

Oregon State Bar
Meeting of the Board of Governors
April 14, 2017
Open Session Minutes
As amended 06.23.2017

President Michael Levelle called the meeting to order at 12:00 p.m. on April 14, 2017. The meeting adjourned at 3:20 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Kerry Sharp, Kate von Ter Stegge, and Elisabeth Zinser. Not present was Per Ramfjord and Traci Rossi. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, Bill Penn, Catherine Petrecca, and Camille Greene. Also present was Colin Andries, past-ONLD Chair, Carol Bernick, PLF CEO, Barbara Fishleder, PLF Director of Personal and Practice Management/OAAP Executive Director, Bruce Schafer, PLF Director of Claims, and Teresa Statler, Tim Martinez, Dennis Black, Saville Easley, Megan Livermore, Holly Mitchell, Molly Mullen, Tom Newhouse, and Rob Raschio from the PLF Board of Directors; and Kelly Harpster, Futures Task Force.

1. Call to Order/Finalization of Agenda

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

2. Combined Meeting with PLF Board of Directors

Ms. Hirschbiel updated the board on the progress made by the two Futures Task Force subcommittees. **[Exhibit A]**

Ms. Harpster updated the board with a review of paraprofessional licensing models in various other states and the status of possible limited licensing models in Oregon. **[Exhibit B]**

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

A. Appellate Screening Special Committee

Ms. Grabe updated the board on new Court of Appeals vacancies. The committee will have a conference call on Monday, April 17, 2017.

B. Board Development Committee

In the absence of Mr. Ramfjord, Mr. Greco presented the committee's recommendations for several committees, and a new lawyer and public member to the Disciplinary Board. **[Exhibit C]**

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

Mr. Greco presented the Board Development Committee's appointment recommendations for the Department of Public Safety Standards and Training Board Policy Committee. **[Exhibit D]**

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

C. Budget & Finance Committee

Mr. Levelle asked the board to decide by consensus whether or not they want to keep the Special BOG account for beer and wine purchases at BOG events. **[Exhibit E]**

Motion: By consensus, the board agreed to keep the Special BOG account.

Mr. Chaney updated the board on the upcoming economic survey that should take place by the end of July. The investment committee will evaluate the significantly different outcomes of the bar's two investment accounts. Sections fund balances continue to be a matter of concern. A message will be sent to that effect and they will be reviewed again in a year. It is anticipated that there will be a budget shortfall in 2018 which will be covered by the reserve, but it is realistic to expect a fee increase in 2019 unless bar programs are significantly reduced. The committee will be looking at establishing priorities for voluntary bar programs. Dennis Black, PLF Board of Directors liaison, asked for a list of programs that are subject to prioritization, and suggested soliciting member input through a survey or some other means.

D. Policy and Governance Committee

Ms. Nordyke presented the committee motion to accept the revision to Article 23 re: the PLF Bylaws and asked the board to waive the one meeting notice. **[Exhibit F]**

Motion: The board voted in favor of waiving the one meeting notice and accepting the committee recommendation to amend Article 23 of the OSB Bylaws. The motion passed.

Ms. Nordyke presented a committee update re: reconfiguration of the Board of Governors as required by ORS 9.025(2)(a). The committee determined that the current configuration is appropriate and therefore is not making any recommendations for changes at this time.

Ms. Nordyke asked Ms. Hirschbiel to present a joint committee update re: CLE co-sponsorship. Ms. Hirschbiel noted that the joint committee had considered three section policy issues: CLE co-sponsorship, section fund balances, and the number of sections. With respect to the number of sections, the committee recommends reviewing alternative formats available with the new association management software and revisiting the issue thereafter. Regarding section fund balances, the committee echoes the report of the Budget & Finance Committee. Mr. Bachofner reported on the alternate proposal that would require section co-sponsorship with CLE seminars only once every three years, as opposed to once every year. Initial feedback has been positive; section leaders were sent an email with the alternate proposal and requesting feedback prior to the bringing the matter back to the full Board for final consideration.

Mr. Levelle presented correspondence from bar member Dwight G. Purdy suggesting the board look at the possibility of bringing back the Legislation CLE and the Bar Convention. Mr. Levelle and Ms. Hirschbiel will give this further consideration and report back to the board. **[Exhibit G]**

E. Public Affairs Committee

Ms. Rastetter thanked sections for their helpful participation in Salem.

Ms. Rastetter gave a general update on legislative activity and reminded the board that 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 if they contact Ms. Grabe.

F. Discipline System Review Update

Ms. Evans updated the board on the status of the recommended changes to the discipline system. On May 2 the Supreme Court will address the changes to the bar rules and consider the Board of Bar Examiners recommended reduction in the passing score for the bar exam.

4. Professional Liability Fund

Ms. Bernick reported that the PLF presented a 1.5 hour CLE for the Solo and Small Firm Section to help them understand the “why” of what the PLF does. PLF is recruiting for a public member and a lawyer member for the PLF Board of Directors.

Ms. Bernick presented the 2017 Excess Renewal Report now that the BOG no longer needs approve the PLF excess rate.

Ms. Bernick reported that the Board of Directors is pleased with the financial investments of the PLF. Their audit was clean and no adjustments were recommended. She introduced Dennis Black who will chair the PLF BOD in 2018.

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 3.400(a) and 5.300(a). **[Exhibit H]**

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

Ms. Hollister presented the MCLE committee request for the board to approve credit for serving on Council on Court Procedures. **[Exhibit I]**

There was considerable discussion about whether the MCLE committee had considered adding credit for serving on the Uniform Trial Court Rules committee as well as other committees or sections that are comparable in volunteer time commitment and workload.

Motion: Ms. Rice moved, Ms. von Ter Stegge seconded, and the board voted to approve the credit for serving on the Council on Court Procedures. ~~Mr. Kerry~~, Mr. Mansfield, and Ms. Rastetter were opposed.

Mr. Sharp

B. Oregon New Lawyers Division Report

In addition to the written report from Ms. Eder, Mr. Andries updated the board on the ONLD progress in reaching out to new members via podcast. Their goal is to produce one per month.

C. Legal Services Program Committee

Mr. Penn asked the board to: approve the LSP Committee’s recommendation to disburse \$69,576 from the annual unclaimed client fund but to hold the funds until the legal aid providers make a recommendation for when to disburse the funds and a method for allocation between providers; and approve the LSP Committee’s recommendation not to disburse the unclaimed client funds from the Strawn v Farmers class action and continue holding the remaining funds in reserve.

Motion: Mr. Greco moved, Mr. Foster seconded, and the board voted unanimously to approve the committee’s recommendations.

D. Report of Officers & Executive Staff

Report of the President

Mr. Levelle reported on two significant activities since the last board meeting: 1) he attended a White Men as Full Diversity Partners Workshop which was a perfect example of how different lenses observe and experience things differently; 2) he attended the Western States Bar Conference which made him appreciate the Oregon State Bar and how well it functions and takes on expansive programs, much more than other surrounding states. The OSB takes a holistic approach rather than addressing issues piecemeal; 3) finally, he had the honor of being the subject of an event hosted by Miller Nash which encouraged him to continue his OSB President mission on inclusion, equity, and access to justice.

Report of the President-elect

Ms. Nordyke’s goal is to continue next year focusing on the themes of Mr. Levelle, Mr. Heysell, and Mr. Spier. Her theme is going to be “The Next Generation” including the next generation of legal consumers, not just the legal profession. She wants to help new and newer lawyers to connect with the less-fortunate who need access to justice by harnessing technology and legal innovation. She encouraged the board to research the current incubator programs in other states.

Report of the Executive Director

Ms. Hirschbiel presented the 2016 OSB Program Evaluations and its function of measuring the progress of OSB programs. She invited Board feedback on the measures and evaluations. She pointed out the OSB Strategic Functions and Areas of Focus that is included on BOG agendas in order to help the Board stay strategic in its discussions. She announced a special BOG meeting in May to focus solely on a generative discussion around diversity, equity and inclusion.

Director of Regulatory Services

As written.

Director of Diversity & Inclusion

Mr. Puente gave a brief report on giving the ACDI more clarity of purpose for their advisory role. He reorganized his department from linear to more collaborative which involves two coordinators – external and internal.

MBA Liaison Report

Ms. Reeves reported on MBA fellowships and their search for businesses and firms to host fellows over the summer. The MBA YLS, along with OHBA, are hosting an event on April 27 at Miller Nash and board members are encouraged to attend.

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. There was no request to do so.

Motion: Mr. Chaney moved, Mr. Mansfield seconded, and the board voted unanimously to approve all items on the consent agenda. Ms. Costantino and Mr. Peachey abstained. **[Exhibits J & K]**

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)**

**Oregon State Bar
Board of Governors Meeting
April 14, 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.

Exhibit A

FUTURES TASK FORCE UPDATE

Helen M. Hirschbiel, Executive Director/Chief Executive Officer

April 14, 2017



Futures Task Force Charge

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.

Futures Task Force

Convened by Board

Innovations Committee

John Grant, Chair

Regulatory Committee

Hon. Chris Garrett, Chair

Innovations Committee Charge

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

Innovations Committee

John Grant, Chair

Incubator
Accelerator
Program

Need for Data

Accessibility &
Rural
Communities

Practice
Management
Resources

Modest Means
Program & Lawyer
Referral Service

Regulatory Committee Charge

- Examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models.

Regulatory Committee

Hon. Chris Garrett, Chair

Alternative Legal
Services Delivery
Workgroup

Brad Tellam, Lead

Paraprofessional
Regulation Workgroup

Kelly Harpster, Lead

Self-Navigation
Workgroup

Sandy Hansberger, Lead

Next Steps

- Committees Drafting Report & Recommendations
- Report to Board at June 23, 2017 Board Meeting

Summary of Draft Proposal for Licensing Paraprofessionals

Eligibility

A candidate for admission must be 18 years old, of good moral character, and meet minimum education and experience requirements. In summary form, the minimum requirements are:

- Must have an Associate's Degree
- Must graduate from an ABA-approved or accredited paralegal studies program
- Must have at least 1 year of substantive law-related experience
- Limited exceptions for J.D.s and very experienced paralegals

Presently undecided is whether to require whether to require a candidate to pass one of the three national paralegal certification examinations or to require no exam. The workgroup is leaning toward the latter.

Regulation

A licensee would be required to carry malpractice insurance, meet continuing education requirements, and comply with professional rules of conduct, just like lawyers. A licensee also would be required to use written agreements containing mandatory disclosures about the limited scope of practice.

Scope of Practice

A licensee may provide legal services only to self-represented litigants in approved proceedings, which would initially include routine family law proceedings and landlord-tenant proceedings (FEDs and small claims). Certain types of cases would be deemed outside of the scope of practice due to complexity.¹

A licensee would be able to provide fairly robust legal assistance for a routine proceeding within the scope of practice, including:

- Selecting, preparing, filing, and serving forms and documents relating to the proceeding
- Providing information and advice about matters relating to the proceeding
- Communicating and negotiating with another party
- Providing emotional and administrative support in court

A licensee would be prohibited from:

- Providing any assistance outside the limited scope of practice
- Representing a client before a court or in depositions
- Filing an appeal

If a licensee knows or reasonably should know that a matter is outside the approved scope of practice, the licensee must refer the person to a lawyer.

¹ For an example of similar exclusions in Washington, see Regulation 2(B) in the Appendix to Admission to Practice Rule 28.

Licensed Paraprofessional Programs

		Arizona	California	Nevada	Utah ¹	Washington	Ontario, CA
Title		Legal Document Preparer	Legal Document Assistant and Unlawful Detainer Assistant	Document Preparation Service	Licensed Paralegal Practitioner	Limited License Legal Technician	Licensed Paralegal
Practice Area(s)		Any	Any (LDA); eviction (UDA)	Any	Family law, eviction, debt collection	Family law	Small claims, ADR, provincial offenses, summary convictions
Education and Experience	Minimum education	Varies by work experience	Varies by work experience	n/a	Associates degree	Associates degree	Accredited paralegal program graduate
	Required course work	n/a	n/a	n/a	Paralegal studies, practice area course	Paralegal studies, practice area course	General and practice area courses
	Law-related work experience	0-2 years, varies by educational degree	0-2 years, varies by educational degree	n/a	1,500 hours	3,000 hours	120 hours field work ³
Licensing Exam		Yes	No	No	Yes	Yes	Yes
Insurance/Bond		No	Bond	Bond	TBD	Insurance	Insurance
Rules of Conduct		Yes	No	No, but deceptive practices prohibited	Yes	Yes	Yes
Scope of services	Select forms	Yes	No	Yes	Yes	Yes	Yes
	Complete pre-approved forms	Yes	Yes	Yes	Yes	Yes	Yes
	Draft other legal forms	Yes	No	Yes	No	Yes, if approved by attorney	Yes
	File and serve forms	Yes	Yes	Yes	Yes	Yes	Yes
	Provide legal information	Yes	Yes, only approved published materials	Not addressed	Yes	Yes	Yes
	Provide legal advice²	No	No	No	No	Yes, limited in scope	Yes
	Negotiate on client's behalf	No	No	No	Yes, in mediation	No	Yes
	Appear in court	No	No	No	No	No	Yes
Other	Trust accounts	No	No	No	Yes	Yes	Yes
	Continuing education	Yes	Yes	No	Yes	Yes	Yes
	Oversight	LDP Board	Dept. of Consumer Affairs, Counties	Secretary of State	Board (TBD)	LLLT Board	Paralegal Standing Committee
Statute/Rule		ACJA 7-208	CA Bus. & Prof. Code §6400 et seq	NRS 240A	Draft Rule 14-802	APR 28	Law Society Act

¹ Utah's program has not yet launched, but a special committee appointed by the Supreme Court completed extensive pre-implementation work in 2016.

² Most states allow licensed paraprofessionals to explain and provide information about the law, court procedures, and required forms, while prohibiting licensees from advising clients about their specific legal rights and remedies or applying legal principles to the particular facts.

³ Field work is required to graduate in addition to 590 hours of paralegal and practice area studies and 120 hours of general college course work.



Licensing Paraprofessionals

Self-Represented Litigants

- In 86% of family law cases, at least one of the litigants is self-represented.
- “self-representation is a permanent aspect of the family court”
- Self-represented litigants:
 - Feel disadvantaged
 - Get worse outcomes
 - Strain court resources



Why Litigants Self-Represent

The 3 C's

Cost · Complexity · Confidence

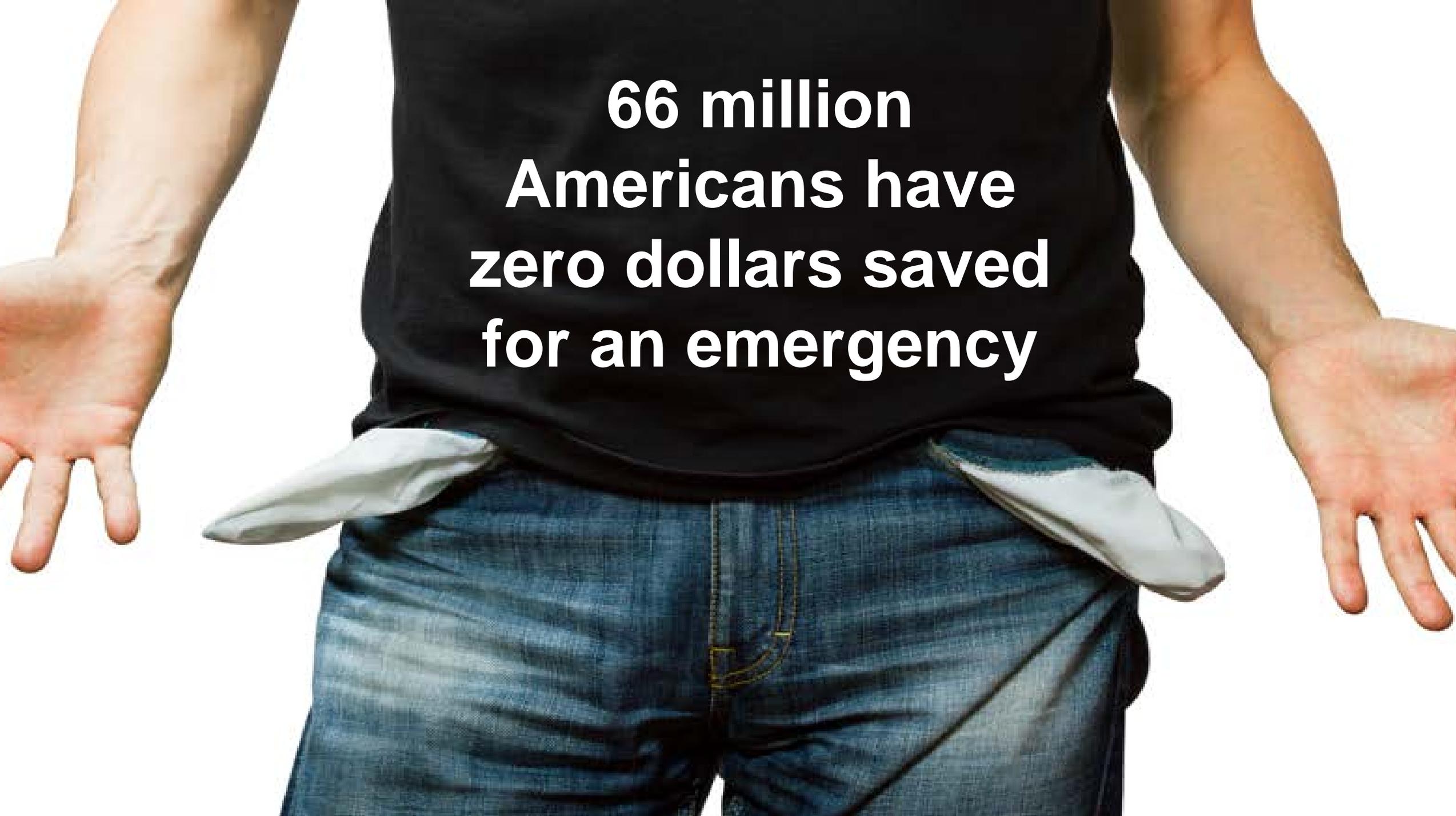
Cost of Divorce in Oregon

- Total cost \$4,000 to \$28,000
- Average fees \$10,000
- With children \$19,100
- With alimony \$17,600
- With property division \$17,900

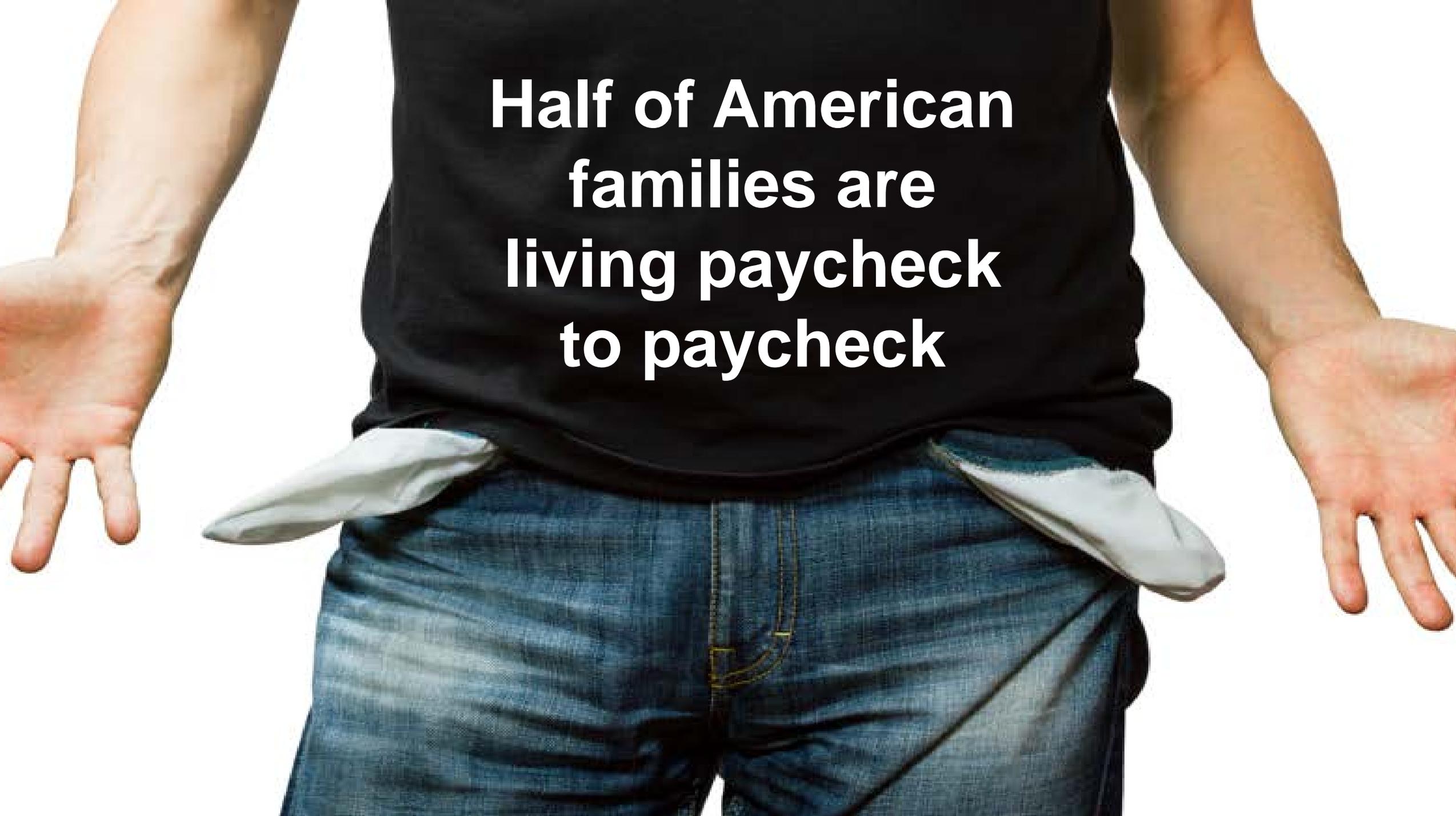




**Nearly 7 in 10
Americans
have less
than \$1,000
in savings**

A photograph of a person's torso and arms, wearing a black t-shirt and blue jeans. The person's hands are held out to the sides, palms up, and the pockets of their jeans are empty, with white fabric visible. The background is plain white.

**66 million
Americans have
zero dollars saved
for an emergency**



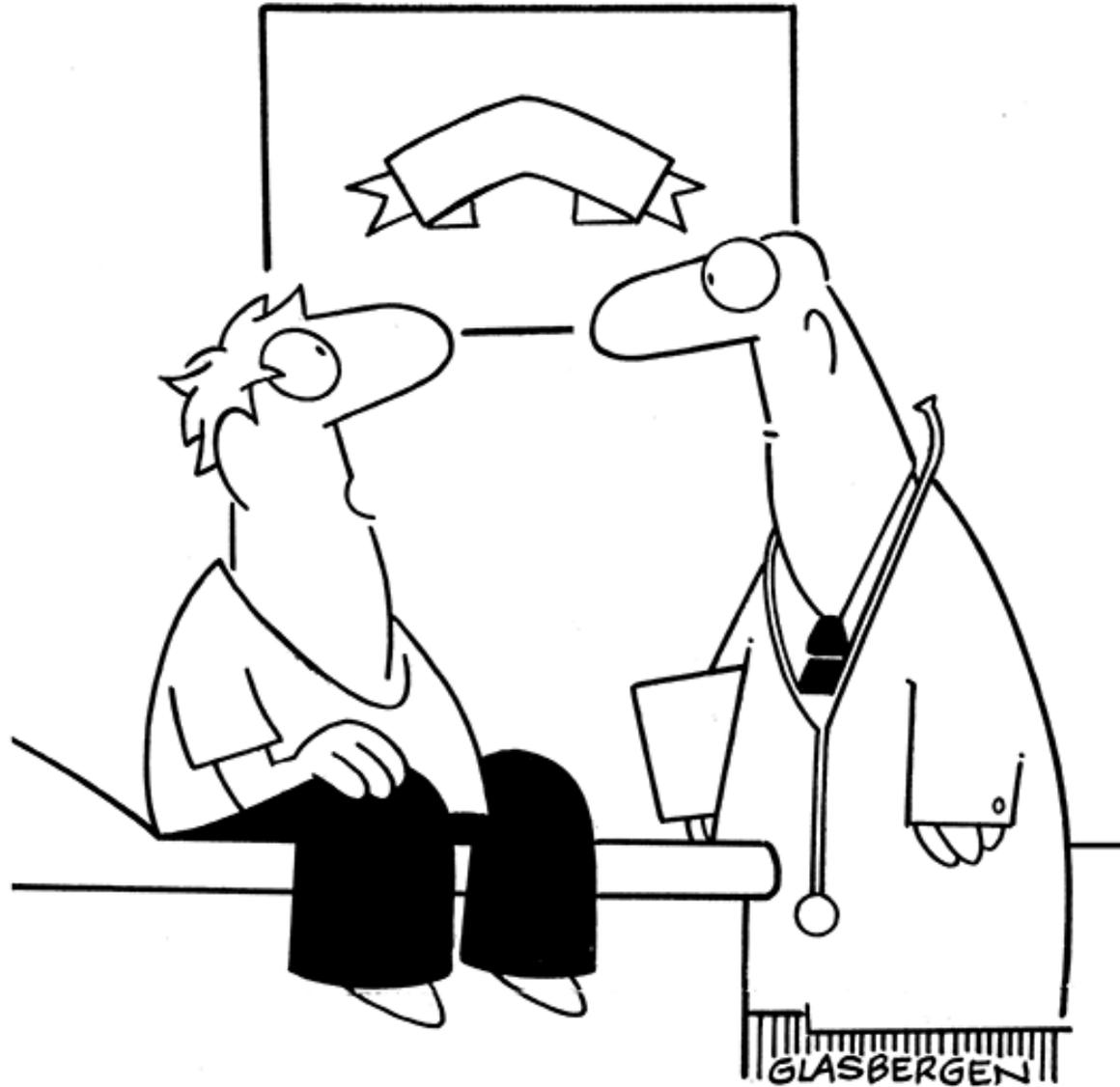
**Half of American
families are
living paycheck
to paycheck**

COMPLEXITY

- Matters perceived as routine or low stakes
- Lawyer perceived as a luxury, not a necessity



"We should be in good shape provided the judge doesn't go all 'legal' on us."



**“I already diagnosed myself on the Internet.
I’m only here for a second opinion.”**

CONFIDENCE

- Disintermediation
- Easy access to legal information
- Prior experience with the legal system

Efforts to Help Pro Se Litigants

- Increase Legal Aid funding
- Encourage pro bono work
- Promote unbundling
- Provide nonlawyer assistance



Limited Licensing In Other Jurisdictions



Eligibility

Knowledge is of no value unless
you put it into practice.

– Anton Chekhov



A close-up photograph of two men in dark suits and white shirts, looking towards each other. The image is dimly lit, with the men's faces and suits appearing in shades of grey and black against a dark background. The text is overlaid on the image in white.

Eligibility: Lawyers vs. Paraprofessionals

Lawyers

- 18 years old
- Of good moral character
- Minimum education
- No experience required
- Pass a test

Paraprofessionals

- 18 years old
- Of good moral character
- Minimum education
- Minimum experience
- Pass a test (undecided)

Educational Attainment in the United States



- 67% of Americans over 25 do not have a bachelor's degree
- Only 8% of Americans over 25 have a professional or doctoral degree
- If you have an Associates Degree, you are more educated than 6 out of 10 of Americans

From the 2016 Census



Minimum Legal Education

- Must graduate from an ABA-approved or accredited paralegal studies program
 - Accredited programs teach both practical skills and legal theory in the following areas:
 - Litigation or civil procedure
 - Legal research and writing
 - Legal ethics
 - Substantive Law

"All the News
that's Fit to Print"

The New York Times

Late Edition

Today, clouds and sunny,
humid, high 73. Tonight
cloudy, areas of drizzle, lo
morrow, variably cloudy,
high 76. Weather map, P

CLXIV . . . No. 56,654

© 2014 The New York Times

NEW YORK, TUESDAY, OCTOBER 14, 2014

What They Don't Teach Law Students: Lawyering

By DAVID SEGAL NOV. 19, 2011

A photograph showing four men in business suits sitting around a table in what appears to be a meeting or conference room. They are looking at documents or devices on the table. The image is semi-transparent, serving as a background for a large white text overlay.

"They are lawyers in the sense that they have law degrees, but they aren't ready to be a provider of services."

“All the News
That’s Fit to Print”

The New York Times

Late Edition

Today, clouds and sunny,
humid, high 73. Tonight
cloudy, areas of drizzle, low
morning, variably cloudy,
high 76. Weather map, p. 1

CLXIV . . . No. 56,654

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NEW YORK, TUESDAY, OCTOBER 14, 2014

*the Vatican,
Shift in Tone
Toward Gays*

*bishops’ Report Signals
Greater Tolerance*

LISABETTA POVOLEDO
and LAURIE GOODSTEIN

VATICAN CITY — In a marked
tone likely to be discussed
shes around the world, an
oly of Roman Catholic
s convened by Pope Fran-
he Vatican released a pre-
y document on Monday
for the church to welcome
cept gay people, unmar-
ples and those who have
ed, as well as the children
e less traditional families.
bishops’ report, issued

Oregon Requires at Least One Year of Substantive Law-Related Experience



C.D.C. RETHINKS
METHODS TO
SPREAD OF E

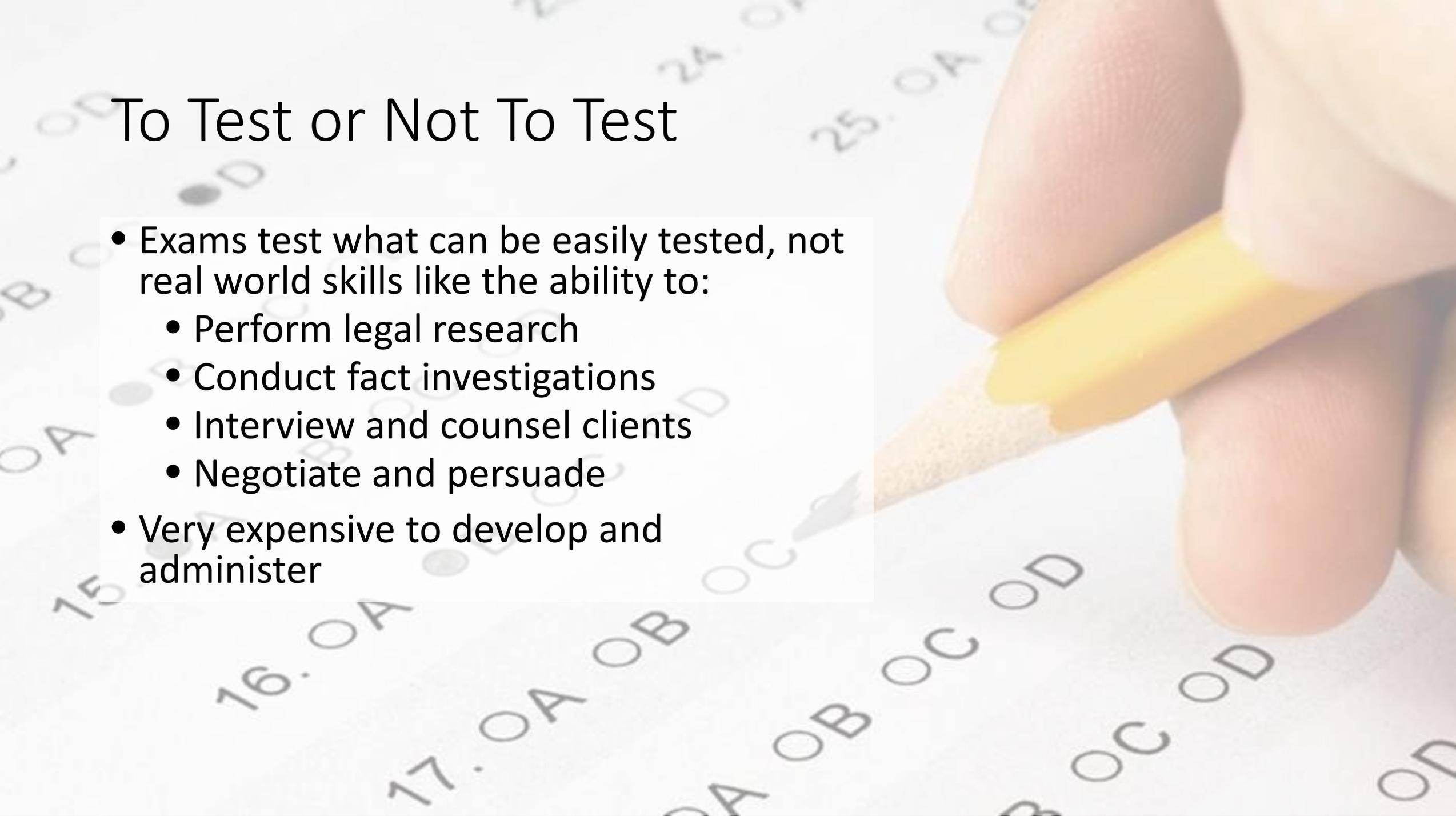
AFTER NURSE IN

Adequacy of Proto
Studied — A Bi
Group Faces R

This article is by Ma
nandez, Sabrina Taver
Richard Fausset.

DALLAS — The tran
of the Ebola virus to a nu
forced the Centers for
Control and Prevention
day to reconsider its app

To Test or Not To Test

A hand holding a yellow pencil is shown in the foreground, pointing towards the text. The background is a document with a grid of letters and numbers, including 'OA', 'OB', 'OC', 'OD' and '15', '16', '17', '24', '25'. The text is slightly blurred, creating a sense of depth.

- Exams test what can be easily tested, not real world skills like the ability to:
 - Perform legal research
 - Conduct fact investigations
 - Interview and counsel clients
 - Negotiate and persuade
- Very expensive to develop and administer

Regulation

The ultimate result of shielding men from the effects of folly is to fill the world with fools.

– Herbert Spencer



Regulation: Lawyers vs. Paraprofessionals

Lawyers

- Must carry malpractice insurance
- Must meet continuing education requirements
- Must comply with rules of professional conduct

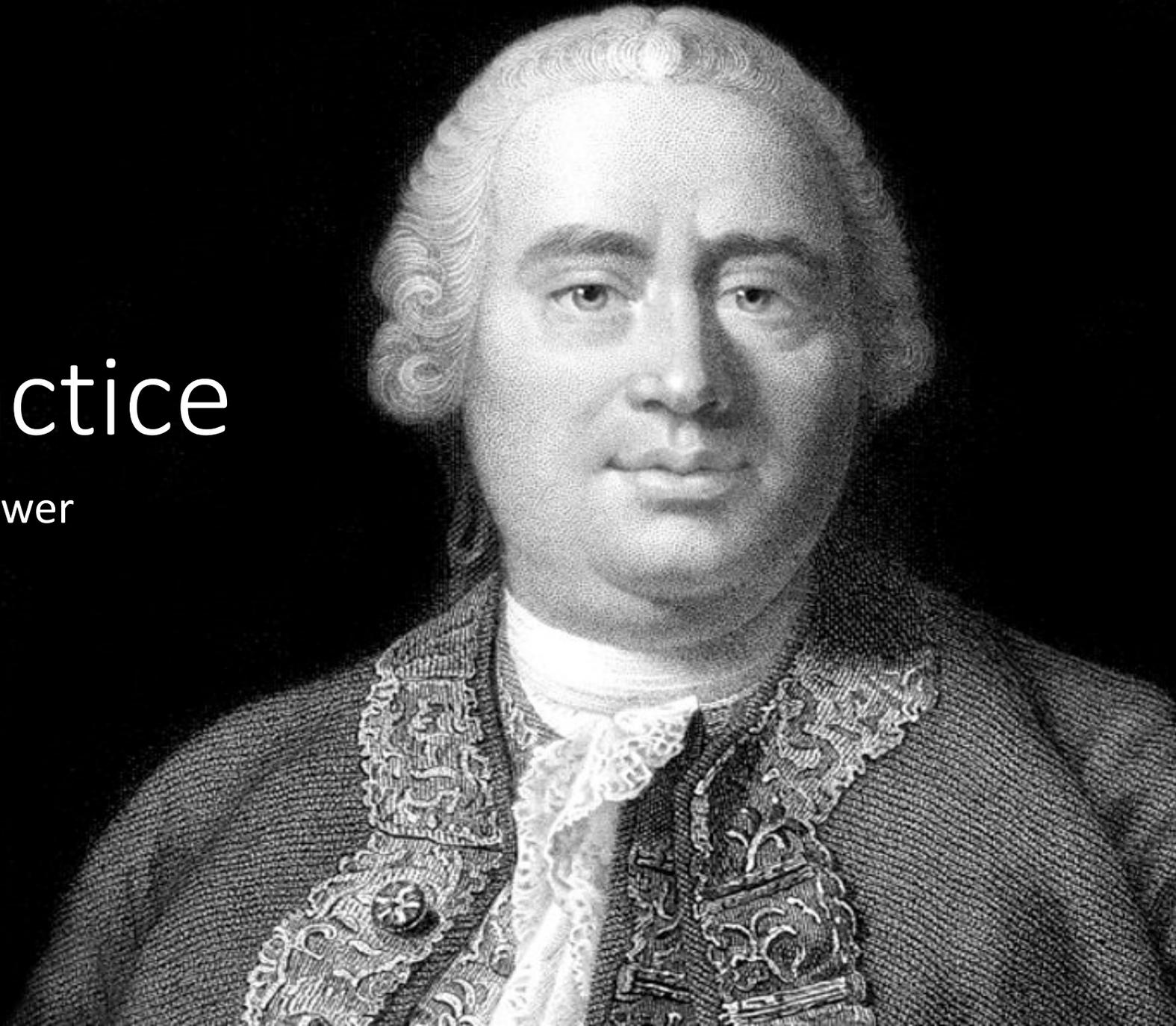
Paraprofessionals

- Must carry malpractice insurance
- Must meet continuing education requirements
- Must comply with rules of professional conduct
- Must use written agreements with mandatory disclosures

Scope of Practice

The law always limits every power
it gives.

– David Hume



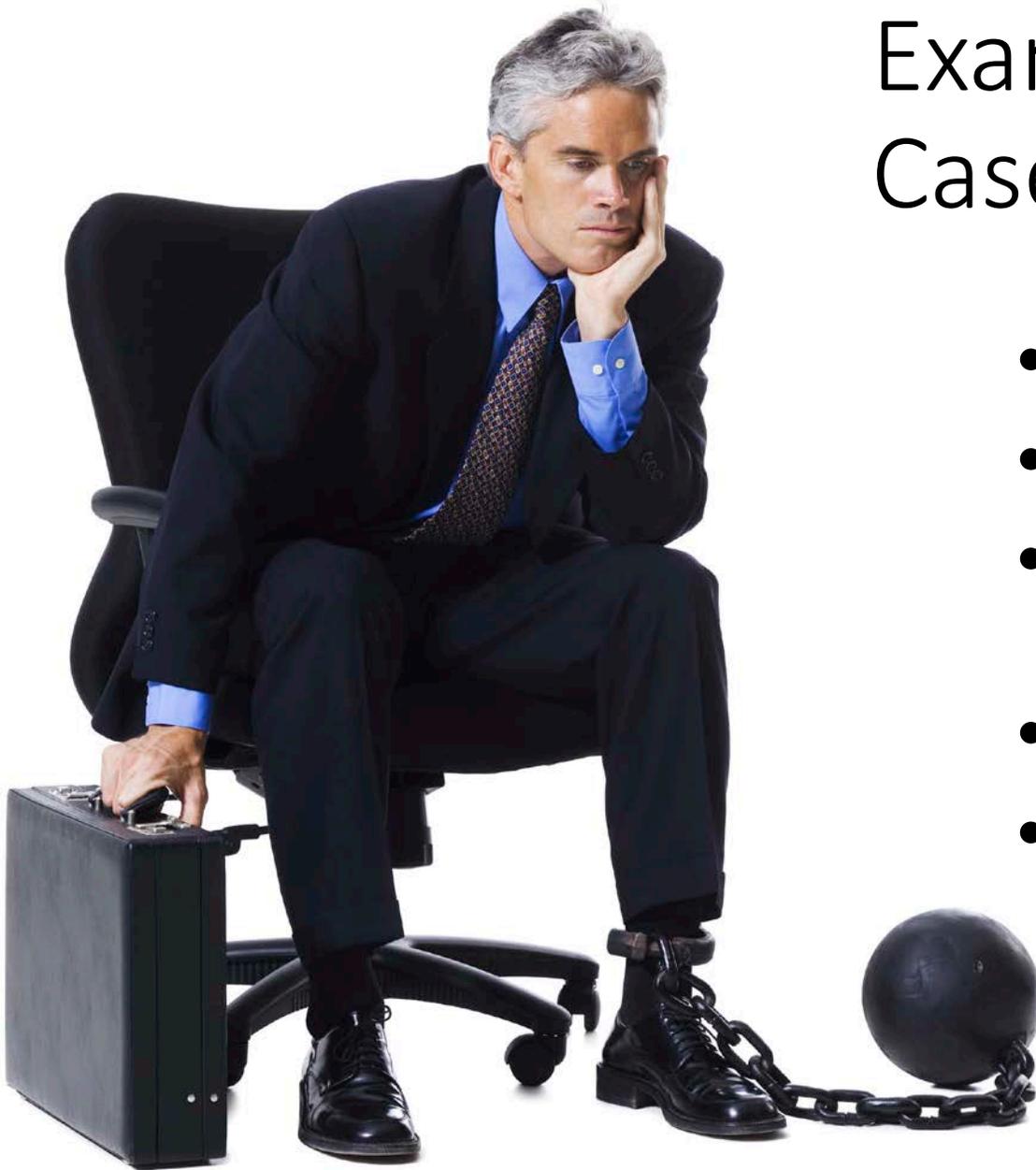
Three Limitations on the Scope of Practice



- May provide approved legal services only for certain types of proceedings
- Even for approved proceedings, may provide only limited legal services
- May not provide any legal services in complex cases

Examples of Complex Cases in Washington

- Nonparental custody
- Indian Child Welfare Act cases
- Jurisdiction under UCCJEA not determined
- Protective orders
- Relocation actions





Duty to Refer to a Lawyer

- If a licensee knows or reasonably should know that a matter is outside the approved scope of practice

The background of the slide features a blue-toned photograph of three people walking away from the camera on a path. Their dark silhouettes are prominent against the lighter background, and their long shadows are cast onto the ground in front of them, suggesting a low sun position. The overall mood is contemplative and forward-moving.

Family Law Proceedings

- Large number of self-represented litigants
- Many non-complex cases
- Forms-driven process with extensive pattern forms
- Success of the family law facilitator program

Landlord-Tenant Proceedings

- Large number of self-represented litigants
- Routine proceedings
- Landlords are already represented by nonlawyers
- Success of the New York Navigator pilot program



KICK'EM OUT QUICK
EVICCTIONS & COLLECTIONS

Services Within the Scope of Practice



- Providing any other legal service in any other matter
- Representing a client in depositions
- Representing a client in court
- Filing an appeal

- Selecting, preparing, filing and serving forms and documents
- Providing information and advice about the proceeding
- Negotiating with another party
- Providing emotional and administrative support in court

summary



ELIGIBILITY

- 18 years old and of good moral character
- Associates degree
- ABA-approved or accredited paralegal studies program
- 1 year of substantive law-related experience
- Pass a test (undecided)

summary



REGULATION AND SCOPE

- Malpractice insurance
- Continuing legal education
- Rules of professional conduct
- Limited scope of practice
- Duty to refer matters outside the scope of practice
- Mandatory written disclosures



Questions?

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 17, 2017
Memo Date: April 17, 2017
From: Guy Greco, Board Development Committee Vice-Chair
Re: Appointments to various bar groups

Action Recommended

Approve the Board Development Committee's recommendations for new member appointments to the following bar committees. Approve forwarding the committee's recommendation for a new lawyer and public member to the Disciplinary Board.

Background

Pro Bono Committee

The Pro Bono Committee assists with expansion of services to low-income clients in civil matters. The committee is in need of three new members and **Stephanie Harper** (952901), **Charlotte Hodde** (161724), and **Christine Zeller-Powell** (115905) are recommended from the OSB volunteer list. Ms. Harper is an in-house attorney, a perspective not evenly represented on the committee. Ms. Hodde is from a medium-sized firm which has an extensive history of supporting pro bono work. Ms. Zeller-Powell offers geographic diversity and is heavily involved with community outreach in Lane County. Ms. Harper and Ms. Hodde's terms would expire December 31, 2017 and Ms. Zeller-Powell's term would expire December 31, 2018.

Quality of Life Committee

The Quality of Life Committee educates lawyers and firms about the benefits of balancing personal life and career obligations. The committee is in need of three new members and **Emily Farrell** (123126), **Kara Govro** (091098), and **Ellen Pitcher** (814454) are recommended from the OSB volunteer list. Ms. Farrell is employed by U of O and has assisted the committee with law school outreach in the past. Ms. Govro is well known as an active and engaged contributor amongst the committee's leadership. Ms. Pitcher offers a varied background in the legal field and provides a more seasoned perspective to quality of life issues. Ms. Govro's terms would expire December 31, 2018 and Ms. Farrell and Ms. Pitcher's terms 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 public member is needed to fill a partial term expiring December 31, 2020. **Dr. Michael R. Villanueva** is recommended based on his extensive neuropsychology experience.

Uniform Civil Jury Instructions Committee

The Uniform Civil Jury Instructions Committee develops uniform jury instructions for use in civil trials. One new member is needed and **Lorelei Craig** (152515) is recommended based on her geographic

area and the perspective she offers from her areas of practice. Ms. Craig's term would expire December 31, 2019.

Disciplinary Board

The Disciplinary Board is a component of the disciplinary process with two lawyer and one public member create a trial panel to evaluate evidence presented by the bar and the accused lawyer. They determine if the accused lawyer has violated the Rules of Professional Conduct and, if so, the appropriate sanctions to be imposed. One new public member is needed to fill a vacant seat in region 4 and one lawyer member in region 5. BOG recommendations are sent to the Supreme Court for appointment consideration.

Sandra Frederiksen is a native Oregonian from Beaverton with extensive volunteer experience through the Beaverton Police Department, animal shelter, and SMART reading program. If appointed to region 4 her term would end on December 31, 2019.

Michael T. McGrath (013445) is with Gearing, Rackner & McGrath LLP. He has served as an arbitrator and practices family law. If approved for appointment Mr. McGrath would serve in region 5 through December 31, 2019.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 14, 2017
Memo Date: April 14, 2017
From: Guy Greco, Board Development Committee Vice-Chair
Re: Recommendations for BPSST Policy Committee Appointment

Action Recommended

Approve the Board Development Committee's appointment recommendations for a policy committee of the Department of Public Safety Standards and Training Board.

Background

As provided in ORS 181.637, the Oregon State Bar has authority to recommend a candidate for appointment to the Private Security/Private Investigators Policy Committee (PSPIPC) of the Department of Public Safety Standards and Training (DPSST) Board. The term of service is two years and members are eligible for reappointment.

Based on an open recruitment through the DPSST, six candidates submitted an interest form for service on the PSPIPC. The interest forms are available as exhibits in the BOG Board Development Committee April meeting materials. After thorough review and deliberation, the Board Development Committee selected **Chris Bloom** as the candidate to recommend for PSPIPC appointment consideration.

Chris Bloom has been a licensed private investigator for more than 7 years and has 30 years of experience in the field as a fire consultant. He is based out of Southern Oregon and holds licenses in four other states. Mr. Bloom taught college-level fire investigation courses and has national experience advocating for ethics and reciprocity in the private investigator profession. He served on the PSPIPC for two years beginning in 2005 but remains eligible to serve another term.

The BOG's Beer & Wine Fund – To Do or Not To Do

The board needs to make a decision if it wants to continue contributing personal funds for beer and wine to be served at official board events. This type of fund has been in existence for several years. Currently there is \$144.39 in the account, the lowest amount in memory. If the board does not want to continue this fund I will close the account and all alcohol at future events will be purchased by the member as a cash bar.

In 2016, \$2,840.00 was expended for two events – the joint BOG/PLF dinner and the board retreat. The latter the most expensive costing \$2,246.00. In previous years there have been 3-4 events for which beer and wine was purchased, but the last 1-2 years it has been only the mid-year out of town and the fall retreat meetings

In 2016, contributions were \$2,324 from 16 people – 7 from members of the 2016 class, 2 from the first-year 2017 class, and 7 senior staff. For the last 4 years the contribution has been \$150.00. Board members who do not drink alcohol are not asked to contribute, and there have been no contributions expected for family members or friends of board members.

April 13, 2017

Article 23 Professional Liability Fund

Section 23.1 Board of Directors

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

Section 23.2 Authority

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors appropriate requirements for PLF coverage and amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

Section 23.3 Operation

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

Section 23.4 Reports

The PLF must present an annual report to the bar membership ~~at the annual meeting of the House of Delegates and must report periodically to the membership.~~

Section 23.5 Relationship with the Board of Governors

Subsection 23.500 Liaisons

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of

Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints ~~the President-elect of the Bar, an additional two~~ lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors. ~~The additional lawyer member of the Board serves at least two years as liaison and will be replaced by a new lawyer member of the Board who will serve at least two years.~~

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) ~~The PLF CEO or the CEO's designee~~ ~~One or more of the Board's PLF liaisons~~ must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

(e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

Subsection 23.501 Reports

The PLF must regularly provide to the BOG the following:

(a) All financial statements when completed;

(b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;

(c) All reports of investment performance and changes in investments;

(d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;

(e) On or before ~~September-October~~ 1 of each year, the proposed assessments for primary ~~and excess~~ coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;

(f) A report generally describing the previous year's excess enrollment, including total firms enrolled, total lawyers and gross premiums from the excess program.

~~(f) All closed claim reports prepared in a manner consistent with the confidentiality requirements of ORS 9.080(2)(a);~~

(g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;

(h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

Subsection 23.502 Release of Information

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President of the Board of Governors to the Chair of

the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

Subsection 23.503 BOG Members Participating in PLF Claims

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. ~~Upon undertaking the representation, the Board of Governors member shall inform the Executive Director in writing as soon as practicable.~~ During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

Subsection 23.504 Annual Meeting

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and/or discuss matters of common interest to the Board of Governors and the PLF. ~~The meeting must include a report by the Personal and Practice Management Committee of the PLF pursuant to PLF Policy 6.150(C).~~ This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by ~~April~~ May 1st of each year, whichever is earlier.

Subsection 23.505 Audit

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

Subsection 23.506 Location of Office

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

Subsection 23.507 Staff Responsibility

The Executive Director of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the Executive Director and bar staff will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its Executive Director and staff in all areas of the Bar's business and activities. The Executive Director of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

Section 23.6 Assessment

Subsection 23.600 Principles

The Board of Governors recognizes that ~~the assessments~~ for coverage ~~is are~~ derived by the prudent application of actuarial principles, responsible evaluation of past and present

operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit ~~proposals~~ to the Board of Governors ~~its recommended for all recommended assessments for the subsequent year (or any mid-year special assessment)~~ supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt ~~an~~ assessments that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

~~Subsection 23.601 Appeals by Members~~

~~(a) Review by the Professional Liability Fund Board of Directors~~

~~The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:~~

~~(1) All notices of assessments and invoices for assessments to members include language that gives notice to the assessed member of the right to appeal to the PLF, the appeal procedure to be followed, and the time limits to perfect the appeal.~~

~~(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:~~

~~"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of this letter. The Executive Director's address is PO Box 231935, Tigard, OR 97281-1935. A request for Board of Governors review constitutes and evidences your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."~~

~~(3) Assure that all steps necessary are taken by the PLF Board of Directors and staff to facilitate the Board of Governors review of the action by the PLF Board of Directors in denying relief requested in the petition.~~

~~(b) Review by the Board of Governors.~~

~~(1) Any member who, after properly and timely filing a petition, is denied requested relief by the PLF Board of Directors has a right to request the Board of Governors to review the action of the PLF Board of Directors in denying the relief requested in that petition. To be entitled to such review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written notice from the PLF to the member denying the requested relief. Review by the Board of Governors on a timely filed request is de novo and on the record. In making the determination whether to affirm the action of the PLF Board of Directors, only the grounds asserted in the petition and written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, on its own motion, requests additional materials from the member and from the PLF.~~

~~(2) The President of the Oregon State Bar must appoint a committee of at least three of the members of the Board of Governors, which must meet and review the appropriate materials and make a recommendation to the Board whether to affirm the action of the PLF Board of Directors. The Board of Governors must make a determination and notify the member in writing of its decision, including any adjustment to the assessment. The decision of the Board of Governors is final.~~

~~(3) A request for Board of Governors review does not relieve a member from the obligation to pay the contested assessment, nor does a review pending before the Board of Governors suspend or toll the default date or delay the imposition of late payment penalties or suspension proceedings. If the Board of Governors review results in an adjustment to the assessment requiring a refund to the member, the PLF must pay the member an appropriate refund together with statutory interest thereon.~~

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April 13, 2017

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RE: Legislation CLE

Dear Michael, Jim, Ray and Helen:

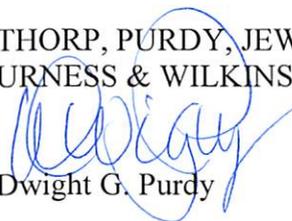
I have been a member of the bar for nearly 43 years. I am writing to lament the apparent loss of the biennial Legislation CLE. If my recollection is correct, the bar ceased having those biennial CLE's when we stopped having the biennial Bar Convention in Seaside. I found those CLE's to be invaluable, as did the members of my firm. It kept us up to date on new legislation. Something the PLF should be pleased about. Now, I have some fear that there is new legislation that I don't know about. Those CLE's were well attended and well received. I have talked with staff in the CLE department about this several times over the years, to no avail. I strongly encourage the Bar to reinstitute the biennial CLE's on new legislation.

As a side note, I also lament the loss of the biennial Bar Convention in Seaside. I realize that we have changed our form of governance, but the biennial convention in Seaside promoted congeniality within the Bar. We would see other attorneys from around the state that we just don't see now. I would encourage the Board to reinstitute the biennial Bar Convention in Seaside where we could have the new Legislation CLE, among other things.

Thank you for considering these matters and thank you for your service to the Bar.

Sincerely yours,

THORP, PURDY, JEWETT
URNES & WILKINSON, P.C.


Dwight G. Purdy

DGP/kdh

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 14, 2017
From: MCLE Committee
Re: Credit for serving on Council on Court Procedures

Action Recommended

Review and approve the proposed MCLE Rules and Regulations regarding credit for service or as staff on the Oregon Council on Court Procedures.

Background

The MCLE Committee recently reviewed a request from member Mark Peterson, who is proposing the following rule and regulation amendments. These amendments would allow members who serve as a member or as staff on the Oregon Council on Court Procedures to claim CLE credit under Category II. Credits in this category are limited to 20 in a three-year reporting period.

Based on Mr. Peterson's personal experience, this activity is comparable to serving on the Uniform Jury Instructions Committees. Members may claim credit for service on these committees pursuant to Rule 5.10 and Regulation 5.00(f).

Members serving on the Oregon Council on Court Procedures are volunteers. They spend a tremendous amount of time reviewing the history of the Oregon Rules of Civil Procedure, comparing them to the federal rules and engaging in a comprehensive analysis in determining whether revisions are needed or appropriate. Their level of commitment is substantial.

Therefore, the MCLE Committee recommends amending the MCLE Rules and Regulations as follows to allow Category II credit for this activity. Category II credits are limited to 20 in a three-year reporting period and 10 in a shorter reporting period.

MCLE Rule 5.12 Oregon Council on Court Procedures. Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.

MCLE Regulation 5.200

- (i) Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.

In the fall of 2016, a member asked if he could claim credit under Category III for service on this committee. MCLE Committee members discussed this at the December 2016 meeting and determined that Category III credit could be claimed for this volunteer activity. Credits in Category III are limited to 6 in a three-year reporting period.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 14, 2017
From: MCLE Committee
Re: 1) Amend regulations regarding programs discussing substance abuse and mental health issues for lawyers; and
2) Correct numbering in several MCLE Rules

Action Recommended

Review and approve proposed amendments to MCLE Regulations 3.400(a) and 5.300(a) related to accreditation of courses related to substance abuse, cognitive impairments, and mental health issues, and make housekeeping amendments to ensure consistent numbering.

Background

The MCLE Committee recommends amending Regulations 4.300(a) and 5.300(a) to provide that CLE courses related to attorney substance abuse, cognitive impairment, and mental health issues qualify for Category I Practical Skills credit.

The MCLE Committee recognizes the importance of educating attorneys about substance abuse, cognitive impairments, and mental health issues within the profession. In 2016, the American Bar Association, in cooperation with the Hazelden Betty Ford Foundation, published the first national study on attorney substance abuse and mental health concerns. The study, published in the *Journal of Addiction Medicine*, reports that 21 percent of licensed, employed attorneys qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety. The study also found that younger attorneys in the first 10 years of practice exhibit the highest incidence of substance abuse and mental health issues.

The proposed amendments would:

1. Allow greater emphasis on attorney education about substance abuse, cognitive impairments, and mental health issues, by providing courses related to these topics qualifying for Category I, Practical Skills credit, instead of Category III Personal Management Assistance credit. This change would also remove the Category III cap of six (6) credits per reporting period for these courses.
2. Remove language from the regulations that implies a negative stigma should be attached to attorneys who may be dealing with substance abuse issues. Currently, MCLE Regulation 3.400(a) allows practical skills credit for programs discussing “the negative aspects of substance abuse to a law practice.” The Committee recommends amending this regulation to remove the “negative” language associated with substance abuse and

focus instead on the impact of substance abuse, cognitive impairment, and mental health related issues to a law practice.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; *the negative aspects of substance abuse to a law practice*; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

Regulation 5.300(a) sets forth the types of activities that may qualify for personal management assistance credit and includes programs addressing alcoholism, drug addiction, depression and anxiety. Personal management assistance credits are in Category III, which is limited to 6.0 credits in a three-year reporting period and 3.0 credits in a shorter reporting period.

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling or other addictions or compulsive behaviors, and other health and mental health related issues). Credit may also be claimed for programs designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).

Because of the types of activities that qualify for personal management assistance credit (career transition and satisfaction, for example), members may see these Category III activities as less important than other activities that qualify for general or practical skills credits.

Therefore, in order to elevate the importance of the serious issues of substance abuse and other mental health issues among lawyers in the United States, the Committee recommends amending these regulations as set forth below.

3.400 Practical Skills Requirement.

(a) A practical skills program is one which includes courses designed primarily to instruct new admittees in the methods and means of the practice of law. This includes those courses which involve instruction in the practice of law generally, instruction in the management of a legal practice, and instruction in particular substantive law areas designed for new practitioners. A practical skills program may include but shall not be limited to instruction in: client contact and relations; court proceedings; negotiation and settlement; alternative dispute resolution; malpractice avoidance; personal management assistance; the ~~negative aspects~~ impact of substance abuse, cognitive impairment and mental health related issues to a law practice; and practice management assistance topics such as tickler and docket control systems, conflict systems, billing, trust and general accounting, file management, and computer systems.

5.300 Category III Activities.

(a) Personal Management Assistance. Credit may be claimed for programs that provide assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing ~~alcoholism, drug addiction~~, burnout, procrastination, ~~depression, anxiety~~, gambling or other addictions or compulsive behaviors, and other health ~~and mental health~~ related issues). Credit may also be claimed for programs designed to improve or enhance a lawyer's professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career satisfaction and transition, and interpersonal/relationship skill-building).

2) Several housekeeping rule amendments were approved by the Board earlier this year but it was recently pointed out to the Committee that there are currently two different MCLE Rules designated as Rule 5.6.

Therefore, in order to be consistent and avoid confusion, the Committee recommends the following rule amendments be approved:

5.6 5.7 Teaching Activities.

(a) Teaching credit may be claimed for teaching accredited continuing legal education activities or for courses in ABA or AALS accredited law schools.

(b) Credit may be claimed for teaching other courses, provided the activity satisfies the following criteria:

- (1) The MCLE Program Manager determines that the content of the activity is in compliance with other MCLE content standards; and
- (2) The course is a graduate-level course offered by a university; and

- (3) The university is accredited by an accrediting body recognized by the U.S. Department of Education for the accreditation of institutions of postsecondary education.

(c) Credit may not be claimed by an active member whose primary employment is as a full-time or part-time law teacher, but may be claimed by an active member who teaches on a part-time basis in addition to the member's primary employment.

(d) No credit may be claimed for repeat presentations of previously accredited courses unless the presentation involves a substantial update of previously presented material, as determined by the MCLE Program Manager.

5.7 5.8 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); and
- (b) It has been published in the form of articles, CLE course materials, chapters, or books, or issued as a final product of the Legal Ethics Committee or a final instruction of the Uniform Civil Jury Instructions Committee or the Uniform Criminal Jury Instructions Committee, personally authored or edited in whole or in substantial part, by the applicant; and
- (c) It contributes substantially to the legal education of the applicant and other attorneys; and
- (d) It is not done in the regular course of the active member's primary employment.

(2) The number of credit hours shall be determined by the MCLE Program Manager, based on the contribution of the written materials to the professional competency of the applicant and other attorneys.

5.8 5.9 Service as a Bar Examiner. Credit may be claimed for service as a bar examiner for Oregon, provided that the service includes personally writing or grading a question for the Oregon bar exam during the reporting period.

5.9 5.10 Legal Ethics Service. Credit may be claimed for serving on the Oregon State Bar Legal Ethics Committee, Client Security Fund Committee, Commission on Judicial Fitness & Disability, Oregon Judicial Conference Judicial Conduct Committee, Local Professional Responsibility Committees, State Professional Responsibility Board, and Disciplinary Board or serving as volunteer bar counsel or volunteer counsel to an accused in Oregon disciplinary proceedings.

5.10 5.11 Jury instructions Committee Service. Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.

Accreditation Standards for Category III Activities

5.11 5.12 Credit for Other Activities.

(a) **Personal Management Assistance.** Credit may be claimed for activities that deal with personal self-improvement, provided the MCLE Program Manager determines the self-improvement relates to professional competence as a lawyer.

(b) **Other Volunteer Activities.** Credit for volunteer activities for which accreditation is not available pursuant to Rules 5.3, 5.4, 5.6, 5.7, 5.8, 5.9, or 5.10 may be claimed provided the MCLE Program Manager determines the primary purpose of such activities is the provision of legal services or legal expertise.

(c) **Business Development and Marketing Activities.** Credit may be claimed for courses devoted to business development and marketing that are specifically tailored to the delivery or marketing of legal services and focus on use of the discussed techniques and strategies in law practice.

Activity Content Standards

5.12 5.13 Group and Teaching CLE Activities

(a) The activity must have significant intellectual or practical content with the primary objective of increasing the participant's professional competence as a lawyer; and

(b) The activity must deal primarily with substantive legal issues, legal skills, practice issues, or legal ethics and professionalism, or access to justice.

5.13 5.14 Ethics and Access to Justice.

(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, rules of professional conduct, or statements of professionalism.

(b) Child abuse or elder abuse reporting programs must be devoted to the lawyer's statutory duty to report child abuse or 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.

(c) In order to be accredited as an activity pertaining to access to justice for purposes of Rule 3.2(d), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law barriers to access to justice arising from biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

(d) Portions of activities may be accredited for purposes of satisfying the ethics and access to justice requirements of Rule 3.2, if the applicable content of the activity is clearly defined.

Teaching Activity Content Standards

5.14 5.15 Other Professionals. Notwithstanding the requirements of Rules 5.6 and 5.12(a) and (b), credit may be claimed for teaching an educational activity offered primarily to other professions or occupations if the MCLE Program Manager determines that the content of the activity is in compliance with other MCLE accreditation standards and the applicant establishes to the MCLE Program Manager's satisfaction that the teaching activity contributed to the presenter's professional competence as a lawyer.

Unaccredited Activities

5.15 5.16 Unaccredited Activities. The following activities shall not be accredited:

(a) Activities that would be characterized as dealing primarily with personal self-improvement unrelated to professional competence as a lawyer; and

(b) Activities designed primarily to sell services or equipment; and

(c) Video or audio presentations of a CLE activity originally conducted more than three years prior to the date viewed or heard by the member seeking credit, unless it can be shown by the member that the activity has current educational value.

(d) Repeat live, video or audio presentations of a CLE activity for which the active member has already obtained MCLE credit.

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 education 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

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

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 16th and 18th, to be followed by a final meeting on January 23rd 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

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

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

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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

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

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

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

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.

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

NICOLE KRISHNASWAMI Portland White Female	Admitted 2010 Oregon Medical Bd. No Experience as a Co-Grader
KENDRA MATTHEWS Portland White Female	Admitted 1996 Private Practice, Admin & Criminal Has Co-Graded in the Past
SARAH A. PETERS Eugene White Female	Admitted 2007 Private Practice, Environmental No Experience as a Co-Grader
MANDI PHILPOTT Gladstone White Female	Admitted 2002 Private Practice, Family Law Has Co-Graded in the Past
ANTHONY ROSILEZ 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
MICHAEL J. SLAUSON Salem White Male	Admitted 2001 DOJ, Criminal & Constitutional Has Co-Graded in the Past
ADRIAN T. SMITH Portland White Lesbian Female	Admitted 2012 Juvenile & Criminal No Experience as a Co-Grader
MIRANDA SUMMER Portland Bi-Racial Lesbian Female	Admitted 2007 Private Practice, Family Law & Workers Comp No Experience as a Co-Grader
KATHERINE E. WEBER 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

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

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 membersand 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.

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

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

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

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
OSB SPONSORED BILLS							
SB 491	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.		
SB 490	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.		
HB 2610	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
HB 2608	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
SB 492	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
SB 552	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
HB 2609	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
POTENTIAL POSITIONS							
SB 506	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.	may need amended language.	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
SB 337	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	
HB 2166	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	
HB 2329	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	
HB 2356	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		
HB 2359	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.		
SB 254	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		
SB 362	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		
SB 381	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		
SB 59	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
SB 95	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
SB 5	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
SB 11	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
SB 34	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
SB 76	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
OTHER BILLS OF INTEREST							
HB 2026	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.		
HB 2101	Public Records	Relating to public records.	H 1st - 1 /9	House Committee On Rules	1 /17 - Referred to Rules.		
HB 2178	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.		
HB 2263	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.		
HB 2264	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.		
HB 2299	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
SB 106	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.		
SB 11	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.		
SB 12	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.		
SB 140	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.		
SB 141	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.		
SB 16	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.		
SB 191	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.		
SB 194	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.		
SB 21	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		
SB 210	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
SB 224	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.		
SB 244	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.		
SB 253	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.		
SB 309	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.		
SB 317	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.		
SB 321	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.		
SB 337	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.		
SB 358	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.		
SB 362	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.		
SB 386	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

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 388	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.		
SB 394	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.		
SB 397	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.		
SB 413	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.		
SB 415	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.		
SB 428	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.		
SB 43	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.		
SB 430	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.		
SB 431	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.		
SB 44	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

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 451	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.		
SB 479	Prohibits courts from applying Sharia law.	Relating to Sharia law.	S 1st - 1 /9	Senate Committee On Judiciary	1 /17 - Referred to Judiciary.		
SB 481	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.		
SB 482	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.		
SB 487	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.		
SB 489	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		
SB 490	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.		
SB 491	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.		
SB 492	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.		
SB 494	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.		
SB 496	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.		
SB 5	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.		
SB 504	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

BILL	SUMMARY	RELATING TO	READING	COMMITTEE	STATUS	RECOMMENDED POSITIONS	SUGGESTED BY & NOTES
SB 505	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.		
SB 506	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.		
SB 519	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.		
SB 525	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.		
SB 558	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.		
SB 57	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.		
SB 58	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.		
SB 95	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.		
SB 97	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

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

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%	26% 31%	32%
Real Estate	5.0%	10.0%	15.0%
Absolute Return	9.0%	14.0%	19.0%
Real Return Strategy	5%	5% 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

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

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.

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

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

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.¹

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

¹ 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 Oregon¹

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.

¹This 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.

Oregon State Bar
Special Open Session of the Board of Governors
March 17, 2017
Minutes

President Michael Levelle called the meeting to order at 8:57 a.m. on March 17, 2017. The meeting adjourned at 9:39 a.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Guy Greco, Ray Heysell, John Mansfield (by telephone), Eddie Medina, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves (by telephone), Julia Rice, Traci Rossi, Kerry Sharp, and Kate von Ter Stegge. Not present were Vanessa Nordyke and Elisabeth Zinser. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Kay Pulju, Susan Grabe, Catherine Petrecca, Judith Baker, Dani Edwards, Kateri Walsh and Camille Greene.

1. Call to Order

2. Public Policy Statements on Controversial Issues

Mr. Levelle and Ms. Hirschbiel led a discussion of the question “How might the bar respond to controversial political issues that could have (or are having) an adverse impact on the judicial system?” The intent of the discussion was to engage in a generative discussion that explores some of the issues that have arisen recently. Mr. Levelle also sought perspectives and concerns of the board members related to controversial issues so he can keep those perspectives in mind when speaking on behalf of the BOG. The discussion centered around the implications of the ICE round-ups and disparagement of judges. Bar staff gave the board examples of statements it had issued in the past in support of the judiciary and actions it has taken recently to help inform the public of rights and responsibilities under the law.

The board reached general consensus that any bar statement or action regarding these issues should focus on their effect on the integrity of the judicial system and the equitable administration of justice. Members agreed that statements should focus on the principles, not the politics. By way of example, several board members pointed to the recent statement issued by the Chief Justice of the California Supreme Court. Board members mentioned not only the need to be mindful of *Keller* restrictions, but also of the bar’s commitment to inclusion. Finally, board members felt it important to reach out to courts and the Oregon Supreme Court Chief Justice, when possible, prior to issuing any statement in order to ensure that the bar is supporting the judiciary and coordinating its educational efforts.