

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 10, 2017  
**Open Session Minutes**

President Michael Levelle called the meeting to order at 9:00 a.m. on February 10, 2017. The meeting adjourned at 11:30 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Eric Foster, Guy Greco, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, and Kerry Sharp. Not present was Chris Costantino, Rob Gratchner, Kate von Ter Stegge, and Elisabeth Zinser. Staff present were Helen Hierschbiel, Amber Hollister, Susan Grabe, Dani Edwards, and Camille Greene. Also present was Carol Bernick, PLF CEO, and Tim Martinez, PLF Board of Directors.

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

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

**2. 2016 Retreat Debrief and Next Steps**

The three takeaways from the November 2016 retreat were: develop clear, concise, achievable goals; focus regularly on strategic and policy issues versus operational issues; and improve development of the board. Moving forward the board will develop a meaningful action plan for each year and keep the mission, strategic function and action plan up front at all BOG meetings.

In addition, the BOG expressed interest in having generative discussions during its meetings. Ms. Hierschbiel gave a brief overview of what generative discussions are and possible topics for generative discussions in 2017.

Mr. Levelle would like the first topic to be 'what is inclusion and equity?' Ms. Hierschbiel announced that we will have a speaker on implicit bias on April 13. Mr. Greco suggested that we schedule any generative discussions for the days only the committees meet. The board, by consensus, agreed to begin in May. The board also discussed other possible generative topics for future meetings.

Ms. Nordyke presented the strategic functions developed by the Policy & Governance Committee over the last year and the Committee's recommended areas of focus for 2017. **[Exhibit A]**.

**Motion:** The board voted unanimously in favor of accepting the Policy & Governance committee recommendations for 2017 areas of focus. The motion passed.

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

**A. Appellate Screening Special Committee**

Mr. Ramfjord updated the board on the detailed process to recommend replacements for Justice Baldwin who announced he will step down from the court in December 2016. The

board's recommendations to the court, approved by President Levelle, are posted on the Oregon State Bar website. **[Exhibit B]**

**Motion:** The board voted to ratify the letter to the court. The committee motion passed. Ms. Reeves abstained.

**B. Board Development Committee**

Mr. Ramfjord presented the committee's recommendations for several committee and board appointments: Steven B. Taylor to the Client Security Fund, Elizabeth Schwartz to the State Lawyers Assistance Committee, James Brown to the Unlawful Practice of Law Committee, Nicole Krishnaswami and Abby K. Miller, and Paul Nickell to the Legal Heritage Interest Group **[Exhibit C]**

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

Mr. Ramfjord presented the committee's expression of support for the BBX co-graders. **[Exhibit D]**

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

Mr. Ramfjord asked the board to defer the vote on the committee's recommended appointment to the BPSST Policy Committee.

**C. Budget & Finance Committee**

Mr. Chaney updated the board on a working version of the 2016 Financial Report. Six long-term bar employees have left in the past 12 months resulting in lower employee wage costs in the next year. The committee will be working with the Policy & Governance Committee on the reduction of the number of sections.

**D. Policy and Governance Committee**

Ms. Nordyke presented the committee motion to accept the revision to the Futures Task Force charge. **[Exhibit E]**

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

Ms. Nordyke asked the board to waive the one-meeting notice requirement.

**Motion:** By consensus, the board voted in favor of waiving the one-meeting notice. The motion passed.

Ms. Nordyke presented the committee motion to accept the proposed amendments to OSB Bylaw 14.4 regarding committee appointments. **[Exhibit F]**

**Motion:** The board voted in favor of accepting the committee-recommended bylaw amendments. The motion passed.

**E. Public Affairs Committee**

Ms. Rastetter gave a general update on legislative activity, including Ms. Hollister's testimony regarding the changes to the OSB disciplinary rules. The committee meets via conference call every two weeks to receive updates on the legislative session and bills of interest. **[Exhibit G]** On May 23, 2017 the committee will conduct its 'Day at the Capitol' where members meet with

the legislators. Board members are encouraged to attend and will be updated with talking points.

#### **4. Professional Liability Fund**

Ms. Bernick gave an update on the PLF's efforts to supply immigration law support, the office's progression towards paperless billing, the increasing number of people who do not have the correct amount of insurance, and the risk attorneys are facing when doing work in securities regulation.

Ms. Bernick presented the 2016 Claims Attorney and Defense Counsel Evaluations which were very positive.

The PLF's 40th anniversary will take place in 2018.

Mr. Martinez reported the Board of Directors is pleased with the financial investments of the PLF. He asked the board to approve the proposed revisions to PLF Policy 5.200. **[Exhibit H]**

**Motion:** Mr. Greco moved, Mr. Foster seconded, and the board voted to approve the revisions. Mr. Chaney, Mr. Peachey, and Mr. Bachofner abstained. The motion passed.

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

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

Ms. Hollister presented the MCLE committee request for the board to approve the changes to MCLE Rules re: UBE Admittees. **[Exhibit I]**

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

##### **B. Oregon New Lawyers Division Report**

In addition to the written report from Ms. Eder, Ms. Edwards mentioned the ONLD partnership with the Military and Veterans section to present housing CLEs, and the proposal to participate in the ABAs diversity challenge working with students in the state to encourage them to apply to and attend law schools.

#### **6. Consent Agenda**

Mr. Levelle asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote.

Mr. Greco asked for an explanation of the LEC's proposed formal opinion regarding lawyer production of client files. Ms. Hirschbiel provided clarification.

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

###### Report of the President

Mr. Levelle reported on his recent testimony in Salem, the meeting with the Chief Justice, and the discussion at the BBX meeting regarding Oregon's high 'cut rate' and its effect on the declining number of new admittees. He introduced Jonathan Puente, the new OSB Director of

Diversity & Inclusion, who reported on the Diversity Action Plan and the efforts to increase the number attorneys of color in Oregon and how to track the progress of these efforts. Mr. Levelle has graciously offered his firm, Sussman Shank, as the location for the ACDI meetings.

Report of the Executive Director

Ms. Hirschbiel presented the 2016 OSB Program Evaluations and its function of measuring the progress of OSB programs. Mr. Ramfjord asked that the program evaluations be included in the next meeting agenda to give the BOG more of an opportunity to review and give feedback.

Director of Diversity & Inclusion

Mr. Puente introduced himself and gave a brief report.

**Motion:** Mr. Greco moved, Mr. Peachey seconded, and the board voted unanimously to approve the consent agenda and past meeting minutes. **[Exhibit J]**

**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)**

Mr. Greco called the board's attention to the article in the agenda regarding California's future struggle with its status as a unified bar.

Mr. Levelle reported on his handout regarding Indian law legal issues in Oregon and encouraged board members to use their status as section liaisons to inform members of this problem. **[Exhibit K]**

**Oregon State Bar  
Board of Governors Meeting  
February 10, 2017  
Executive Session Minutes**

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

A. Unlawful Practice of Law Litigation

Ms. Hollister informed the board of a non-action item.

B. Pending Non-Disciplinary Litigation

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

## 2016 Retreat Debrief and Next Steps

- I. Retreat board self-assessment summary and takeaways
  - A. Board needs to develop clear, concise, and achievable goals.
  - B. Board should focus regularly on strategic and policy issues versus operational issues.
  - C. Board could improve development of the board
    - A. Identify and cultivate qualified candidates (recruitment)
      1. What are the attributes, abilities and skills that the OSB needs
      2. Ensure the board represents the diversity of Oregon lawyers
      3. Plan for leadership succession
    - B. Provide job descriptions for board members (education & orientation)
    - C. Ensure new members are familiar with the organization and general board practices (education & orientation)
    - D. Ensure that board members are valued and skills utilized (recognition & engagement)
    - E. Foster inclusion in discussions and meeting planning
- II. Suggestions for moving forward
  - A. Keep mission, strategic functions, and areas of focus up front at all BOG meetings
  - B. Develop a meaningful action plan and keep it “front and center” at board meetings—a short list of big issues
  - C. Mission, strategic functions, tactics in place; ensure BOG is familiar with them
- III. Implementation
  - A. Rearrange agenda
    1. Mission will be at top of agenda,
    2. Generative discussion to start (recommend two per year)
    3. Strategy/Action Plan review of progress
    4. Items added to consent agenda
  - B. Create Board Development Plan
  - C. Other?
- IV. Generative Discussions
  - A. What is generative thinking?
    1. A cognitive process for deciding what to pay attention to

2. “Making sense” by probing assumptions, logic, and values
3. Problem-framing NOT problem-solving
4. Not expected to result in a decision
5. May inspire subsequent discussions of strategy, plans, tactics, execution

B. What is a generative topic?

1. An issue that is open to multiple interpretations and touches on core values
2. Something new to the board that we haven’t talked to death already
3. Something significant, having major impact
4. Ambiguous; no obvious way to look at it

C. What does it mean for the meetings

1. No discussion about some topics
2. Possible increase in length of meetings

D. Possible generative topics

1. Who do we serve? To whom do we owe duties?
  - Fiduciary v Representative
  - Public v Members
2. Why a unified bar? What’s the advantage? What is deeper purpose? What are the dilemmas? Opportunities? What would happen if we split?
3. What are we trying to accomplish with the Futures Task Force?
4. What are the implications of a no-growth or negative growth membership?
5. What is our diversity paradigm?
6. What if we didn’t have a HOD?
7. What does it mean to promote respect for the rule of law?

V. BOG Buy-In

- A. Ask BOG to approve new agenda format (MICHAEL)
- B. Ask BOG to approve devoting time to two generative discussions (MICHAEL)
- C. Ask BOG to identify generative discussion topics (MICHAEL)
  - A. Michael—you may want to suggest one topic on D&I and get BOG buy-in on implicit bias educations session
- D. Ask BOG to approve strategic functions (VANESSA)
- E. Ask BOG to approve areas of focus (VANESSA)

## VI. Diversity deep-dive

### A. Major Trends/Challenges in Diversity, Equity and Inclusion

- a. Demographics of OSB does not reflect demographics of Oregon
- b. Pipeline issues
- c. Leadership barriers
- d. Communication and inclusion issues
- e. Education and awareness
- f. Equity and access/institutional bias
- g. Leadership buy-in

### B. How our Lenses Shape our Legacy

- a. What D, E, I conversations does the board need to have in the future?
  - i. Improving awareness
- b. What makes governance experiences with outside groups a win-win?  
What would it take to create more of them?
- c. What might be legacy I.D.E.A.S?
- d. What needs more or less investment in the future?
- e. How do we break down silos and build up collaboration with other groups?
- f. How will we acknowledge success? What does it take to institutionalize D, E, I?

# MINUTES

## BOG Appellate Screening Committee

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Meeting Date: January 6, 2017

Location: OSB Center

Chair: Per Ramfjord

Attendance: Eric Foster, Guy Greco (by phone), Vanessa Nordyke, Eddie Medina, Tom Peachey, Kathleen Rastetter, Julia Rice, Traci Rossi, Kate Von Ter Stegge, Kerry Sharp, Michael Levelle.

Staff Present: Susan Grabe, Kellie Bagnani

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The committee met in executive session to consider confidential documents (A governing body may go into executive session to consider “information or records that are exempt by law from public inspection.” ORS 192.660(2)(f)). Our documents/notes are confidential per:

Confidential Submissions: ORS 192.502(4)

Internal Advisory Communication: ORS 192.502(1)

**1. Review appellate screening bylaws, process and timelines.** The committee reviewed OSB Bylaw 2.703(f) of the Judicial Selection Bylaws as well as the process, criteria and timelines for the Supreme Court vacancy. The committee also discussed that the bar’s Appellate Selection process is driven by the Governor’s timeline. In this case, the bar has been requested to provide its results to the Governor’s office by February 8, 2017. The committee discussed the need to ensure the perspective of an appellate judge and decided to extend an invitation to former Chief Judge Mary Deits to participate in the process.

**2. Candidate and reference check questions.** The committee reviewed and revised its questions to solicit feedback that would best help inform their deliberations.

**3. Interview dates and follow up.** The committee determined that, based on member availability, the best dates for interviewing candidates was January 16<sup>th</sup> and 18<sup>th</sup>, to be followed by a final meeting on January 23<sup>rd</sup> to discuss reference materials, background checks and candidate interviews.

**4. Background reference check assignments.** Background reference checks were assigned to committee members.

# MINUTES

## BOG Appellate Screening Committee

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**Meeting Date:** January 23, 2017

**Location:** OSB Center

**Chair:** Per Ramfjord

**Attendance:** Jim Chaney, Eric Foster, Guy Greco (by ph), Vanessa Nordyke, Eddie Medina, Kathleen Rastetter, Julia Rice (by ph), Traci Rossi, Kate Von Ter Stegge, Judge Deits

**Staff Present:** Susan Grabe, Misha Isaak

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The committee met in executive session to consider confidential documents (A governing body may go into executive session to consider “information or records that are exempt by law from public inspection.” ORS 192.660(2)(f)). Our documents/notes are confidential per:

Confidential Submissions: ORS 192.502(4)

Internal Advisory Communication: ORS 192.502(1)

- 1. Appellate Screening recommendations.** The committee met to deliberate on the committee’s recommendations to the Board of Governors of those “Highly Qualified” candidates for consideration by Governor Brown. The committee discussion leading up to the recommendations included discussion of reference materials and were conducted in confidential executive session pursuant to subsection 2.703(f) of the Judicial Selection Bylaws. The final recommendations were unanimously adopted by the committee.
- 2. Next Steps.** The committee discussed further revisions to the process for the future and finalizing the letter in a timely fashion to meet the Governor’s timeline.



# Oregon State Bar

## Board of Governors

### *President*

Michael D. Levelle, Portland

### *President-elect*

Vanessa A. Nordyke, Salem

### *Region 1*

Thomas C. Peachey, The Dalles

### *Region 2*

James C. Chaney, Eugene

### *Region 3*

Eric R. Foster, Medford

### *Region 4*

Guy B. Greco, Newport  
Eddie D. Medina, Hillsboro

### *Region 5*

Christine R. Costantino, Portland  
Michael D. Levelle, Portland  
Johnathan E. Mansfield, Portland  
Per A. Ramfjord, Portland  
Liani JH Reeves, Portland  
Katherine von Ter Stegge, Portland

### *Region 6*

Vanessa A. Nordyke, Salem  
Julia C. Rice, Salem

### *Region 7*

Kathleen J. Rastetter, Oregon City

### *Region 8*

John R. Bachofner, Vancouver, WA

### *Public Members*

Robert Gratchner, Gresham  
Traci Rossi, Portland  
Kerry L. Sharp, Lake Oswego  
Elisabeth Zinser, Ashland

### *Immediate Past President*

R. Ray Heysell, Medford

## CEO/Executive Director

Helen Hirschbiel, Tigard

February 9, 2017

Governor Kate Brown  
State Capitol Building  
900 Court St. NE, Suite 254  
Salem, OR 97301

Dear Governor Brown:

The Oregon State Bar's Appellate Screening Committee has completed its review of the candidates who have applied for appointment to the Oregon Supreme Court and who agreed to disclose their application materials to the OSB. Pursuant to OSB Bylaws, the Committee has conducted an in-depth review of each application and candidate, including in-person interviews of all candidates who opted to participate in the process.

The Committee's review process is intended to provide you with relevant, reliable, and descriptive information to help inform your appointment decision. As instructed by OSB Bylaws, our recommendation of candidates as "highly qualified" is based on "the statutory requirements of the position, as well as information obtained in the review process, and the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service." A "highly qualified" recommendation is intended to be objective, and the Committee's failure to identify any specific candidate as "highly qualified" should not be viewed as a finding that the person is unqualified. A "highly qualified" recommendation is intended to reflect the candidate's overall ability to serve on the court.

The Board of Governors is pleased that members from around the state, including a public member, serve on the Appellate Screening Committee. Hon. Mary Deits, former Chief Judge of the Oregon Court of Appeals, also volunteered her time as a Committee member during this review process, for which the Board of Governors is especially grateful. We also deeply appreciate the assistance and leadership of your counsel and your office during this process.

Pursuant to OSB Bylaw 2.703, the Oregon State Bar Board of Governors has approved the following list of candidates deemed "highly qualified" for appointment to the Oregon Supreme Court:

Allen, Beth A.  
Aoyagi, Robyn E.  
Auerbach, Harry  
Brown, Marc D.  
Bushong, Stephen K.  
Cook, Nena  
Duncan, Rebecca  
Flynn, Meagan A.  
Garrett, Chris  
Leith, David E.  
Ortega, Darleen R.  
Rasmussen, Karsten H.  
Rubin, Bruce A.

The Board of Governors appreciates that there were many qualified candidates for the positions and that the review process presented a challenging task. According to OSB Bylaw 2.700, a press release will be issued with the list of the "highly qualified" candidates and the results will be posted on the OSB webpage. Also pursuant to OSB Bylaws, we will gladly respond to any requests from your office as to whether certain other candidates meet a "qualified" standard.

Sincerely,

MICHAEL D. LEVELLE

Michael D. Levelle  
OSB President

A handwritten signature in blue ink, appearing to read "Per Ramfjord".

Per Ramfjord  
OSB Board of Governors  
Appellate Screening Committee Chair

Cc: Ben Souede, General Counsel, Office of the Governor  
Misha Isaak, Deputy General Counsel, Office of the Governor

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**Memo Date:** February 9, 2017  
**From:** Per Ramfjord, Board Development Committee Chair  
**Re:** Appointments to various bar groups

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### Action Recommended

Approve the Board Development Committee's recommendations for new member appointments to the Client Security Fund Committee, State Lawyers Assistance Committee, Unlawful Practice of Law Committee, and the Legal Heritage Interest Group.

### Background

#### Client Security Fund Committee

The Client Security Fund Committee investigates and recommends acceptance or rejection of claims for reimbursement of lawyer theft or misappropriation of client money. The committee is in need of one member appointment and **Steven B Taylor** (821285) is recommended from the OSB volunteer list. Mr. Taylor has 25 years of civil practice experience and after closing his office several years ago he began teaching paralegal courses including those focused on ethics. He served on the CSF Committee in the early 90's and offers a significant amount of experience serving on various non-legal related boards. If appointed, Mr. Taylor's term on the CSF Committee would expire December 31, 2019.

#### State Lawyers Assistance Committee

The State Lawyers Assistance Committee investigates and resolves complaints about lawyers whose conduct impairs their ability to practice law. One new member is needed to fill a partial term expiring December 31, 2019. **Elizabeth Schwartz** (961121) offers experience as a practicing lawyer and recently earned her license as a mental health therapist. These two perspectives are beneficial for work on this committee.

#### Unlawful Practice of Law Committee

The Unlawful Practice of Law Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. **James Brown** (670129) offers a varied practice experience and he is recommended for appointment based on his reputation for hard work. Mr. Brown offers geographic diversity and would serve a term through December 31, 2020.

#### Legal Heritage Interest Group

The Legal Heritage Interest Group preserves and communicates the history of the OSB to interested groups. **Nicole Krishnaswami** (104293), an existing interest group member, volunteered to serve as secretary for the remainder of 2017. **Abby K. Miller** (094443) is recommended as a new member and offers additional gender balance on the group. If appointed Ms. Miller would serve through December 31, 2019. **Paul Nickell**, a current OSB employee, is recommended for appointment as a public member. If approved, his term would begin on March 1, 2017, after his retirement from the OSB, and expire December 31, 2019.

## Oregon Board of Bar Examiners

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**To:** Board of Governors Development Committee  
**Memo Date:** January 30, 2017  
**Meeting Dates:** February 9 – 10, 2017  
**From:** Dawn Evans, Director of Regulatory Services  
**Re:** Proposed Co-Graders for the July 2017 Bar Exam

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As requested by this committee, the Board of Bar Examiners has provided information for each of the candidates proposed to serve as co-graders for the July 2017 grading session.

<b>STEFFAN ALEXANDER</b> Portland Black Male	Admitted 2013 Private Practice, Litigation No Experience as Co-Grader
<b>TODD E. BOFFERDING</b> Hood River White Male	Admitted 1988 Private Practice, Real Estate/Family Has Co-Graded in the Past
<b>ROSA CHAVEZ</b> Eugene Hispanic Female	Admitted in 2003 University of Oregon Has Co-Graded in the Past
<b>MARISHA CHILDS</b> Vancouver Black Female	Admitted 2012 (Reciprocity) Private Practice, Elder Law & Estates No Experience as a Co-Grader
<b>CHRISTY A. DOORNINK</b> Portland White Female	Admitted 2003 Private Practice, Workers Comp. No Experience as a Co-Grader
<b>DENISE FJORDBECK</b> Salem White Female	Admitted 1982 DOJ, Admin & Environmental No Experience as a Co-Grader
<b>LISSA K. KAUFMAN</b> Portland White Female	Admitted 1997 Private Practice, Family & Consumer Has Co-Graded in the Past

<b>NICOLE KRISHNASWAMI</b> Portland White Female	Admitted 2010 Oregon Medical Bd. No Experience as a Co-Grader
<b>KENDRA MATTHEWS</b> Portland White Female	Admitted 1996 Private Practice, Admin & Criminal Has Co-Graded in the Past
<b>SARAH A. PETERS</b> Eugene White Female	Admitted 2007 Private Practice, Environmental No Experience as a Co-Grader
<b>MANDI PHILPOTT</b> Gladstone White Female	Admitted 2002 Private Practice, Family Law Has Co-Graded in the Past
<b>ANTHONY ROSILEZ</b> CA in 2016) Klamath Falls Hispanic Male	Admitted 1996 (Never practiced in OR, moved from  Klamath Community College, Labor & Employment No Experience as a Co-Grader
<b>MICHAEL J. SLAUSON</b> Salem White Male	Admitted 2001 DOJ, Criminal & Constitutional Has Co-Graded in the Past
<b>ADRIAN T. SMITH</b> Portland White Lesbian Female	Admitted 2012 Juvenile & Criminal No Experience as a Co-Grader
<b>MIRANDA SUMMER</b> Portland Bi-Racial Lesbian Female	Admitted 2007 Private Practice, Family Law & Workers Comp No Experience as a Co-Grader
<b>KATHERINE E. WEBER</b> Oregon City White Female	Admitted 1994 Circuit Ct Judge No Experience as a Co-Grader

**ERNEST WARREN, JR.**

Portland  
Black Male

Admitted 1989  
Private Practice, Criminal/land use  
Has Co-Graded in the Past

**SIMON WHANG**

Portland  
Asian Male

Admitted 2003  
Office of City Attorney  
Has Co-Graded in the Past

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** Policy & Governance Committee  
**Re:** Proposed revision to Futures Task Force charge

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### Action Recommended

Approve revision of the charge for the Futures Task Force.

### Options

1. Approve the recommended change to the Futures Task Force charge and forward the amended charge to the BOG for adoption.
2. Decline to approve the proposed revision.

### Background

In April 2016, the Board of Governors approved the creation of a Futures Task Force with the following charge:

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

The BOG subsequently approved the creation of two committees for the Task Force, one focused on regulatory issues, and the other focused on exploring innovative legal service delivery models that would both allow for more sustainable law practices and improved access to justice.

The committees have met several times over the last few months. In their meetings they have reviewed and questioned the charge for the Futures Task Force. Specifically, they noted a difference in its treatment of the public and bar members. The charge directs an examination of how the bar “can best serve its members ....and better serve and protect the public....” As written, the charge seems to suggest that member service is a higher priority than public service. Given the bar’s statutory mandate as a regulatory entity in service to the public, the committees believe this difference in treatment is unintentional.

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The committees have asked that the BOG consider amending the charge to reflect the bar's interest in best serving both members and the public. The following proposal seeks to do just that:

Examine how the Oregon State Bar can best protect the public and support lawyers' professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

At its meeting on January 6, 2017, the Policy & Governance Committee reviewed this matter and now recommends that the BOG approve the proposed revised charge for the Futures Task Force.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** Policy & Governance Committee  
**Re:** Proposed amendment to OSB Bylaw 14.4 regarding committee appointments

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### **Action Recommended**

Waive the one-meeting notice requirement and approve the proposed amendment to OSB Bylaw 14.4 to reflect the Board Development Committee's practice for committee appointments.

### **Options**

1. Approve the recommended revisions to OSB Bylaw 14.4 and forward the amendments to the BOG for adoption.
2. Decline to amend the bylaws.

### **Background**

The Board Development Committee routinely evaluates and makes new member appointment recommendations for various bar committees, councils, and boards. There are a number of factors the committee considers during its selection process including the group's membership balance with regard to age, disability status, gender and gender identity, geographic location, race and ethnicity, sexual orientation, as well as type and years of practice.

During its November 2016 meeting, the committee approved the following policy describing its practice of considering disciplinary matters during the appointment process:

#### **OSB Board Development Committee Policy**

##### **Prior or Pending Disciplinary Matters**

In making appointment recommendations to the Board of Governors, the OSB Board Development Committee may consider the applicant's pending or prior disciplinary proceedings. In so doing, the Committee recognizes that, because the vast majority of bar complaints before the Client Assistance Office do not move forward, the mere existence of such a complaint will not preclude appointment. However, the existence of a pending complaint where charges of misconduct have been approved for filing by the State Professional Responsibility Board will disqualify an applicant until the charges have been resolved. In addition, the Committee will not appoint to any committee a member currently subject to disciplinary probation or suspension. In considering

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past disciplinary conduct, the Committee will take account of the nature and severity of such conduct as well as the length of time that has passed since they occurred.

OSB Bylaw 14.4 pertains to committee membership and should be amended to reflect the Board Development Committee's practice in making appointments. Based on the aforementioned policy, the following bylaw change is recommended.

#### **Section 14.4 Membership**

All members of standing committees must be active members of the Bar. No member shall be eligible for appointment to a standing committee if charges of misconduct have been approved for filing or if the member is subject to current disciplinary probation or suspension. All members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year. The Board appoints members to fill vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

The Policy & Governance Committee reviewed this proposal at its January 6, 2017 meeting and recommends that the Board waive the one meeting notice requirement and adopt the proposed bylaw changes immediately.

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<b>OSB SPONSORED BILLS</b>							
<a href="#">SB 491</a>	This bill includes changed proposed by the OSB Discipline Review Committee. These include: Creation of professional adjudicator; elimination of LRPCs; SPRB member appointed by Supreme Court; statutory immunity for mentors; and probation and diversion monitors.	Relating to regulation of attorneys; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">SB 490</a>	This bill includes several issues, including changes necessitated by the implementation of AMS software, clarification of the role of the past-president, elimination of the obsolete vice-president position, and the renaming of the Executive Director position.	Relating to administration of the Oregon State Bar; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">HB 2610</a>	This bill was proposed by the Business Law Section and incorporates concepts from the Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National Commerce Act	Relating to corporation documents.	H 1st - 1 /9	House Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		Business Law Section
<a href="#">HB 2608</a>	Proposed by the Estate Planning Section, this bill corrects the effective date of HB 2331 (2015).	Relating to the Oregon Uniform Trust Code; declaring an emergency.	H 1st - 1 /9	House Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		Estate Planning Section
<a href="#">SB 492</a>	Proposed by the Family Law Section, this bill is a redraft of HB 2332 (2015), and is intended to streamline the process for parties to determine if a modification of spousal support is appropriate.	Relating to exchange of information in spousal support proceedings.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		Family Law Section
<a href="#">SB 552</a>	Proposed by the Family Law Section, this bill will provide courts with the ability to claim against a third party that is named as the beneficiary of life insurance that was ordered for the benefit of a child or former spouse.	Relating to concealed handgun licenses.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		Family Law Section
<a href="#">HB 2609</a>	Proposed by the Nonprofit Organizations Law Section, this bill updates and modernizes ORS Chapter 65, the nonprofit code.	Relating to nonprofit corporations.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor; 2 /8 - Work Session scheduled.		Nonprofit Section
<b>POTENTIAL POSITIONS</b>							
<a href="#">SB 506</a>	Judges reporting elder abuse	Relating to abuse reporting; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee On Judiciary	1 /17 - Referred to Human Services, then Judiciary. 2 /6 - Public Hearing held.	<b>may need amended language.</b>	SG testified. Don't think it is moving - 2/7

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 337</a>	exempts attorneys from registration if debt management services. DOJ has grave concerns	Relating to exempting attorneys from regulation as debt management service providers in certain circumstances; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary	DOJ unofficially has reached out with concerns	
<a href="#">HB 2166</a>	Debt Buyer bill - same bill as Fagan's in 2015	Relating to debt collection practices; declaring an emergency.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor	Nothing official but members of DC already expressed concerns	
<a href="#">HB 2329</a>	permits the Board of Psychologist Examiners to assess disciplinary costs against the psychologist but no reciprocal right to recover costs and attorney fees for the psychologist/licensee who is successful at the hearing.	Relating to assessment of disciplinary costs by State Board of Psychologist Examiners.	H 1st - 1 /9	House Committee On Health Care	1 /17 - Referred to Health Care. 2 /3 - Public Hearing held.	request to oppose from the Admin Law section. Section has also provided possible amendments. Bill is going to be amended. Work Group is going to be convened	
<a href="#">HB 2356</a>	Establishes requirements under which debt buyer may bring legal action to collect debt	Relating to debt collection practices.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor		
<a href="#">HB 2359</a>	Removes requirement for beneficiary in trust deed to send, and Attorney General to receive, copy of notice that beneficiary has denied grantor's eligibility for foreclosure avoidance measure.	Relating to copies of notices of a denial of eligibility for a foreclosure avoidance measure.	H 1st - 1 /9	House Committee On Business and Labor	1 /17 - Referred to Business and Labor; 2 /8 - Public Hearing scheduled.		
<a href="#">SB 254</a>	Requires financial institutions to participate in data match system established by Department of Revenue to identify assets held at financial institutions by delinquent debtors.	Relating to collection of debts owed to state; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability		
<a href="#">SB 362</a>	Changes legal rate of interest from nine percent per annum to greater of one percent per annum or rate equal to weekly average one-year constant maturity Treasury yield.	Relating to the legal rate of interest.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary		
<a href="#">SB 381</a>	Requires certain notices related to real estate loans to be mailed to all addresses on file for recipient, including post office boxes.	Relating to mailing of notices.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation		
<a href="#">SB 59</a>	Authorizes Long Term Care Ombudsman to petition for protective order regarding person in long term care facility or residential facility when ombudsman believes person who is subject of petition is in need of protective services.	Relating to the Long Term Care Ombudsman; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Business and Transportation; 2 /13 - Public Hearing Scheduled.		Elder Law
<a href="#">SB 95</a>	Requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable individual to Department of Consumer and Business Services and Department of Human Services.	Relating to reporting of suspected financial abuse.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Human Services, then Judiciary; 2 /13 - Public Hearing Scheduled.		Elder Law

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 5</a>	Modifies laws related to student athlete agents	Relating to student athlete agents.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /2- Public Hearing and Work Session held; 2 /14 - Work Session scheduled.		OJD
<a href="#">SB 11</a>	Modifies annual salaries of judges of Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts.	Relating to compensation of judges; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
<a href="#">SB 34</a>	Expands "move over law" to include any motor vehicle that is displaying warning or hazard lights or specific indications of distress.	Relating to the offense of failure to maintain a safe distance from a motor vehicle.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
<a href="#">SB 76</a>	Defines "unarmed combat sports." Authorizes Oregon State Athletic Commission to regulate unarmed combat sports.	Relating to unarmed combat sports; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /14 - Public Hearing and Work Session Scheduled.		OJD
<b>OTHER BILLS OF INTEREST</b>							
<a href="#">HB 2026</a>	DOJ budget	Relating to state finance; declaring an emergency.	H 1st - 1 /9	House Committee On Judiciary; Joint Committee on Ways and Means	1 /17 - Referred to Judiciary with subsequent referral to Ways and Means.		
<a href="#">HB 2101</a>	Public Records	Relating to public records.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
<a href="#">HB 2178</a>	Requires witness before statutory, standing, special or interim legislative committee to sign declaration that witness's testimony is true to best of witness's knowledge and belief, and that witness understands testimony is subject to penalty for perjury.	Relating to legislative testimony.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
<a href="#">HB 2263</a>	Increases fee from \$500 to \$625 for third mediation session conducted by mediator assigned by Employment Relations Board to resolve labor dispute or labor controversy.	Relating to fees charged by the Employment Relations Board.	H 1st - 1 /9	House Committee On Business and Labor; Joint Committee on Ways and Means	1 /17 - Referred to Business and Labor with subsequent referral to Ways and Means. 2 /1 - Public Hearing held. 2 /8 - Work Session held.		
<a href="#">HB 2264</a>	Increases application fee for individual who applies to be included on State Conciliation Service list of qualified arbitrators for labor controversy.	Relating to fees paid to State Conciliation Service by qualified arbitrators.	H 1st - 1 /9	House Committee On Business and Labor; Joint Committee on Ways and Means	1 /17 - Referred to Business and Labor with subsequent referral to Ways and Means. 2 /1 - Public Hearing held. 2 /8 - Work Session held.		
<a href="#">HB 2299</a>	Repeals requirement that Oregon Government Ethics Commission pay attorney fees for person prevailing in certain contested case hearings.	Relating to Oregon Government Ethics Commission payment of attorney fees.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules; 2 /14 - Public Hearing scheduled.		

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 106</a>	Creates Public Records Advocate and Public Records Advisory Council.	Relating to public accountability in administering the public records law; prescribing an effective date.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Joint Committee On Ways and Means	1 /17 - Referred to General Government and Accountability, then Ways and Means. 2 /6 - Public Hearing held.		
<a href="#">SB 11</a>	Modifies annual salaries of judges of Supreme Court, Court of Appeals, Oregon Tax Court and circuit courts.	Relating to compensation of judges; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means; 2 /14 - Public Hearing and Work Session Scheduled.		
<a href="#">SB 12</a>	Authorizes Oregon Business Development Department to require fingerprints of certain persons for purpose of requesting state or nationwide criminal records check.	Relating to criminal records checks by the Oregon Business Development Department.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability. 2 /6 - Public Hearing held.		
<a href="#">SB 140</a>	Appropriates moneys from General Fund to Oregon Youth Authority for gang intervention services in Multnomah County.	Relating to state financial administration; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means.		
<a href="#">SB 141</a>	Appropriates moneys from General Fund to Department of Education for Youth Development Division for gang prevention services in city of Gresham.	Relating to state financial administration; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means.		
<a href="#">SB 16</a>	Prohibits Department of Corrections facilitated dialogue or responsibility letter bank program facilitator, advisory committee member or staff person from being compelled to testify or produce evidence concerning facilitated dialogue and responsibility letter bank program communications, except as provided by department rule.	Relating to Department of Corrections restorative justice program communications; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 191</a>	Directs State Chief Information Officer to provide sections on Oregon transparency website relating to energy tax incentives, cleanups of brownfields, tourism and affordable housing.	Relating to Oregon transparency website; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 194</a>	Permits elector or chief petitioner to file action in circuit court to challenge determination by Secretary of State or elections official to reject elector's signature on initiative or referendum petition during signature verification process.	Relating to ballot measures.		Senate Committee On Judiciary; Senate Committee On Rules	1 /17 - Referred to Judiciary, then Rules.		
<a href="#">SB 21</a>	Authorizes Oregon Board of Accountancy to disclose confidential information to certain public entities.	Relating to accounting; declaring an emergency.	S 1st - 1 /9 S 2nd - 2/7	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation. 2 /1 - Public Hearing and Possible Work Session held; 2 /7 - Recommendation: Do pass		
<a href="#">SB 210</a>	Authorizes counties, cities and special districts to publish public notices required by law on websites of Association of Oregon Counties, League of Oregon Cities and Special Districts Association of Oregon, respectively.	Relating to publication of public notices.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary	1 /17 - Referred to General Government and Accountability, then Judiciary.		

**2017 Legislative Session**

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
<a href="#">SB 224</a>	Requires Public Employees' Benefit Board and Oregon Educators Benefit Board to provide benefit plan option that includes Oregon Health and Science University as in-network provider.	Relating to Oregon Health and Science University as an in-network provider for state benefit plans.	S 1st - 1 /9	Senate Committee On Health Care	1 /17 - Referred to Health Care; 2 /14 - Public Hearing Scheduled.		
<a href="#">SB 244</a>	Establishes notification requirements of Department of Human Services regarding reported or suspected deficiencies, violations or failures of child-caring agency to comply with full compliance requirements and regarding reports of suspected child abuse of child in care.	Relating to notifications required regarding child-caring agencies; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services	1 /17 - Referred to Human Services. 2 /1 - Public Hearing held. 2 /6 - Work Session held.		
<a href="#">SB 253</a>	Requires institutions of higher education to provide fact sheet to each applicable student detailing amount of education loans received, estimate of total amount of education loans student will owe at graduation, estimate of amount student will have to pay each month to service loans and percentage of borrowing limit student has reached for each type of federal loan.	Relating to student loan disclosure.	S 1st - 1 /9	Senate Committee On Education	1 /17 - Referred to Education.		
<a href="#">SB 309</a>	Eliminates option of members of individual account program of Public Employees Retirement System to receive distributions as installment payments upon retirement.	Relating to distributions under the individual account program of the Public Employees Retirement System.	S 1st - 1 /9	Senate Committee On Workforce	1 /17 - Referred to Workforce.		
<a href="#">SB 317</a>	Requires public bodies that conduct public meetings to post online instructions explaining how public may access written records and other informational materials presented at public meetings.	Relating to public meetings.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 321</a>	Provides that member of Legislative Assembly has standing to intervene and participate in proceeding in which constitutionality of Oregon statute or provision of Oregon Constitution is challenged.	Relating to proceedings challenging the constitutionality of provisions; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Senate Committee On Rules.	1 /17 - Referred to Judiciary, then Rules.		
<a href="#">SB 337</a>	Exempts attorney and law firm that employs attorney or with which attorney is affiliated from regulation as debt management service provider if attorney or law firm provides debt management services in course of practicing law.	Relating to exempting attorneys from regulation as debt management service providers in certain circumstances; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 358</a>	Modifies requirements for appearance in small claims department of circuit court or justice court.	Relating to small claims.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 362</a>	Changes legal rate of interest from nine percent per annum to greater of one percent per annum or rate equal to weekly average one-year constant maturity Treasury yield.	Relating to the legal rate of interest.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 386</a>	Prohibits public employer from participating in collection of labor organization dues.	Relating to restricting public employer from using resources to participate in collection of labor organization dues.	S 1st - 1 /9	Senate Committee On Workforce	1 /17 - Referred to Workforce.		

**2017 Legislative Session**

<b>BILL</b>	<b>SUMMARY</b>	<b>RELATING TO</b>	<b>READING</b>	<b>COMMITTEE</b>	<b>STATUS</b>	<b>RECOMMENDED POSITIONS</b>	<b>SUGGESTED BY &amp; NOTES</b>
<a href="#">SB 388</a>	Establishes Whistleblower Commission.	Relating to whistleblowing.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 394</a>	Allows President of Senate, Speaker of House of Representatives, Minority Leader of Senate or Minority Leader of House of Representatives to petition Supreme Court for injunction requiring agency of executive department to execute law.	Relating to petitions by members of the Legislative Assembly for injunctions to require executive department agencies to execute the law.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary.	1 /17 - Referred to General Government and Accountability, then Judiciary.		
<a href="#">SB 397</a>	Directs Department of Human Services to convene work group to develop common client confidentiality release form to be used by public bodies and community organizations to enable and facilitate appropriate sharing of confidential information.	Relating to the sharing of information between social services providers; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services; Joint Committee On Ways and Means	1 /17 - Referred to Human Services, then Ways and Means. 2 /8 - Public Hearing scheduled.		
<a href="#">SB 413</a>	Establishes Legislative Committee on Accountability as joint committee of Legislative Assembly.	Relating to joint committees of the Legislative Assembly.	S 1st - 1 /9	Senate Committee On General Government and Accountability; Senate Committee on Judiciary.	1 /17 - Referred to General Government and Accountability, then Judiciary.		
<a href="#">SB 415</a>	Requires executive department public body that, as of January 1, 2017, maintained two or more full-time equivalent positions predominantly dedicated to public relations work on behalf of public body to repurpose one full-time equivalent position so as to prioritize responding to public records requests above all other duties and work responsibilities.	Relating to executive department public body responses to public records; declaring an emergency.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 428</a>	Exempts collection, storage or use of diffuse surface water from falling rain, melting snow or other precipitation from requirement to obtain water right permit or certificate.	Relating to diffuse surface water.	S 1st - 1 /9	Senate Committee On Environment and Natural Resources	1 /17 - Referred to Environment and Natural Resources.		
<a href="#">SB 43</a>	Subject to certain exemptions, expands definition of lobbying to include person who holds position with public body or private entity and whose work responsibilities include lobbying.	Relating to lobbying.	S 1st - 1 /9	Senate Committee On Rules	1 /17 - Referred to Rules.		
<a href="#">SB 430</a>	Requires insurer to pay claims up to coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.	Relating to amounts insurers must pay under limits for uninsured motorist coverage.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 / 13 - Public Hearing and Possible Work Session scheduled.		
<a href="#">SB 431</a>	Requires insurer to pay claims up to coverage limits for insured's uninsured motorist coverage, less amounts recovered from other motor vehicle liability insurance policies.	Relating to amounts that insurers must pay under the limits for uninsured motorist coverage.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 / 13 - Public Hearing and Possible Work Session scheduled.		
<a href="#">SB 44</a>	Permits executive director of Oregon Government Ethics Commission to designate employee of commission to fulfill any duty or responsibility assigned to executive director by law or by commission.	Relating to the executive director of the Oregon Government Ethics Commission.	S 1st - 1 /9	Senate Committee On Rules	1 /17 - Referred to Rules.		

**2017 Legislative Session**

<b>BILL</b>	<b>SUMMARY</b>	<b>RELATING TO</b>	<b>READING</b>	<b>COMMITTEE</b>	<b>STATUS</b>	<b>RECOMMENDED POSITIONS</b>	<b>SUGGESTED BY &amp; NOTES</b>
<a href="#">SB 451</a>	Sunsets certain exemptions from disclosure for public records.	Relating to public records.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 479</a>	Prohibits courts from applying Sharia law.	Relating to Sharia law.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 481</a>	Establishes state policy regarding public access to public records.	Relating to public records.	S 1st - 1 /9	Senate Committee On General Government and Accountability	1 /17 - Referred to General Government and Accountability.		
<a href="#">SB 482</a>	Permits city to issue citation for speeding using red light camera in conjunction with other technology that is capable of measuring speed.	Relating to traffic violations; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 487</a>	Restricts limitation on award of noneconomic damages to claims in actions for wrongful death.	Relating to damages in actions for wrongful death; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 489</a>	Eliminates obsolete terms and procedures in statutes relating to court records.	Relating to court records; declaring an emergency.	S 1st - 1 /9 S 2nd- 2 /7	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /1 - Public Hearing and Work Session held; 2 /7 - Recommendation: Do pass		
<a href="#">SB 490</a>	Changes title of executive director of Oregon State Bar to chief executive officer of Oregon State Bar.	Relating to administration of the Oregon State Bar; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">SB 491</a>	Directs Supreme Court to appoint state professional responsibility board.	Relating to regulation of attorneys; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /7 - Public Hearing and Work Session held.		
<a href="#">SB 492</a>	Permits parties to judgment that contains spousal support award to request required exchange of certain documents without filing request for modification of judgment with court.	Relating to exchange of information in spousal support proceedings.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 494</a>	Establishes Advance Directive Rules Adoption Committee for purpose of adopting form of advance directive to be used in this state.	Relating to health care decisions; prescribing an effective date.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 496</a>	Directs presiding judges of judicial districts within state to ensure proceedings before grand jury are recorded.	Relating to recording of grand jury proceedings; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 5</a>	Modifies laws related to student athlete agents.	Relating to student athlete agents.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary. 2 /2- Public Hearing and Work Session held; 2 /14 - Work Session scheduled.		
<a href="#">SB 504</a>	Eliminates limitation of liability for owner of land used for trail or recreational purposes when owner is public body.	Relating to immunity of public bodies.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		

**2017 Legislative Session**

<b>BILL</b>	<b>SUMMARY</b>	<b>RELATING TO</b>	<b>READING</b>	<b>COMMITTEE</b>	<b>STATUS</b>	<b>RECOMMENDED POSITIONS</b>	<b>SUGGESTED BY &amp; NOTES</b>
<a href="#">SB 505</a>	Directs district attorney to ensure proceedings before grand jury are recorded.	Relating to recording of grand jury proceedings; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 506</a>	Exempts public or private official from reporting child or elder abuse when official acquires information that official reasonably believes has already been reported and is already known by law enforcement agency or Department of Human Services.	Relating to abuse reporting; declaring an emergency.	S 1st - 1 /9	Senate Committee on Human Services; Senate Committee on Judiciary	1 /17 - Referred to Human Services, then Judiciary. 2 /6 - Public Hearing held.		
<a href="#">SB 519</a>	Allows polygraph test as condition of employment for preemployment screening of law enforcement officers, subject to applicable collective bargaining agreement.	Relating to polygraph tests.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary; 2 /16 - Public Hearing and Work Session scheduled.		
<a href="#">SB 525</a>	Extends sunset on provision authorizing Department of Human Services to appear as party in juvenile court proceeding without appearance of Attorney General.	Relating to legal representation in the child welfare system; declaring an emergency.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
<a href="#">SB 558</a>	Requires Oregon Health Authority to convene work group to advise and assist in implementing targeted outreach and marketing for Health Care for All Oregon Children program.	Relating to improving the health of Oregon children; declaring an emergency.	S 1st - 1 /9	Senate Committee On Health Care; Joint Committee On Ways and Means.	1 /17 - Referred to Health Care, then Ways and Means.		
<a href="#">SB 57</a>	Prohibits court from appointing deputy public guardian and conservator as fiduciary and requires court to appoint Oregon Public Guardian and Conservator as fiduciary.	Relating to the Oregon Public Guardian and Conservator.	S 1st - 1 /9	Senate Committee On Judiciary; Joint Committee On Ways and Means	1 /17 - Referred to Judiciary, then Ways and Means.		
<a href="#">SB 58</a>	Modifies duties and authority of Long Term Care Ombudsman.	Relating to the Long Term Care Ombudsman; declaring an emergency.	S 1st - 1 /9	Senate Committee On Human Services	1 /17 - Referred to Human Services; 2 /13 - Public Hearing Scheduled.		
<a href="#">SB 95</a>	Requires certain securities professionals to report suspected financial exploitation of elderly, disabled or vulnerable individual to Department of Consumer and Business Services and Department of Human Services.	Relating to reporting of suspected financial abuse.	S 1st - 1 /9	Senate Committee On Human Services; Senate Committee on Judiciary.	1 /17 - Referred to Human Services, then Judiciary; 2 /13 - Public Hearing Scheduled.		
<a href="#">SB 97</a>	Provides that Director of Department of Consumer and Business Services must act as, or acknowledge another regulatory official as, group-wide supervisor for internationally active insurance group.	Relating to modernizing insurance corporate governance; declaring an emergency.	S 1st - 1 /9	Senate Committee On Business and Transportation	1 /17 - Referred to Business and Transportation; 2 /15 - Public Hearing and Possible Work Session scheduled.		

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**Memo Date:** December 22, 2016  
**From:** Carol J. Bernick, PLF CEO  
**Re:** 2017 PLF Investment Portfolio Reallocation – PLF Policy 5.200

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### Action Recommended

Approve proposed revisions to PLF Policy 5.200.

### Background

The PLF Board of Directors requests approval of its current asset allocation to include a Senior Secured Bank Loan Strategy. The PLF Investments Committee received presentations from VOYA and CREDIT SUISSE. The Investments Committee has determined that VOYA most closely meets the needs of the PLF. At its December 9, 2016 meeting, the Board of Directors recommended the following:

1. Approve the re-allocation of investment portfolio assets to effect -5% from Real Return Strategies (Diversified Inflation Strategies) and +5% to Senior Secured Bank Loans.

Attachment: PLF Policy 5.200

ASSET CLASS	MINIMUM PERCENT	TARGET PERCENT	MAXIMUM PERCENT
U.S. Equities	17%	24%	31%
International Equities	12%	21%	30%
Fixed Income	20%	<del>26%</del> 31%	32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	5%	<del>5%</del> 0%	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; BOD 10/14/16; BOG 11/19/16)

(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.

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 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

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

### 5.400 REPORTS TO BOARD OF DIRECTORS

The Board of Directors will receive on a monthly basis a copy of the PLF's financial statement, a copy of any investment reports prepared by the PLF's investment advisors, and such other financial reports as the Chief Executive Officer may present. In addition, the Board of Directors will receive copies of all reports from consulting actuaries and any consultants who evaluate the performance of the PLF's investment advisors. All members of the Board of Directors and Board of Governors will receive a copy of the final annual audit of the PLF.

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

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** MCLE Committee  
**Re:** Amend MCLE Rules for New Uniform Bar Examination Admittees and Adopt Housekeeping Changes

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### **Action Recommended**

Review and recommend approval by the Supreme Court of an MCLE Rule requiring admittees who are admitted to the Oregon State Bar after taking the Uniform Bar Exam to complete Oregon-specific MCLE credits. Also recommend approval of housekeeping changes necessary to ensure consistent numbering of MCLE Rules and Regulations.

### **Background**

The Oregon Supreme Court has determined that Oregon will administer the Uniform Bar Exam (UBE) starting with the July 2017 exam. New Rules for Admission (RFA) provide that Oregon will begin accepting transferred UBE scores from other jurisdictions on August 21, 2017, for scores earned in other UBE jurisdictions in the July 2017 or subsequent exam administrations.

Because applicants admitted via the UBE may not have received any education on Oregon law prior to admission, the Court also promulgated RFA 8.21, which requires new admittees to complete credits emphasizing Oregon law during their first MCLE reporting period.

#### **RFA 8.21 Continuing Legal Education on Oregon Law**

As part of completing the 15 hours of accredited CLE activity required by MCLE Rule 3.3(b) to be completed in the first reporting period after admission as an active member, every applicant admitted by examination after June 1, 2017, shall complete and certify that, of the 15 required hours, 1 hour of the 2 credit hours in ethics is devoted to Oregon ethics and professionalism, and 4 hours of the 10 credit hours in practical skills is devoted to Oregon practice and procedure, as regulated and approved by the Board.

The Rules for Admission, however, apply only to applicants for admission to the Oregon State Bar. Members of the OSB are not required to comply with the RFAs. To require compliance by members, MCLE Requirements imposed by the Court need to be incorporated into the MCLE Rules and Regulations.

To accomplish this, the MCLE Committee recommends the adoption of the below proposed amendment to MCLE Rule 3.3; this would align the MCLE Rules with the Rules for Admission.

To provide further guidance to new UBE admittees, the MCLE Committee will consider and recommend the adoption of MCLE Regulations, interpreting the new Oregon-specific MCLE requirements in the near future. To this end, the Board of Bar Examiners has convened a Task Force, including a liaison from the MCLE Committee, which will consider what programs should qualify for credit as “Oregon ethics and professionalism” and “Oregon practice and procedure.”

In addition to the UBE changes, this memorandum also recommends a number of housekeeping changes necessary to ensure consistent numbering.

### **Proposed Amendments**

In order to align the requirement in RFA 8.21 with the MCLE Rules, the MCLE Committee recommends amending MCLE Rule 3.3(b) as follows:

#### **3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.**

(a) An active member whose reporting period is established in Rule 3.7(c)(2) or (d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement or resumption of the practice of law in accordance with Rule 3.4. Two of the 15 credit hours shall be devoted to ethics.

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics, and ten credit hours in practical skills. One of the ethics credit hours must be devoted to Oregon ethics and professionalism and four of the ten credits in practical skills must be devoted to Oregon practice and procedure. New admittees must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Program Manager may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member’s admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee’s first reporting period, the requirements in Rule 3.2(a) shall apply.

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In addition, the MCLE Committee asks the BOG to review and recommend approval of the following amendments so that the rules and regulations are consistently numbered:

#### **3.2 Active Members.**

(a) Minimum Hours. Except as provided in Rules 3.3 and 3.4, all active members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules.

(b) Ethics. At least five of the required hours shall be in subjects relating to ethics in programs accredited pursuant to Rule ~~5.5(a)~~ 5.13(a).

(c) Child Abuse or Elder Abuse Reporting. One hour must be on the subject of a lawyer's statutory duty to report child abuse or one hour on the subject of a lawyer's statutory duty to report elder abuse (see ORS 9.114). MCLE Regulation 3.300(d) specifies the reporting periods in which the child abuse or elder abuse reporting credit is required.

(d) Access to Justice. In alternate reporting periods, at least three of the required hours must be in programs accredited for access to justice pursuant to Rule ~~5.5(b)~~ 5.13(c).

### **3.3 Reinstatements, Resumption of Practice After Retirement and New Admittees.**

(a) An active member whose reporting period is established in Rule ~~3.7(c)(2) or (d)(2)~~ 3.6(c)(2) or 3.6(c)(3) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement ~~or resumption of the practice of law in accordance with Rule 3.4~~. Two of the 15 credit hours shall be devoted to ethics.

(b) New admittees shall complete 15 credit hours of accredited CLE activity in the first reporting period after admission as an active member, including two credit hours in ethics, and ten credit hours in practical skills. New admittees must also complete a three credit hour OSB-approved introductory course in access to justice. The MCLE Program Manager may waive the practical skills requirement for a new admittee who has practiced law in another jurisdiction for three consecutive years immediately prior to the member's admission in Oregon, in which event the new admittee must complete ten hours in other areas. After a new admittee's first reporting period, the requirements in Rule ~~3.2(a)~~ shall apply.

### **3.6 Reporting Period.**

(a) In General. All active members shall have three-year reporting periods, except as provided in paragraphs (b), (c) and (d).

(b) New Admittees. The first reporting period for a new admittee shall start on the date of admission as an active member and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(c) Reinstatements.

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

(2) Except as provided in Rule ~~3.7~~ 3.6(c)(1), the first reporting period for a member who is reinstated as an active member following a transfer to inactive, retired or Active Pro Bono status or a suspension, disbarment or resignation shall start on the date of reinstatement

and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

(3) Notwithstanding Rules ~~3.7~~ 3.6 (c)(1) and (2), reinstated members who did not submit a completed compliance report for the reporting period immediately prior to their transfer to inactive, retired or Active Pro Bono status, suspension or resignation will be assigned a new reporting period upon reinstatement. This reporting period shall begin on the date of reinstatement and shall end on December 31 of the next calendar year. All subsequent reporting periods shall be three years.

### **Regulations to MCLE Rule 3 Minimum Continuing Legal Education Requirement**

**3.100 Out-of-State Compliance.** An active member seeking credit pursuant to MCLE Rule ~~3.5(b)~~ 3.4(b) shall attach to the member's compliance report filed in Oregon evidence that the member has met the requirements of Rules ~~3.2(a) and (b)~~ with courses accredited in any jurisdiction. This evidence may include certificates of compliance, certificates of attendance, or other information indicating the identity of the crediting jurisdiction, the number of 60-minute hours of credit granted, and the subject matter of programs attended.

**3.200 Reciprocity.** An active member who is also an active member in a jurisdiction with which Oregon has established MCLE reciprocity (currently Idaho, Utah or Washington) may comply with Rule ~~3.5(a)~~ 3.4(a) by attaching to the compliance report required by MCLE Rule 7.1 a copy of the member's certificate of compliance with the MCLE requirements from that jurisdiction, together with evidence that the member has completed the child abuse or elder abuse reporting training required in ORS 9.114. No other information about program attendance is required. MCLE Regulation 3.300(d) specified the reporting periods in which the child abuse or elder abuse reporting credit is required.

**3.500 Reporting Period Upon Reinstatement.** A member who returns to active membership status as contemplated under MCLE Rule ~~3.7(c)(2)~~ 3.6(c)(2) shall not be required to fulfill the requirement of compliance during the member's inactive or retired status, suspension, disbarment or resignation, but no credits obtained during the member's inactive or retired status, suspension, disbarment or resignation shall be carried over into the next reporting period.

**3.600 Introductory Course in Access to Justice.** In order to qualify as an introductory course in access to justice required by MCLE Rule 3.3(b), the three-hour program must meet the accreditation standards set forth in MCLE Rule ~~5.13(c)~~ 5.5(b) and include discussion of at least three of the following areas: race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

### **Rule Five Accreditation Standards for Category II Activities**

#### **5.7 Legal Research and Writing.**

(1) Credit for legal research and writing activities, including the preparation of written materials for use in a teaching activity may be claimed provided the activity satisfies the following criteria:

(a) It deals primarily with one or more of the types of issues for which group CLE activities can be accredited as described in Rule ~~5.1(b)~~ 5.12(b); and

**Regulations to MCLE Rule 5  
Accreditation Standards**

**5.050 Written Materials.**

(a) For the purposes of accreditation as a group CLE activity under MCLE Rule 5.1~~(e)~~ (c), written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** February 10, 2017  
**From:** Helen Hierschbiel, Executive Director  
**Re:** CSF Claim No. 2015-23 SMITH (Ballantyne) 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*

Robert Ballantyne hired Michael Morey in 2001 to represent him in a lawsuit against the Archdiocese of Portland. Mr. Ballantyne had a duly executed contingent fee agreement with Mr. Morey. After Mr. Morey worked on the case for two and a half years, the Archdiocese made a settlement offer of \$650,000, which Mr. Ballantyne refused. Mr. Ballantyne became dissatisfied with Mr. Morey's performance and sought advice from his long-time family friend, retired attorney Jeffrey Boly. Mr. Boly helped connect Mr. Ballantyne with attorney Frederick Smith.

On June 26, 2003, Mr. Ballantyne executed a fee agreement that provided that Mr. Morey's contingent fee would be paid based on the most recent offer from the Archdiocese (\$650,000) and that Mr. Smith's contingent fee would be based on any further amount Mr. Smith obtained over and above the initial offer. Mr. Smith refused to sign the proposed fee agreement. Nevertheless—and without a fully executed fee agreement—Mr. Smith undertook to represent Mr. Ballantyne at the July 7, 2003 mediation. At the time, Mr. Smith was aware of Mr. Ballantyne's fee agreement with Mr. Morey. The mediation continued through July 10, 2003, at which time Mr. Ballantyne agreed to a settlement offer of \$900,000.

When he learned of the settlement agreement, Mr. Morey attempted to contact Mr. Smith to discuss division of the contingent fee. Mr. Smith, however, did not participate in any discussions with Mr. Morey. Therefore, on July 22, 2003, Mr. Morey filed a notice of attorney's lien and action to recover his costs and a reasonable fee.

On July 23, 2003, Mr. Smith drafted and presented Mr. Ballantyne with a contingent fee agreement different from the agreement that Mr. Ballantyne signed on June 26, 2003. This new fee agreement provided that Mr. Smith would receive a one-third contingent fee of all sums recovered. Mr. Ballantyne signed the agreement and, at Mr. Smith's instruction, interlined above his signature, "as of July 1, 2003."

Mr. Smith then represented Mr. Ballantyne in a malpractice case against Mr. Morey. Mr. Smith lost the malpractice case both at the circuit court level and on appeal. In the end, because of the attorney fee agreements he had signed with Mr. Morey and Mr. Smith, Mr. Ballantyne received a small fraction of the total settlement. Mr. Ballantyne was ordered to pay Mr. Morey \$527,000, and Mr. Smith kept the \$300,000 that he thought he was due.<sup>1</sup>

Mr. Ballantyne then sued Mr. Smith, his daughter Jaculin Smith, and Mr. Boly for malpractice, alleging they gave him bad legal advice by encouraging him to fight Mr. Morey every step of the way. In her response to the CSF Committee investigator, Ms. Smith indicates that the PLF paid Mr. Ballantyne nearly \$210,000 in order to settle those claims; however, we do not have access to that settlement agreement.

Mr. Ballantyne also filed an ethics complaint against all the attorneys involved. Formal disciplinary proceedings were initiated against only Mr. Smith and Mr. Boly. The complaint against Mr. Smith included allegations of dishonesty, fraud, deceit or misrepresentation that reflects adversely on a lawyer's fitness to practice. Mr. Smith passed away on May 3, 2013, prior to conclusion of the disciplinary proceedings. Therefore, the bar dismissed the cases against Mr. Smith. Mr. Boly was ultimately disciplined for engaging in the unauthorized practice of law by providing legal advice and assistance to Mr. Ballantyne in this matter. *See In re Boly*, 27 DB Rptr 136 (2013).

Mr. Ballantyne alleged a loss caused by Mr. Smith of \$1.5 million and submitted a claim for reimbursement of that amount from the CSF.

#### *CSF Committee Analysis*

In order for a loss to be eligible for CSF reimbursement, it must result from a lawyer's dishonest conduct. CSF Rule 2.2.1. In addition, a loss must not be covered by some other fund, bond, surety agreement or insurance contract. CSF Rule 2.3. Generally, claims must be submitted within two years after the claimant knew or should have known of the loss, but in any event, claims are not allowed if submitted more than six years after the date of the loss. CSF Rule 2.8. In the cases of extreme hardship or special and unusual circumstances, the Committee may approve or recommend for payment a claim that would otherwise be denied due to noncompliance with one or more of the rules. See CSF Rule 2.11.

The CSF Committee struggled with this claim. In some respects, Mr. Ballantyne presents a very sympathetic case. Even so, the Committee spent considerable time discussing whether Mr. Smith's conduct in securing and taking the \$300,000 fee was dishonest. Mr. Ballantyne did sign the subsequent contingent fee agreement and because of Mr. Smith's death, no court or panel ever made any findings of dishonesty by Mr. Smith. In addition, the Committee found it

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<sup>1</sup> The Oregonian covered the case in 2011 and again in 2013 when the case concluded, noting that "[t]he suit also has upset the legal community, raising questions about the professionalism of at least one of the attorneys involved—and fueled concerns about potential damage to the public image of attorneys."

relevant that Mr. Ballantyne had secured payment of over \$200,000 from the PLF for the malpractice claims against Mr. Smith. Although the CSF Committee did not have access to the PLF settlement documents, several members noted that the PLF standard release is very broad and likely would have covered all claims. Thus, Mr. Ballantyne would have no rights against Mr. Smith to assign to the bar as required under CSF Rule 5.1.1. Finally, as noted by the investigator, the claim was submitted more than two years after Mr. Ballantyne should have known of the loss and more than six years after the date of the loss.

On balance, given the numerous defects with Mr. Ballantyne's claim, the CSF Committee decided not to exercise its discretion to waive noncompliance with the rules, and to deny Mr. Ballantyne's claim.

**OREGON STATE BAR INDIAN LAW SECTION**  
**Indian Law Legal Issues in Oregon<sup>1</sup>**

The goal of the Indian Law Section (ILS) is to encourage a greater understanding of Indian law among Oregon legal professionals and improve the practice of Indian law throughout Oregon. The ILS represents a wide spectrum of attorneys who handle cases, transactions and other matters involving Indian law, including attorneys in private practice, attorneys who work as in-house attorneys for Indian tribes, attorneys for non-profit organizations advocating for tribal rights, federal and state attorneys, and attorneys who serve as tribal court judges for Indian tribes in Oregon. The ILS was organized in 1995 by practitioners working in Indian Country in Oregon and is open to all members of the Bar as well as non-attorneys. Membership can include persons who are attorneys, tribal court judges, tribal leaders and tribal members, or anyone else interested in Indian law issues.

A. Serving Tribal Governments

Many ILS attorneys represent the tribal governments and other tribal entities of Oregon's nine federally recognized Indian tribes and serve as outside or in-house counsel. In this role, these attorneys are called upon to:

1. Ensure that tribal members are safe, have adequate employment opportunities, and access to education and health care.
2. Create and maintain healthy government-to-government relationships between tribal governments and city, county, state, and federal agencies. Ensure consultation with federal and state agencies on all actions which affect tribal members and Indian land.
3. Drive economic development and entrepreneurship on Indian reservations. Ensure that tribal gaming operations are successful, primarily benefit Indian tribes, and remain free from criminal activity.
4. Ensure that federal agencies meet their treaty and trust obligations to Oregon tribes and their members.
5. Empower Oregon tribes to independently administer their own affairs pursuant to the Indian Self-Determination and Education Assistance Act.

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<sup>1</sup>This document was approved by a majority of the Indian Law Section's Executive Committee. The opinions expressed in this document reflect the views of certain Executive Committee members acting in their personal capacity and do not necessarily reflect the views of that individual's employer or other entities or organizations in which that individual participates.

## B. Accountability for Treaty and Trust Obligations

Oregon's Indian tribes and their members enjoy rights negotiated for in treaties with the United States government. These treaties were not a grant of rights to the tribes, but rather a reservation of inherent tribal rights. Likewise, the law of the United States describes a federal trust obligation to Indian tribes which is akin to a fiduciary responsibility. ILS attorneys who represent tribes protect these rights and obligations before various government agencies and in the courts. It is the priority of Indian tribes and their counsel to:

1. Ensure that the U.S. Indian Health Service is fully funded and creates access to health care for Native American families living both on and off Oregon's reservations.
2. Ensure that the U.S. Bureau of Indian Education provides excellent education for tribal children.
3. Ensure that the United States protects the subsistence hunting, gathering and fishing rights that are both vital to native culture and key to meeting the nutritional needs of Oregon's native population.
4. Protect existing Indian land, restore the Indian land base, and maintain an adequate water supply to serve reservation communities.

## C. Economic Development in Indian Country

Many ILS attorneys represent tribally owned as well as non-tribal businesses working to create mutually beneficial business relationships with Indian tribes and on Indian land. In this regard, ILS attorneys may:

1. Make non-tribal businesses aware of investment opportunities in Indian Country.
2. Negotiate contracts with Indian tribes that include limited waivers of sovereign immunity, choice of law, and choice of venue.
3. Take advantage of various federal preference and grant programs that promote investment in reservation businesses.

## D. Environmental and Energy Law Issues

The dominance of hydroelectric power generation in the Northwest raises energy production and environmental concerns which directly impact Oregon's Indian tribes. Accordingly, Oregon tribes must be consulted and involved in all decisions affecting the natural environment and related to energy production and transmission in Oregon. In addition, Indian tribes and their counsel may work to:

1. Ensure that the Columbia River and its adjacent sites remain free of pollution. Ensure that the CERCLA “Superfund” cleanup operations at the Hanford Nuclear Reservation and the Portland Harbor are effective.
2. Ensure that fish species central to native culture in the Northwest flourish.
3. Participate in revisions to the Columbia River Treaty, the international agreement between Canada and the United States for the cooperative development and operation of the water resources of the Columbia River Basin.
4. Ensure cooperation between federal, state and tribal governments in the siting of energy transmission infrastructure.
5. Advocate for Indian tribes as rate payers in the regulation by the State of investor owned utilities.
6. Develop tribally owned energy generation and distribution infrastructure and participate in the development of and sponsor clean energy projects in Oregon.

E. Criminal Jurisdiction, Child Welfare, Law Enforcement and Tribal Courts

The complicated framework of federal, tribal, and state criminal and police jurisdiction on Indian reservations has resulted in jurisdictional gaps which can leave reservation communities vulnerable to crime. Indian tribal courts are expanding jurisdiction to fill these gaps. The federal Indian Child Welfare Act (ICWA) also protects the rights of tribes and Native American children and parents in state dependency hearings. In this regard, ILS attorneys may work to:

1. Address the need for coordination between state and tribal courts and establish procedures for comity/full faith and credit between tribal and state courts.
2. Establish intergovernmental and inter-agency jurisdictional agreements with law enforcement agencies to eliminate jurisdictional gaps that endanger reservation communities.
3. Address individual tribal members’ need for competent tribal court counsel in child custody matters. Remove financial barriers to tribal participation in ICWA cases by eliminating the *pro hac vice* fee and requirement that out-of-state counsel associate with local counsel in ICWA cases.
4. Address the need of individual tribal members and non-native criminal defendants for competent tribal courts in criminal matters. Design and fund support services and procedures that protect crime victims while also representing the rights of both native and non-native criminal defendants in tribal courts.

5. Hold tribal governments accountable to their members in their own tribal courts under their own laws as well as the federal Indian Civil Rights Act.
6. Represent tribal interests in child welfare matters, ensuring that ICWA rules and guidelines are adhered to in both state and tribal courts, and protect the interests of tribal children and tribal members involved in child welfare cases, in accordance with ICWA.

F. Legal Education

Tribal law predates the United States and continues to this day. Indian Tribes have constantly advocated for their rights throughout United States history, but many Americans, and even attorneys, are unaware of or confused by the nature of tribal rights, tribal law, and federal Indian law. Accordingly, it is incumbent on ILS attorneys, and all members of the Oregon State Bar, to:

1. Familiarize themselves with the sovereign status of Indian tribal governments and of the federal laws and treaties that protect tribal sovereignty and inform decision makers and legislators on these issues.
2. Educate their non-tribal private and government clients about Indian law.
3. Follow legislation and committee reports affecting Indian tribes, including juvenile dependency issues.
4. Advocate that Indian law be taught in Oregon's law schools.
5. Advocate that Indian law subjects be tested in the Oregon State Bar exam.