligible under applicable provisions of Title 8 of these Rules until the course is next offered by the Bar. If the attorney does not successfully complete the course when it is next offered, the attorney may be suspended from the practice of law upon the order of the Adjudicator[Supreme Court] until the attorney successfully completes the course.

(d) Notwithstanding the provisions of BR 6.4(b) and (c), an extension of time in which to complete the ethics school requirement may be granted by the Bar or the Adjudicator[Supreme Court], as the case may be, for good cause shown.

*(Rule 6.4 added by Order dated December 10, 2010, effective June 1, 2011.)*

## Title 7 — Suspension for Failure to Respond in a Disciplinary Investigation

### Rule 7.1 Suspension for Failure to Respond to a Subpoena.

(a) Petition for Suspension. When an attorney fails without good cause to timely respond to a request from Disciplinary Counsel [or the LPRC] for information or records, or fails to respond to a subpoena issued pursuant to BR 2.2(b)(2)[2.3(a)(3), BR 2.3(b)(3)(C), or BR 2.3(b)(3)(E)], Disciplinary Counsel may petition the Disciplinary Board for an order immediately suspending the attorney until such time as the attorney responds to the request or complies with the subpoena. A petition under this rule shall allege that the attorney has not responded to requests for information or records, or has not complied with a subpoena, and has not asserted a good-faith objection to responding or complying. The petition shall be supported by a declaration setting forth the efforts undertaken by Disciplinary Counsel [or the LPRC] to obtain the attorney's response or compliance.

(b) Procedure. Disciplinary Counsel shall file a petition under this rule with the Disciplinary Board Clerk, *with proof of service on the state chairperson, who* The Adjudicator shall have the authority to act on the matter for the Disciplinary Board. A copy of the petition and declaration shall be served on the attorney as set forth in BR 1.8(a).

(c) Response. Within 7 business days after service of the petition, the attorney may file a response with the Disciplinary Board Clerk, setting forth facts showing that the attorney has responded to the requests or complied with the subpoena or the reasons why the attorney has not responded or complied. The attorney shall serve a copy of the response [answer] upon Disciplinary Counsel pursuant to BR 1.8(b). Disciplinary Counsel may file a reply to any response with the Disciplinary Board Clerk within 2 business days after being served with a copy of the attorney's response and shall serve a copy of the reply on the attorney. [The response and reply shall be filed with the Disciplinary Board Clerk, with proof of service on the state chairperson.]

(d) Review by the Disciplinary Board. Upon review, the Adjudicator [Disciplinary Board state chairperson] shall issue an order that either denies the petition or [immediately suspends [ing] the attorney from the practice of law for an indefinite period; or denying the petition]. The Adjudicator [state chairperson] shall file the order with the Disciplinary Board Clerk, who shall promptly send [ a] copies [y] to Disciplinary Counsel and the attorney.

(e) Duties upon Suspension. An attorney suspended from practice under this rule shall comply with the requirements of BR 6.3(a) and (b).

(f) Independent Charges. Suspension of an attorney under this rule is not discipline. Suspension or reinstatement under this rule shall not prevent [bar] the SPRB from directing Disciplinary Counsel to file [causing] a formal complaint [disciplinary charges to be filed] against an attorney alleging a [for] violation of RPC 8.1(a)(2), arising from the failure to respond or comply as alleged in the petition for suspension filed under this rule.

(g) Reinstatement. Subject to [ the provisions of] BR 8.1(a)(viii) and BR 8.2(a)(v), any attorney [person] who has been a member of the Bar but suspended under Rule 7.1 solely for failure to respond to requests for information or records or to respond to a subpoena shall be reinstated by the Executive Director to the membership status from which the person was suspended upon the filing of a Compliance Declaration [Affidavit] with Disciplinary Counsel as set forth in BR 13[2].10.

*(Rule 7.1 amended by Order dated November 1, 1984, effective December 1, 1984. Amended by Order dated September 24, 1987, effective October 1, 1987. Rule 7.1 amended by Order dated October 1, 1990. Title 7 amended by Order dated July 22, 1991.)*

*(Rule 7.1 deleted by Order dated October 19, 2009.)*

*(Rule 7.1 added by Order dated August 12, 2013, effective November 1, 2013.)*

## Title 8 — Reinstatement

### **Rule 8.1 Reinstatement — Formal Application Required.**

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

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

(ii) resigned under Form B of these rules prior to January 1, 1996; or

(iii) been disbarred as a result of a disciplinary proceeding commenced by formal complaint before January 1, 1996; or

(iv) been suspended for misconduct for a period of more than 6 [six] months; or

(v) been suspended for misconduct for a period of 6 [six] months or less but has remained in a suspended status for a period of more than 6 [six] months prior to the date of application for reinstatement; or

(vi) been enrolled voluntarily as an inactive or retired member for more than 5 [five] years; or

(vii) been involuntarily transferred to[*enrolled as an*] inactive membership status; or

(viii) been suspended for any reason and has remained in that status more than 5 [five] years,

and who desires to be reinstated as an active member or to resume the practice of law in this state shall be reinstated as an active member of the Bar only upon formal application and compliance with the Rules of Procedure in effect at the time of such application. Applicants for reinstatement under this rule must file a completed application with the Bar on a form prepared by the Bar for that[*such*] purpose. The applicant shall attest that the applicant did not engage in the practice of law except where authorized to do so during the period of the applicant's inactive or retired status, suspension, disbarment, or resignation. A reinstatement to inactive status is[*shall*] not[ *be*] allowed under this rule. An applicant who has been suspended for a period exceeding six months may not apply[ *The application*] for reinstatement[ *of a person who has been suspended for a period exceeding six months shall not be made earlier than*] any earlier than 3 [three] months before the earliest possible expiration of the period specified in the[ *court's*] opinion or order imposing[*of*] suspension.

(b) Required Showing; Effect of Noncooperation. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest. Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application. The Executive Director may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

(c) Learning and Ability. In addition to the showing required in BR 8.1(b), each applicant under this rule who has remained in a suspended or resigned status for more than 3 [three] years or has been enrolled voluntarily

or involuntarily as an inactive or retired member for more than 5 [five] years must show that the applicant has the requisite learning and ability to practice law in this state. The Bar may recommend and the Supreme Court may require as a condition precedent to reinstatement that the applicant take and pass the bar examination administered by the Board of Bar Examiners, or successfully complete a prescribed course of continuing legal education. Factors to be considered in determining an applicant's learning and ability include, but are not limited to: the length of time since the applicant was an active member of the Bar; whether and when the applicant has practiced law in Oregon; whether the applicant practiced law in any jurisdiction during the period of the applicant's suspension, resignation, [ or] inactive, or retired status in Oregon[this state]; and whether the applicant has participated in continuing legal education activities during the period of suspension, [or] inactive, or retired status in Oregon[this state].

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

(e) Review by Executive Director; Referral of Application to Board. Notice of and requests for comment on applications filed under BR 8.1 shall be published on the [b]Bar's website for a period of 30 days. If, after review of an application filed under BR 8.1 and any information gathered in the investigation of the application, the Executive Director determines that the applicant has made the showing required by BR 8.1(b), the Executive Director shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Executive Director is unable to determine from a review of an application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

(f) Board Consideration of Application. If, after a referral from the Executive Director, the Board determines from its review of the application and any information gathered in the investigation of the application that the applicant has made the showing required by BR 8.1(b), the Board shall recommend to the Supreme Court, as provided in BR 8.7, that the application be granted, conditionally or unconditionally. If the Board determines that the applicant has not made the showing required by BR 8.1(b), the Board shall recommend to the [Supreme C]court that the application be denied.

*(Rule 8.1(c) and (f) amended by Order dated May 31, 1984, effective July 1, 1984.)*

*(Rule 8.1(c) amended by Order dated July 27, 1984 nun pro tunc May 31, 1984.)*

*(Rule 8.1 amended by Order dated March 13, 1989, effective April 1, 1989, corrected June 1, 1989.)*

*(Rule 8.1(a) and (c) amended by Order dated March 20, 1990, effective April 2, 1990.)*

*(Rule 8.1(a), (c), and (d) amended by Order dated December 14, 1995.)*

*(Rule 8.1(a) amended by Order dated February 5, 2001.)*

*(Rule 8.1(d) amended by Order dated October 19, 2009.)*

*(Rule 8.1(c) amended and Rule 8.1(e) and (f) added by Order dated April 5, 2013.)*

### **Rule 8.2 Reinstatement — Informal Application Required.**

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

(i) resigned under Form A of these rules for 5 [five] years or less prior to the date of application for reinstatement, and who has not been a member of the Bar during such period; or

(ii) been enrolled voluntarily as an inactive or retired member for 5 [five] years or less prior to the date of application for reinstatement; or

(iii) been suspended for failure to pay the Professional Liability Fund assessment, Client Security Fund assessment, or membership fees or penalties and has remained in that status more than 6 [six] months but not in excess of 5 [five] years prior to the date of application for reinstatement; or

(iv) been suspended for failure to file with the Bar a certificate disclosing lawyer trust accounts and has remained in that status more than 6 [six] months but not in excess of 5 [five] years prior to the date of application for reinstatement; or

(v) been suspended under BR 7.1 and has remained in that status more than 6 [six] months but not in excess of 5 [five] years prior to the date of application for reinstatement,

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

(b) Required Showing. Each applicant under this rule must show that the applicant has good moral character and general fitness to practice law and that the applicant's resumption of the practice of law in this state [by the applicant] will not be detrimental to the administration of justice or the public interest. Each applicant has a duty to cooperate and comply with requests from the Bar in its efforts to assess the applicant's good moral character and general fitness to practice law, including responding to a lawful demand for information; the execution of releases necessary to obtain information and records from third parties whose records reasonably bear upon character and fitness; and reporting promptly any changes, additions or corrections to information provided in the application. The Executive Director may refer to the Board any applicant who, during the pendency of a reinstatement application, engages in conduct that would violate RPC 8.1(a) if done by an attorney, with a recommendation that the Board determine that the applicant has not made the showing required by BR 8.1(b) and recommend to the Supreme Court that the application be denied. No applicant shall resume the practice of law in this state or active membership status unless all the requirements of this rule are met.

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

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

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

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

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

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

(e) Referral of Application to Board. If the Executive Director is unable to determine from a review of an informal application and any information gathered in the investigation of the application that the applicant for

reinstatement has made the showing required by BR 8.2(b), the Executive Director shall refer the application to the Board for consideration, with notice to the applicant.

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

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

*(Rule 8.2(b) amended by Order dated May 31, 1984, effective July 1, 1984.)*  
*(Rule 8.2 amended by Order dated March 13, 1989, effective April 1, 1989.)*  
*(Rule 8.2 (a) and (b) amended by Order dated March 20, 1990, effective April 2, 1990.)*  
*(Rule 8.2(a) amended by Order dated December 28, 1993.)*  
*(Rule 8.2(a) amended by Order dated December 14, 1995.)*  
*(Rule 8.2 amended by Order dated December 9, 2004, effective January 1, 2005.)*  
*(Rule 8.2(d)(iii) amended by Order dated April 26, 2007.)*  
*(Rule 8.2(c) and 8.2(d) amended by Order dated October 19, 2009.)*  
*(Rule 8.2(a)(iv) added by Order dated June 6, 2012.)*  
*(Rule 8.2(a)(v) added by Order dated August 12, 2013, effective November 1, 2013.)*

### **Rule 8.3 Reinstatement — Compliance Declaration[Affidavit].**

(a) Applicants. Subject to the provisions of BR 8.1(a)(v), any person who has been a member of the Bar but who has been suspended for misconduct for a period of six months or less shall be reinstated upon the filing of a Compliance Declaration[Affidavit] with Disciplinary Counsel as set forth in BR 13[2].9, unless the court or Disciplinary Board in any suspension order or decision shall have directed otherwise.

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

*(Rule 8.3 established by Order dated March 13, 1989, effective April 1, 1989.)*  
*(Rule 8.3(a) amended by Order dated December 28, 1993.)*  
*(Rule 8.3(b) amended by Order dated October 19, 2009.)*

### **Rule 8.4 Reinstatement — Financial or Trust Account Certification Matters.**

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

- (i) payment to the Bar of all applicable assessments, fees and penalties owed by the member to the Bar, and
- (ii) in the case of a suspension for failure to pay membership fees or penalties or the Client Security Fund assessment, payment of a reinstatement fee of \$100; or

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

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

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

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

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

*(Rule 8.4 (former BR 8.3) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.4(a)(ii) – 8.4(a)(iv) and 8.4(b) amended by Order dated October 19, 2009.)*

*(Rule 8.4(a) amended by Order dated June 6, 2012.)*

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

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

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

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

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

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

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

*(Rule 8.4 established by Order dated November 24, 1987, effective January 1, 1988.)*

*(Rule 8.5 (former BR 8.4) amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.5(a) amended by Order dated December 14, 1995.)*

*(Rule 8.5(a) amended by Order dated October 19, 2009.)*

*(Rule 8.5(a) amended by Order dated June 6, 2012.)*

**Rule 8.6 Other Obligations Upon Application.**

(a) Financial Obligations. Each applicant under BR 8.1 through 8.5 shall pay to the Bar, at the time the application for reinstatement is filed, all past due assessments, fees and penalties owed to the Bar for prior years, and the membership fee and Client Security Fund assessment for the year in which the application for reinstatement is filed, less any active or inactive membership fees or Client Security Fund assessment paid by the applicant previously for the year of application. Each applicant under BR 8.1(a)(i) and BR 8.1(a)(viii), shall also pay to the Bar, at the time of application, an amount equal to \$50 for each year the applicant remained suspended or resigned, and for which no membership fee has been paid. Each applicant under BR 8.2(a)(i), BR 8.2(a)(iii), or (iv) shall also pay to the Bar, at the time of application, an amount equal to \$100 for each year the applicant remained suspended or resigned and for which no membership fee has been paid. Each applicant shall also pay, upon reinstatement, any applicable assessment to the Professional Liability Fund.

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

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

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

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

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

*(Rule 8.6(a) and (b) amended by Order dated December 14, 1995.)*

*(Rule 8.6(a), (b) and (c) amended by Order dated February 5, 2001.)*

*(Rule 8.6(a) amended by Order dated June 6, 2012.)*

*(Rule 8.6(a) amended by Order dated August 10, 2015.)*

**Rule 8.7 Board Investigation And Recommendation.**

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

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

professional misconduct, or an involuntary transfer to inactive status, shall not be temporarily reinstated pursuant to this rule.

*(Rule 8.7 amended by Order dated December 28, 1993.)*

*(Rule 8.7(a) amended by Order dated December 9, 2004, effective January 1, 2005.)*

*(Rule 8.7(a) and (b) amended by Order dated April 5, 2013.)*

#### **Rule 8.8 Petition To Review Adverse Recommendation.**

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

*(Rule 8.8 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 8.8 amended by Order dated April 5, 2013.)*

#### **Rule 8.9 Procedure On Referral By Supreme Court.**

On receipt of notice of a referral to the Disciplinary Board under BR 8.8, Disciplinary Counsel may appoint Bar Counsel to represent the Bar. Disciplinary Counsel or Bar Counsel shall prepare and file with the Disciplinary Board Clerk, with proof of service on the applicant, a statement of objections. The statement of objections shall be substantially in the form set forth in BR 13[2].5.

*(Rule 8.9 amended by Order dated February 5, 2001. Amended by Order dated June 17, 2003, effective July 1, 2003.)*

#### **Rule 8.10 Answer To Statement Of Objections.**

The applicant shall answer the statement of objections within 14 days after service of the statement and notice to answer upon the applicant. The answer shall be responsive to the objections filed. General denials are not allowed. The answer shall be substantially in the form set forth in BR 13[2].3 and [ *The original*] shall be filed with the Disciplinary Board Clerk, with proof of service on Disciplinary Counsel [ *and Bar Counsel*]. After the answer is filed or upon the expiration of the time allowed in the event the applicant fails to answer, the matter shall proceed to hearing.

*(Rule 8.10 amended by Order dated July 17, 2003, effective July 1, 2003.)*

#### **Rule 8.11 Hearing Procedure.**

Titles 4, 5, and 10 [ *shall*] apply as far as practicable to reinstatement proceedings referred by the Supreme C[c]ourt to the Disciplinary Board for hearing.

#### **Rule 8.12 Burden Of Proof.**

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

**Rule 8.13 Burden Of Producing Evidence.**

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

**Rule 8.14 Reinstatement and Transfer--Active Pro Bono.**

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

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

*(Rules 8.5 - 8.11 amended by Order dated November 24, 1987, effective January 1, 1988.)*

*(Rules 8.6 - 8.13 amended by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 8.14 added by Order dated September 6, 2001, effective September 6, 2001.)*

*(Rule 8.14(a) and 8.14(b) amended by Order dated October 19, 2009.)*

## Title 9 — Resignation

**Rule 9.1 Resignation.**

An attorney may resign membership in the Bar by filing with Disciplinary Counsel a resignation that[in writing which] shall be effective only on acceptance by the Supreme C[c]ourt. If no charges, allegations or instances of alleged misconduct involving the attorney are under investigation by the Bar, and no disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.6. If charges, allegations, or instances of alleged misconduct involving the attorney are under investigation by the Bar, or if disciplinary proceedings are pending against the attorney, the resignation must be on the form set forth in BR 12.7.

*(Rule 9.1 amended by Order dated February 5, 2001.)*

**Rule 9.2 Acceptance Of Resignation.**

Disciplinary Counsel shall promptly forward the resignation to the State Court Administrator for submission to the Supreme C[c]ourt. Upon acceptance of the resignation by the court, the name of the resigning attorney shall be stricken from the roll of attorneys; and he or she shall no longer be entitled to the rights or privileges of an attorney, but shall remain subject to the jurisdiction of the court with respect to matters occurring while he or she was an attorney. Unless otherwise ordered by the court, any pending investigation of charges, allegations, or instances of alleged misconduct by the resigning attorney shall, on the acceptance by the court of his or her resignation, be closed, as shall any pending disciplinary proceeding against the attorney.

*(Rule 9.2 amended by Order dated February 5, 2001.)*

**Rule 9.3 Duties Upon Resignation.**

(a) Attorney to Discontinue Practice. An attorney who has resigned membership in the [Oregon State ]Bar shall not practice law after the effective date of the resignation. This rule shall not preclude an attorney who has resigned from providing information on the facts of a case and its status to a succeeding attorney, and such information shall be provided on request.

(b) Responsibilities. It shall be the duty of an attorney who has resigned to immediately take all reasonable steps to avoid foreseeable prejudice to any client and to comply with all applicable laws and disciplinary rules.

(c) Notice. When, as a result of an attorney's resignation, an active client matter will be left for which no other active member of the Bar, with the consent of the client, has agreed to resume responsibility, the resigned attorney shall give written notice of the cessation of practice to the affected clients, opposing parties, courts, agencies, and any other person or entity having reason to be informed of the cessation of practice. Such notice shall be given no later than 14 days after the effective date of the resignation. Client property pertaining to any active client matter shall be delivered to the client or an active member of the Bar designated by the client as substitute counsel no later than 21 days after the effective date of the resignation.

(d)[(c)] Contempt. Disciplinary Counsel may petition the Supreme Court to hold an attorney who has resigned in contempt for failing to comply with the provisions of BR 6.3(a) or (b). The court may order the attorney to appear and show cause, if any, why the attorney should not be held in contempt of court and sanctioned accordingly.

*(Rule 9.3 amended by Order dated March 13, 1989, effective April 1, 1989.)*

**Rule 9.4 Effect of Form B Resignation.**

An attorney who has resigned membership in the Bar under Form B of these rules after December 31, 1995, shall never be eligible to apply for reinstatement under Title 8 of these rules and shall not be considered for admission under ORS 9.220 or on any basis under the Rules for Admission of Attorneys [ *reinstatement under Title 8 of these rules*].

*(Rule 9.4 added by Order dated December 14, 1995.)*

**Rule 9.5 [Reserved for expansion]**

*(Rule 9.5 repealed by Order dated January 17, 2008.)*

## Title 10 — Review By Supreme Court

**Rule 10.1 Disciplinary Proceedings.**

Upon the conclusion of a disciplinary hearing, the Adjudicator[*trial panel*], pursuant to BR 1.8, shall file the trial panel's[*its*] written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, Bar Counsel, and the respondent[*accused*]. [*The trial panel shall file a copy of its opinion with the State Court Administrator.*] The Bar or the respondent[*accused*] may seek review of the matter by the Supreme Court; otherwise, the decision of the trial panel shall be final on the 3[*6*]1st day following the notice of receipt of the trial panel opinion by the Disciplinary Board Clerk pursuant to Rule 2.4(i)(4).

*(Rule 10.1 amended by Order dated July 8, 1988.)*

*(Rule 10.1 amended by Order dated August 2, 1991.)*

*(Rule 10.1 amended by Order dated August 19, 1997, effective October 4, 1997.)*

*(Rule 10.1 amended by Order dated February 5, 2001.)*

*(Rule 10.1 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.1 amended by Order dated June 17, 2003, effective January 1, 2004.)*

**Rule 10.2 [Contested Reinstatement Proceeding.] Request For Review.**

*[Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and serve copies on Disciplinary Counsel, the applicant and the State Court Administrator. Each such reinstatement matter shall be reviewed by the Supreme Court.]*

Within 30 days after the Disciplinary Board Clerk has acknowledged, as required by BR 2.4(i)(4), receipt of a trial panel opinion, the Bar or the respondent may file with the Disciplinary Board Clerk and the State Court Administrator a request for review as set forth in BR 12.8. A copy of the request for review shall be served on the opposing party.

*(Rule 10.2 amended by Order dated July 22, 1991.)*

*(Rule 10.2 amended by Order dated February 5, 2001.)*

*(Rule 10.2 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.2 amended by Order dated October 19, 2009.)*

**Rule 10.3 [Request For Review.] Contested Reinstatement Proceeding.**

*[Within 60 days after the Disciplinary Board Clerk has acknowledged, as required by BR 2.4(i)(4), receipt of a trial panel opinion, the Bar or the accused may file with the Disciplinary Board Clerk and the State Court Administrator a request for review as set forth in BR 12.8. A copy of the request for review shall be served on all parties.]*

Upon the conclusion of a contested reinstatement hearing, the trial panel shall file its written opinion with the Disciplinary Board Clerk and the State Court Administrator, and serve copies on Disciplinary Counsel and the applicant. Each such reinstatement matter shall be reviewed by the Supreme Court.

*(Rule 10.3 amended by Order dated July 8, 1988.)*

*(Rule 10.3 amended by Order dated August 19, 1997, effective October 4, 1997.)*

*(Rule 10.3 amended by Order dated February 5, 2001.)*

*(Rule 10.3 corrected by Order dated June 28, 2001.)*

*(Rule 10.3 amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.3 amended by Order dated June 17, 2003, effective January 1, 2004.)*

**Rule 10.4 Filing In Supreme Court.**

(a) Record. Disciplinary Counsel shall file the record of a proceeding with the State Court Administrator upon the receipt by Disciplinary Counsel of:

(i) a request for review timely filed pursuant to BR 10.2 [a trial panel opinion in any contested reinstatement proceeding]; or

(ii) a trial panel opinion in any contested reinstatement proceeding [a request for review timely filed pursuant to BR 10.3].

The record shall include a copy of the trial panel's opinion. Upon receipt of the record, the matter shall be reviewed by the court as provided in BR 10.5.

*(Rule 10.4(a)(i) amended by Order dated July 22, 1991.)*

*(Rule 10.4 amended by Order dated June 29, 1993.)*

*(Rule 10.4(a)(ii) and (b) amended by Order dated August 19, 1997, effective October 4, 1997.)*

*(Rule 10.4 amended by Order dated June 17, 2003, effective January 1, 2004.)*

**Rule 10.5 Procedure In Supreme Court.**

*(a) Petition. No later than 28 days after the court's written notice to Disciplinary Counsel, Bar Counsel and the accused or applicant of receipt of the record, a petition asking the court to adopt, modify or reject, in whole or in part, the decision of the trial panel shall be filed with the court.*

*(b) Moving Party. The petition shall be filed by the accused or applicant if the trial panel made a finding of misconduct against the accused or recommended that an applicant be denied reinstatement or be conditionally reinstated; otherwise, the Bar shall file the petition.]*

*(a)[c] Briefs. No later than 28 days after the Supreme Court's written notice to Disciplinary Counsel and the respondent or applicant of receipt of the record, the party who requested review or the applicant, as the case may be, must file a brief. The brief must include a request for relief asking the court to adopt, modify, or reject, in whole or in part, the decision of the trial panel. [A petition filed under this rule shall be accompanied by a brief.] Otherwise, t[7]he format of the opening brief and the timing and format of answering briefs and reply briefs shall be governed by the applicable Oregon Rules of Appellate Procedure[ of the Supreme Court]. The failure of the Bar or a[n accused] respondent or applicant to file a [petition or] brief does not prevent the opposing litigant from filing a brief. Answering briefs are not limited to issues addressed in petitions or opening briefs, and may urge the adoption, modification or rejection in whole or in part of any decision of the trial panel.*

*(b)[d] Oral Argument. The Oregon Rules of Appellate Procedure[ of the Supreme Court] relating[ve] to oral argument[ shall] apply in disciplinary and contested reinstatement proceedings.[ The moving party under BR 10.5(b) shall be considered the appellant.]*

*(Rule 10.5(b) and (c) amended by Order dated July 22, 1991.)*

*(Rule 10.5(b), 10.5(c), and 10.5(d) amended by Order dated October 19, 2009.)*

**Rule 10.6 Nature Of Review.**

The Supreme C[c]ourt shall consider each matter de novo upon the record and may adopt, modify or reject the decision of the trial panel in whole or in part and thereupon enter an appropriate order. If the court's order adopts the decision of the trial panel without opinion, the opinion of the trial panel shall stand as a statement of the decision of the court in the matter but not as the opinion of the court.

*(Rule 10.6 amended by Order dated July 22, 1991.)*

*(Rule 10.6 amended by Order dated October 19, 2009.)*

**Rule 10.7 Costs And Disbursements.**

*(a) Costs and Disbursements. "Costs and disbursements" are actual and necessary (1) service, filing and witness fees; (2) expenses of reproducing any document used as evidence at a hearing, including perpetuation depositions or other depositions admitted into evidence; (3) expenses of the hearing transcript, including the cost of a copy of the transcript if a copy has been provided by the Bar to a[n accused] respondent without charge; and (4) the expense of preparation of an appellate brief in accordance with ORAP 13.05. Lawyer fees are not recoverable costs and disbursements, either at the hearing or on review[appeal], [nor are p]revaling party fees are not recoverable by any party.*

*(b) Allowance of Costs and Disbursements. In any discipline or contested reinstatement proceeding, costs and disbursements as permitted in BR 10.7(a) may be allowed to the prevailing party by the [court or ]Disciplinary Board or the Supreme Court. A[n accused] respondent or applicant prevails when the charges against the respondent[accused] are dismissed in their entirety or the applicant is unconditionally reinstated to the practice of law in Oregon. The [b]Bar shall be considered to have prevailed in all other cases.*

(c) Recovery After Offer of Settlement. A[n *accused*] respondent may, at any time up to 14 days prior to hearing, serve upon[ *Bar Counsel and*] Disciplinary Counsel an offer[ *by the accused*] to enter into a stipulation for discipline or no contest plea under BR 3.6. In the event the SPRB rejects such an[ *written*] offer[ *by an accused to enter into a stipulation for discipline or no contest plea is rejected by the SPRB,*] and the matter proceeds to hearing and results in a final decision of the Disciplinary Board or[ *of*] the court imposing a sanction no greater than that to which the respondent[*accused*] was willing to plead no contest or stipulate based on the charges the respondent[*accused*] was willing to concede or admit, the Bar shall not recover, and the respondent[*accused*] shall recover, actual and necessary costs and disbursements as permitted in BR 10.7(a) incurred after the date the SPRB rejected the respondent's[ *accused's*] offer[ *was rejected by the SPRB*].

(d) Procedure for Recovery and Collection. The procedure set forth in the Oregon Rules of Appellate Procedure [of the Supreme Court] regarding the filing of cost bills and objections thereto shall apply,[*be followed*] except that, in matters involving final decisions of the Disciplinary Board, cost bills and objections thereto shall be resolved by the Adjudicator[*state chairperson of the Disciplinary Board*]. The cost bill and objections thereto shall be filed with the Disciplinary Board Clerk, with proof of service on the [state chairperson of the Disciplinary Board and the] other party, and shall not be due until 21 days after the date a trial panel's decision is deemed final under BR 10.1. The procedure for entry of judgments for costs and disbursements as judgment liens shall be as provided in ORS 9.536.

*(Rule 10.7 amended by Order dated June 25, 1985, effective July 15, 1985; amended by further Orders dated July 8, 1985 and July 22, 1985; amended by Order dated March 13, 1989, effective April 1, 1989. Rule 10.7 (a) amended by Order dated October 1, 1990; amended by Order dated June 28, 2001.)*

*(Rule 10.7(d) amended by Order dated June 17, 2003, effective July 1, 2003.)*

*(Rule 10.7(a) and (d) amended by Order dated April 26, 2007.)*

*(Rule 10.7(b) amended by Order dated October 19, 2009.)*

## Title 11 — Time Requirements

### **Rule 11.1 Failure To Meet Time Requirements.**

The failure of any person or body to meet any time limitation or requirement in these rules shall not be grounds for the dismissal of any charge or objection, unless a showing is made that the delay substantially prejudiced the ability of the respondent[*accused*] or applicant to receive a fair hearing.

## Title 12 — Unlawful Practice of Law Committee

### **Rule 12.1 Appointment.**

The Supreme Court may appoint as many members as it deems necessary to carry out the Unlawful Practice of Law Committee's functions. At least two members of the Unlawful Practice of Law Committee must be members of the general public and no more than one-quarter of the Unlawful Practice of Law Committee members may be lawyers engaged in the private practice of law.

### **Rule 12.2 Investigative Authority.**

Pursuant to ORS 9.164, the Unlawful Practice of Law Committee shall investigate on behalf of the Bar complaints of the unlawful practice of law. For purposes of this rule, "unlawful practice of law" means (1) the practice of law in Oregon, as defined by the Supreme Court, by a person who is not an active member of the Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.

**Rule 12.3 Public Outreach and Education.**

(a) The Unlawful Practice of Law Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law. The Unlawful Practice of Law Committee may cooperate in its education efforts with federal, state, and local agencies tasked with preventing consumer fraud.

(b) The Unlawful Practice of Law Committee may write informal opinions on questions relating to what activities may constitute the practice of law. Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

**Rule 12.4 Enforcement.**

The Bar may petition the Supreme Court to hold a disbarred attorney or an attorney whose resignation pursuant to BR 9.1 or BR 9.4 has been accepted by the court in contempt for engaging in the unlawful practice of law. The court may order the disbarred or resigned attorney to appear and show cause, if any, why the disbarred or resigned attorney should not be held in contempt of court and sanctioned accordingly.

Title 13[2] — Forms

**Rule 13[2].1 Formal Complaint.**

A formal complaint in a disciplinary proceeding shall be in substantially the following form:

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

|  |   |           |
|--|---|-----------|
| In Re:                                       | ) | No. _____ |
| _____  | ) |           |
| Complaint as to the conduct of               | ) | FORMAL    |
| _____, <u>Respondent</u> [ <i>Accused</i> ]) | ) | COMPLAINT |

For its first cause of complaint, the Oregon State Bar alleges:

**1.**

The Oregon State Bar was created and exists by virtue of the laws of the State of Oregon and is, and at all times mentioned herein was, authorized to carry out the provisions of ORS Chapter 9, relating to discipline of attorneys.

**2.**

The Respondent[*Accused*], \_\_\_\_\_, is, and at all times mentioned herein was, an attorney at law, duly admitted by the Supreme Court of the State of Oregon to practice law in this state and a member of the Oregon State Bar, having his [her] office and place of business in the County of \_\_\_\_\_, State of \_\_\_\_\_.

**3. et seq.**

(State with certainty and particularity the actions of the Respondent[*Accused*] alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

**4. (or next number)**

The aforesaid conduct of the Respondent[*Accused*] violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its second cause of complaint against said Respondent[*Accused*], the Oregon State Bar alleges:

**5. (or next number)**

Incorporates by reference as fully set forth herein Paragraphs \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ of its first cause of complaint.

**6. (or next number)**

(State with certainty and particularity the actions of the Respondent[*Accused*] alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

**7. (or next number)**

The aforesaid conduct of the Respondent[*Accused*] violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

AND, for its third cause of complaint against said Respondent[*Accused*], the Oregon State Bar alleges:

**8. (or next number)**

Incorporates by reference as fully set forth herein Paragraphs \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ of its first cause of complaint and Paragraphs \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ of its second cause of complaint.

**9. (or next number)**

(State with certainty and particularity the actions of the Respondent[*Accused*] alleged to be in violation of the disciplinary rules or statutes, including time, place and transaction, if necessary.)

**10. (or next number)**

The aforesaid conduct of the Respondent[*Accused*] violated the following standard[s] of professional conduct established by law and by the Oregon State Bar: (insert applicable disciplinary rules and statutes).

WHEREFORE, the Oregon State Bar demands that the Respondent[*Accused*] make answer to this complaint; that a hearing be set concerning the charges made herein; that the matters alleged herein be fully, properly and legally determined; and pursuant thereto, such action be taken as may be just and proper under the circumstances.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Disciplinary Counsel

*(Rule 12.1 amended by Order dated February 5, 2001.)*

**Rule 13[2].2 Notice to Answer.**

A copy of the formal complaint (statement of objections), accompanied by a notice to answer it within a designated time, shall be served on the respondent[*accused*] (applicant). Such notice shall be in substantially the following form:

**(Heading as in complaint/statement of objections)****NOTICE TO ANSWER**

You are hereby notified that a formal complaint against you (statement of objections to your reinstatement) has been filed by the Oregon State Bar, a copy of which formal complaint (statement of objections) is attached hereto and served upon you herewith. You are further notified that you may file with the Disciplinary Board Clerk, with a service copy to Disciplinary Counsel, your verified answer within fourteen (14) days from the date of service of this notice upon you. In case of your default in so answering, the formal complaint (statement of objections) shall be heard and such further proceedings had as the law and the facts shall warrant.

(The following paragraph shall be used in a disciplinary proceeding only:)

You are further notified that an attorney accused of misconduct may, in lieu of filing an answer, elect to file with Disciplinary Counsel of the Oregon State Bar, a written resignation from membership in the Oregon State Bar. Such a resignation must comply with BR 9.1 and be in the form set forth in BR 12.7. You should consult an attorney of your choice for further information about resignation.

The address of the Oregon State Bar is 16037 S.W. Upper Boones Ferry Road, Tigard, Oregon 97224, or by mail at P. O. Box 231935, Tigard, Oregon 97281-1935.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Disciplinary Counsel

*(Rule 12.2 amended by Order dated February 5, 2001.)*

*(Rule 12.2 amended by Order dated April 26, 2007.)*

*(Rule 12.2 amended by Order dated March 20, 2008.)*

*(Rule 12.2 amended by Order dated October 19, 2009.)*

**Rule 13[2].3 Answer.**

The answer of the respondent*[accused]* (applicant) shall be in substantially the following form:

**(Heading as in complaint/statement of objections)****ANSWER**

\_\_\_\_\_, (name of respondent*[accused]* applicant), whose residence address is \_\_\_\_\_, in the County of \_\_\_\_\_, State of Oregon, and who maintains his [her] principal office for the practice of law or other business at \_\_\_\_\_, in the County of \_\_\_\_\_, State of Oregon, answers the formal complaint (statement of objections) in the above-entitled matter as follows:

**1.**

Admits the following matters charged in the formal complaint (statement of objections) as follows:

**2.**

Denies the following matters charged in the formal complaint (statement of objections) as follows:

**3.**

Explains or justifies the following matters charged in the formal complaint (statement of objections).

4.

Sets forth new matter and other defenses not previously stated, as follows:

5.

WHEREFORE, the respondent*[accused]* (applicant) prays that the formal complaint (statement of objections) be dismissed.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

RESPONDENT*[ACCUSED]* (APPLICANT)  
Attorney for Respondent*[Accused]* (Applicant)

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in the trial panel hearing and is subject to penalty for perjury.

[ACCUSED] RESPONDENT (APPLICANT)

**Rule 13[2].4 [Reserved for expansion]**

*(Rule 12.4 repealed by Order dated July 22, 1991.)*

**Rule 13[2].5 Statement Of Objections To Reinstatement.**

In a contested reinstatement proceeding, the statement of objections shall be in substantially the following form:

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

|                         |   |               |
|-------------------------|---|---------------|
| In The Matter Of The    | ) |               |
| Application of          | ) | STATEMENT     |
| _____                   | ) | OF            |
| For Reinstatement as    | ) | OBJECTIONS    |
| an Active Member        | ) | TO            |
| of the Oregon State Bar | ) | REINSTATEMENT |

The Oregon State Bar objects to the qualifications of the Applicant for reinstatement on the ground and for the reason that the Applicant has not shown, to the satisfaction of the Board of Governors, that he [she] has the good moral character or general fitness required for readmission to practice law in Oregon, that his [her] readmission to practice law in Oregon will be neither detrimental to the integrity and standing of the Bar or the administration of justice, nor subversive to the public interest, or that he [she] is, in all respects, able and qualified, by good moral character and otherwise, to accept the obligations and faithfully perform the duties of an attorney in Oregon, in one or more of the following particulars:

1.

The Applicant does not possess good moral character or general fitness to practice law, in that the Applicant, \_\_\_\_\_ (state the facts of the matter)

2.

(Same)

3.

(Same)

WHEREFORE, the Oregon State Bar requests that the recommendation of the Board of Governors to the Supreme Court of the State of Oregon in this matter be approved and adopted by the Court and that the application of the Applicant for reinstatement as an active member of the Oregon State Bar be denied.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Disciplinary Counsel

*(Rule 12.5 amended by Order dated February 5, 2001.)  
(Rule 12.5 amended by Order dated October 19, 2009.)*

**Rule 13[2].6 Form A Resignation.**

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re: ) FORM A  
(Name) ) RESIGNATION

[State of )  
County of ) ss]

I, \_\_\_\_\_, *[being duly sworn on oath, depose and say]* declare that my residence address is \_\_\_\_\_ (No. and Street), \_\_\_\_\_ (City), \_\_\_\_\_ (State), \_\_\_\_\_ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and respectfully request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of \_\_\_\_\_, a resident Oregon attorney, whose principal office address is \_\_\_\_\_, and that all such clients have been or will be promptly notified accordingly, and that the following arrangements have been made with regard to client files and records pertaining to inactive or former clients, if any:

\_\_\_\_\_.

DATED at \_\_\_, this \_\_\_ day of \_\_\_, 20\_\_.

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

(Signature of Member)

*[Subscribed and sworn to before me this \_\_\_ day of \_\_\_, 20\_\_.*

Notary Public for Oregon  
My Commission Expires: ]

I, \_\_\_\_\_, Executive Director of the Oregon State Bar, do hereby certify that there are not now pending against the above-named attorney any formal disciplinary charges and no complaints, allegations or instances of alleged misconduct involving said attorney are under investigation by the Oregon State Bar.

DATED this \_\_\_ day of \_\_\_, 20\_\_.

OREGON STATE BAR  
By:  
Executive Director

**Rule 13[2].7 Form B Resignation.**

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re: \_\_\_\_\_ ) FORM B  
(Name) \_\_\_\_\_ ) RESIGNATION

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss

I, \_\_\_\_\_, being duly sworn on oath, depose and say that my principal office for the practice of law or other business is located at \_\_\_\_\_ (Building No. and Name, if any, or Box No.), \_\_\_\_\_ (Street address, if any), \_\_\_\_\_ (City), \_\_\_\_\_ (State), \_\_\_\_\_ (Zip Code); that my residence address is \_\_\_\_\_ (No. and Street), \_\_\_\_\_ (City), \_\_\_\_\_ (State), \_\_\_\_\_ (Zip Code), and that I hereby tender my resignation from membership in the Oregon State Bar and request and consent to my removal from the roster of those admitted to practice before the courts of this state and from membership in the Oregon State Bar.

I am aware that there is pending against me a formal complaint concerning alleged misconduct and/or that complaints, allegations or instances of alleged misconduct by me are under investigation by the Oregon State Bar and that such complaints, allegations and/or instances include:

(List of formal complaints, proceedings or investigations pending.)

I do not desire to contest or defend against the above-described complaints, allegations or instances of alleged misconduct. I am aware of the rules of the Supreme Court and of the bylaws and rules of procedure of the Oregon State Bar with respect to admission, discipline, resignation and reinstatement of members of the Oregon State Bar. I understand that any future application by me for reinstatement as a member of the Oregon State Bar is currently barred by BR 9.4, but that should such an application ever be permitted in the future, it will be treated as an application by one who has been disbarred for misconduct, and that, on such application, I shall not be entitled to a reconsideration or reexamination of the facts, complaints, allegations or instances of alleged misconduct upon which this resignation is predicated. I understand that, on its filing in this court, this resignation and any supporting documents, including those containing the complaints, allegations or instances of alleged misconduct, will become public records of this court, open for inspection by anyone requesting to see them.

This resignation is freely and voluntarily made; and I am not being, and have not been, subjected to coercion or duress. I am fully aware of all the foregoing and any other implications of my resignation.

I hereby certify that all client files and client records in my possession have been or will be placed promptly in the custody of \_\_\_\_\_, a resident Oregon attorney, whose principal office address is \_\_\_\_\_, and that all such clients have been or will be promptly notified accordingly.

DATED at \_\_, this \_\_ day of \_\_, 20\_\_.

(Signature of Attorney)

Subscribed and sworn to before me this \_\_ day of \_\_, 20\_\_.

Notary Public for Oregon  
My Commission Expires:

*(Rule 12.7 amended by Order dated June 5, 1997, effective July 1, 1997).  
(Rule 12.7 amended by Order dated February 5, 2001.)*

**Rule 13[2].8 Request For Review.**

A request for review pursuant to BR 10.3 shall be in substantially the following form.

**IN THE SUPREME COURT  
OF THE STATE OF OREGON**

In Re: )  
 ) No. \_\_\_\_\_  
Complaint as to the )  
Conduct of \_\_\_\_\_ ) REQUEST FOR  
Respondent[*Accused*] ) REVIEW

[The Respondent[*Accused*]/The Oregon State Bar] hereby requests the Supreme Court to review the decision of the Disciplinary Board trial panel rendered on [date] in the above matter.

DATED this \_\_ day of \_\_, 20\_\_.

[signature of respondent[*accused*] or counsel]

**Rule 13[2].9 Compliance Declaration[Affidavit].**

A compliance declaration[*affidavit*] filed under BR 8.3 shall be in substantially the following form:

**COMPLIANCE DECLARATION[AFFIDAVIT]**

In re: Application of  
\_\_\_\_\_  
(Name of attorney) (Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

- 1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_
- 2.a. Residence address \_\_\_\_\_ Telephone \_\_\_\_\_
- 3. I hereby attest that during my period of suspension from the practice of law from \_\_\_\_\_ to \_\_\_\_\_, (insert dates) I did not at any time engage in the practice of law except where authorized to do so.

4. I also hereby attest that I complied as directed with the following terms of probation: (circle applicable items)

- a. abstinence from consumption of alcohol and mind-altering chemicals/drugs, except as prescribed by a physician
- b. attendance at Alcoholics Anonymous meetings
- c. cooperation with Chemical Dependency Program
- d. cooperation with State Lawyers Assistance Committee
- e. psychiatric/psychological counseling
- f. passed Multi-State Professional Responsibility exam
- g. attended law office management counseling and/or programs
- h. other - (please specify) \_\_\_\_\_
- i. none required

[I, \_\_\_\_\_, the undersigned, being first duly sworn, depose and say that the above answers are true and correct as I verily believe.]

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

(Name)

[Subscribed and sworn to before me this \_\_\_ day of \_\_\_, 20\_\_.

*Notary Public in and for  
the State of Oregon  
My Commission Expires: ]*

*(Rule 12.9 established by Order dated March 13, 1989, effective April 1, 1989.)*

*(Rule 12.9 amended by Order dated February 5, 2001.)*

**Rule 13[2].10 Compliance Declaration[Affidavit].**

A compliance declaration[*affidavit*] filed under BR 7.1(g) shall be in substantially the following form:

**COMPLIANCE DECLARATION[AFFIDAVIT]**

In re: Reinstatement of

\_\_\_\_\_  
(Name of attorney) (Bar number)

For reinstatement as an active/inactive (circle one) member of the OSB.

1. Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_

2.a. Residence address \_\_\_\_\_ Telephone \_\_\_\_\_

3. I hereby attest that during my period of suspension from the practice of law from \_\_\_\_\_ to \_\_\_\_\_, (insert dates)

I did not at any time engage in the practice of law except where authorized to do so.

OR

I engaged in the practice of law under the circumstances described on the attached [attach an explanation of activities relating to the practice of law during suspension].

4. I also hereby attest that I responded to the requests for information or records by Disciplinary Counsel[ or the Local Professional Responsibility Committee] and have complied with any subpoenas issued by Disciplinary Counsel[ or the Local Professional Responsibility Committee], or provided good cause for not complying to the request.

[I, \_\_\_\_\_, the undersigned, being first duly sworn, depose and say that the above answers are true and correct as I verily believe.]

I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY.

(Name)

[Subscribed and sworn to before me this \_\_\_ day of \_\_\_, 20\_\_.

*Notary Public in and for  
the State of Oregon  
My Commission Expires: ]*

*(Rule 12.10 established by Order dated August 12, 2013, effective November 1, 2013.)*

# OREGON STATE BAR

## Board of Governors Agenda

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Meeting Date: November 19, 2016  
Memo Date: November 15, 2016  
From: Kateri Walsh, Director, Media Relations &  
New Lawyer Mentoring Program  
To: OSB Board of Governors

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### **Action Recommended**

Sunset the New Lawyer Mentoring Committee.

### **Background**

The New Lawyer Mentoring Committee was established following the Oregon Supreme Court's adoption of a mandatory mentoring requirement for all new lawyers beginning in 2011.

The committee played an essential role in creating a successful program, and providing staff with ongoing guidance in its first years of operation. Among other actions, the committee helped restructure the curriculum after the first year in response to feedback, and assisted in creation of a Law Firm Certification Policy to streamline administrative requirements for firms with their own structured mentoring programs.

The OSB BOG and staff are continuously working to assure that volunteers are used efficiently, and in service that is both meaningful and rewarding. In the past 24 months, as the NLMP has continued to mature, the advisory committee has played a less active role in continued development. After inviting input from committee members this fall, the volunteers were all in agreement that it is appropriate to sunset the committee at this time.

Notwithstanding this recommendation, bar staff would like to have access to volunteers who are willing to be informal advisors, particularly current or recent participants in the program. This would assure that practicing members can continue to advise on new developments or innovations in the NLMP. Several members of the current committee, and several additional program participants, have volunteered to play this role on an as-needed basis.

The staff is thankful to both the BOG and the bar members who served on this committee, for their invaluable role in creating a new program that will ultimately touch almost every member of the Oregon State Bar.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
FERRUA (Lopez-Diaz) 2016-35

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### **Action Requested**

The Client Security Fund Committee recommends reimbursement of \$12,500 to Marcelino Lopez-Diaz for his loss resulting from the conduct of attorney Franco Ferrua.

### **Discussion**

#### Background

Mr. Lopez-Diaz hired Mr. Ferrua in January 2013 to represent him in a criminal matter, which originated in Washington County Circuit Court and was removed to the U.S. District Court of Oregon. A family member paid Mr. Ferrua \$15,000 to provide representation through trial. Mr. Ferrua deposited the funds in a personal account (rather than a lawyer trust account), and there is no evidence of a written fee agreement as required by RPC 1.5(c)(3) and RPC 1.15-1(c). He did not maintain contemporaneous time records or an accounting of the funds.

In late May 2013, Mr. Ferrua appeared at arraignment and a detention hearing. A five-day jury trial was scheduled for July 23, 2013. On July 16, 2013, Mr. Ferrua moved to extend the trial date for 90 days. The court granted the motion, re-setting the trial date to November 5, 2013, and ordering the parties to report readiness by October 22, 2013.

When Mr. Ferrua failed to either report to the court or file a motion for continuance by mid-day on November 4, 2013, the court removed Mr. Ferrua from representation and appointed Federal Public Defender Thomas Price.

Formal disciplinary proceedings were initiated against Mr. Ferrua, alleging misconduct in representing Mr. Lopez-Diaz. The trial panel found that Mr. Ferrua deposited unearned fees into his personal account, and failed to account for those fees. It determined that from the arraignment on May 28, 2013 until November 4, 2013, Mr. Ferrua visited Mr. Lopez-Diaz once. Further, it found no evidence that Mr. Ferrua had taking any steps to prepare for trial—no pleadings were filed, no witnesses interviewed, no exhibits prepared.

On March 8, 2016, the trial panel found multiple violations of the rules of professional conduct by Mr. Ferrua and suspended him for 180 days. The trial panel also ordered restitution to Mr. Lopez-Diaz in the amount of \$12,500.

### 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. Lopez-Diaz loss was caused by the dishonest conduct of Mr. Ferrua who promised to provide legal services in exchange for the advance payment of a legal fee. Mr. Ferrua deposited the money into his personal account, and the extent of his legal services, if any, were minimal or insignificant. Therefore, the CSF Committee recommends that Mr. Lopez-Diaz be reimbursed \$12,500, the full amount of his claim.

Attachment: Investigator's Report

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
MILSTEIN (Connolly) 2016-31

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### Action Requested

The Client Security Fund Committee recommends reimbursement of \$18,170 to Joseph A. Connolly, III for his loss resulting from the conduct of attorney Jeffrey S. Milstein.

### Discussion

#### Background

In January 2014, Joe Connolly retained Jeffrey Milstein to represent him in his marital dissolution and with related criminal charges.<sup>1</sup> The initial fee agreement provided for an hourly rate of \$50. A subsequent retainer agreement provided for an hourly rate of \$80. Mr. Milstein told Mr. Connolly by email that he didn't *"see any way for this [divorce] case to go beyond \$2,500 total....I am also going to help Joe [with defending his interests in] the misdemeanor charge."* Ms. Connolly's mother paid an initial \$1,000 retainer and additional installment payments toward attorney fees, for a total payment of \$3,000.

A settlement was reached in the dissolution matter in May 2014, which provided that Mr. Connolly's wife would pay him \$18,170. On July 24, 2014, Mr. Milstein picked up the \$18,170 settlement check, made payable solely to Mr. Connolly, from the wife's lawyer. Mr. Milstein instructed Mr. Connolly to meet him at the bank. At the bank, Mr. Milstein told Mr. Connolly that he was required to run the settlement check through his trust account. Mr. Connolly endorsed it "under protest." Mr. Milstein then presented Mr. Connolly with an itemized bill showing that Mr. Connolly owed Mr. Milstein \$16,525. Mr. Connolly disputed the bill and made demand for the full amount settlement check. Rather than refund any portion of the settlement or attempt to resolve the dispute, Mr. Milstein withdrew all of the money from the trust account and used it pay his business expenses.

Disciplinary proceedings were initiated against Mr. Milstein as a result of his conduct in appropriating Mr. Connolly's settlement proceeds. One of the violations asserted in the formal

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<sup>1</sup> The Court records reflect that Mr. Connolly was represented by court-appointed counsel in defense of the criminal charges. Mr. Milstein did appear at a couple of disposition review hearings in the spring of 2014 in relation to possible revocation of Mr. Connolly's probation. He did not, however, represent Mr. Connolly in the probation revocation hearing; Mr. Connolly was appointed counsel and Mr. Milstein withdrew from the case on September 10, 2014.

complaint was conversion of funds. Mr. Milstein submitted a Form B resignation, which was accepted by the Oregon Supreme Court on November 3, 2016.

### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. CSF Rule 2.2. In addition, reimbursement of a legal fee will be allowed only if the legal services that the lawyer actually provided were, in the Committee's judgment, minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee had no trouble concluding that Mr. Milstein converted Mr. Connolly's settlement check to his own use. The more difficult question was whether Mr. Milstein performed legal services for Mr. Connolly that were more than "minimal or insignificant." Mr. Milstein contends that he performed significant legal services beyond that for which Mr. Connolly paid; Mr. Connolly disagrees.

Both Mr. Milstein and Mr. Connolly have credibility issues. Mr. Connolly has a history of drug abuse and currently has a mental impairment that affects his recall. Mr. Milstein is currently facing felony heroin and meth possession charges that arose during Mr. Milstein's representation of Mr. Connolly. The documents that Mr. Milstein submitted to support his legal fees include highly suspect entries, including charges for non-legal work and charges that appear clearly excessive on their face. The CSF investigator found those documents wholly unpersuasive and unreliable to support Mr. Milstein's claim for fees above the original \$3,000 paid by Mr. Connolly. Finally, the hourly rate agreed to is at issue. In the end, the CSF Committee gave the benefit of the doubt to Mr. Connolly and recommended payment of the full settlement check of \$18,170.

Attachment: Investigator's Report

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-23 HAWES (Sansome) Request for BOG Review

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### **Action Requested**

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### **Discussion**

#### *Summary of Facts*

Mr. Sansome retained Mr. Hawes on March 17, 2015 to represent him in a civil case against various government entities for civil rights violations and multiple other claims arising from his arrest, prosecution, 9-day jury trial, and subsequent acquittal on multiple counts of sex abuse.

The fee agreement reflects that Mr. Sansome paid \$12,500 for legal services that were to be billed at \$125 per hour together with a hybrid contingent and pro bono agreement for additional legal services. The agreement provides that Mr. Hawes would place the money in his trust account, but he did not do so. Instead, he deposited the funds into his business account on March 17, 2015. The funds were depleted by May 8, 2015.

Although Hawes produced no tangible work in exchange for the \$12,500 he collected from Mr. Sansome, his itemized invoice reflects over 125 hours on Mr. Sansome's case over a 3 ½ month period, including reviewing the volumes of records from the criminal investigation and trial<sup>1</sup> and researching applicable law. Without tangible work product, it is difficult to test the credibility of Mr. Hawes' claim that he did the work. However, the hours claimed are not unreasonable given the complexity and novelty of some of the claims.

#### *CSF Committee Analysis and Applicant's Appeal*

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 a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" includes a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned. CSF Rule 2.2.1. Reimbursement of a

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<sup>1</sup> Mr. Sansome provided Mr. Hawes six CDs of documents, interviews, transcripts of the criminal trial, motions and other documents related to the criminal trial, videos, Albany Policy and DHS policy manuals and numerous other documents.

legal fee will only be allowed, however, if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee determined that by depositing the \$12,500 into a regular checking account, rather than into a lawyer trust account, Mr. Hawes effectively dispersed those funds to himself prior to earning them, thereby meeting the definition of dishonest conduct in Rule 2.2.1. The Committee also found, however, that Mr. Hawes performed significant legal services that would account for the total amount of the retainer. Therefore, the Committee denied reimbursement.

Mr. Sansome takes issue with the Committee's decision, noting that he never received any product for the work that Mr. Hawes alleges he performed. It may be worth noting that formal disciplinary proceeding were recently approved against Mr. Hawes for his conduct in representing Mr. Sansome; the charges are failure to deposit the funds in his trust account and failure to respond to the bar's inquiries. They do not include dishonesty or charging a clearly excessive fee.

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

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, Executive Director  
**Re:** CSF Claim No. 2016-30 MCCART (Mandelberg) Request for BOG Review

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### **Action Requested**

Consider claimant's request for BOG review of the CSF Committee's decision to deny his claim.

### **Discussion**

#### *Summary of Facts*

Arthur Mandelberg retained Rachel Kosmal McCart in December 2011 to pursue a claim for damages resulting from purchasing a lame horse. Mr. Mandelberg paid \$60,000 for a show horse for his teenage daughter. After buying the horse, he learned that the horse was lame, and alleged that defendants drugged the horse to hide its physical defects. It was an extremely contentious, lengthy, and expensive lawsuit involving seven defendants and claims for damages exceeding \$1 million. Claims against four of the defendants were settled in August and September 2015, and Ms. McCart withdrew from the representation shortly thereafter. Mr. Mandelberg paid somewhere in the neighborhood of \$400,000 to \$500,000 in attorney fees.

Mr. Mandelberg filed his CSF claim in June 2016, alleging numerous instances of overbilling and efforts to maximize her fees at his expense.

#### *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. 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. Further, 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 no evidence of dishonest conduct by Ms. McCart. Instead, they viewed this claim as a dispute over fees, born from an unsatisfactory result in the underlying litigation.



# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen Hirschbiel, CEO/Executive Director  
**Re:** CSF Award Recommended for Payment  
GERBER (Shorb) 2016-40

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### **Action Requested**

The Client Security Fund Committee recommends reimbursement of \$5000 to Charles Ray Shorb for his loss resulting from the conduct of attorney Susan Gerber.

### **Discussion**

#### Background

Susan Gerber was admitted to the Oregon State Bar in 1999. Beginning sometime in 2010, Ms. Gerber practiced in Ontario, Oregon, first with the Rader Stoddard Perez firm, then in a brief partnership with Vicki Vernon in early 2014, and by March 2014 on her own. She represented clients in post-conviction relief cases and criminal appeals. In the spring and summer of 2014, the bar received several complaints from Ms. Gerber's clients and a Malheur County judge alleging that Gerber was missing court dates and not attending to her clients' matters. In response to the bar's investigation, Gerber explained that she had become overwhelmed by her workload starting in December 2013. She also attributed her conduct to her addiction to prescription pain medication following knee surgery. In October 2014, Gerber stipulated to an involuntary transfer to inactive status on the ground that her addiction disabled her from "assisting and cooperating with her attorney and from participating in her defense" of disciplinary matters.

#### Charles Ray Shorb

Mr. Shorb was found guilty of one count of Rape in the First Degree and two counts of Sexual Abuse in the First Degree on January 30, 2008. Bear Wilner-Nugent represented Mr. Shorb in his first post-conviction relief case, which was denied. Mr. Wilner-Nugent filed an appeal. By mid-August 2013, however, Mr. Shorb was dissatisfied with Mr. Wilner-Nugent's services and notified him that he was retaining Ms. Gerber.

On September 5, 2013, Mr. Shorb hired Ms. Gerber to file a second PCR petition. He paid her \$5,000 for her services. An unsigned, undated fee agreement provides the fee is earned upon receipt. It also provides that if the client discharges the attorney, the client may be entitled to a refund if the services for which the fee was paid are not completed.

Time records indicate that Ms. Gerber spent 3.4 hours on the case over the course of a couple of months. She never initiated a second PCR or any other proceeding on Mr. Shorb's behalf. Mr. Shorb ultimately fired Ms. Gerber and contacted Mr. Wilner-Nugent again in August or September 2014 for further assistance.

### Analysis

In order to be eligible for reimbursement, the loss must be caused by the lawyer's dishonest conduct. In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" includes 1) a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for advance payment of a legal fee, or 2) a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned. CSF Rule 2.2.1. 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. Further, reimbursement of a legal fee will be allowed only if the services the lawyer actually provided were minimal or insignificant. CSF Rule 2.2.3.

The CSF Committee concluded that Ms. Gerber's conduct was dishonest and that the services she provided were minimal or insignificant. Therefore, the Committee recommends reimbursement of the full amount of Mr. Shorb's claim.

Attachment: Investigator's Report

### 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) A lawyer shall not solicit professional employment by any means 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.~~

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 9, 2016  
**From:** Legal Ethics Committee  
**Re:** Proposed Amendment to OSB Formal Ethics Op No 2005-110 *Conflicts of Interest, Former Clients: Former Client as Adverse Witness*

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### Issue

Decide whether to adopt the proposed amendment to OSB Formal Ethics Op No 2005-110 *Conflicts of Interest, Former Clients: Former Client as Adverse Witness*.

### Options

1. Adopt the proposed amended formal ethics opinion.
2. Decline to adopt the proposed amended formal ethics opinion.

### Discussion

Lawyers have duties of confidentiality and loyalty to former clients that survive well after the representation ends. These duties are reflected in Oregon RPC 1.6 and 1.9. One exception is set forth in RPC 1.9(c), which provides that a lawyer may not use information relating to the representation of client *except* “when the information has become generally known....”

A frequently asked question on the Ethics Hotline is whether a former client’s criminal conviction would be considered information that is “generally known.” A typical scenario looks something like this: Lawyer represents Defendant A in a felony criminal matter, which results in a conviction. The representation ends. Later, Lawyer represents Defendant B in criminal charges unrelated to the former representation. Lawyer soon learns, however, that the prosecutor is going to call former client (Defendant A) to testify against new client (Defendant B). Lawyer would like to use the felony conviction to impeach Defendant A, but is concerned about her continuing obligations of loyalty and confidentiality to Defendant A.

In its current iteration, OSB Formal Op No 2005-110 sets forth a lawyer’s duties under Oregon RPC 1.6 and 1.9. The LEC proposal expands on the current analysis with a discussion of what information might be considered “generally known” that could be used against a former client under RPC 1.9(c)(1).

Staff recommends adoption of the proposed amended opinion.

Attachment: Proposed Amended OSB Formal Ethics Op Nos. 2005-110

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2016  
**From:** Helen M. Hirschbiel, Executive Director  
**Re:** OSB Section CLE Co-Sponsorship

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### Action to Consider

Consider whether to take any action in response to the HOD resolution and discussion regarding section CLE co-sponsorship with the OSB CLE Seminars Department.

### Options

1. Move forward with implementation of the policy as planned.
2. Defer implementation of the policy until 2018.

If implementation is deferred, consider whether to:

1. Convene a focus group with sections opposed to the policy to better understand their concerns.
2. Abandon the policy entirely and look for other ways to accomplish the goals of the policy.
3. Plan to move forward with the policy in 2018, and do additional outreach in the meantime.
4. Other?

Attachments: Summary of 2016 HOD Actions

September 9, 2016 Memo to BOG regarding Section Co-Sponsorship with CLE Seminars Department