President Vanessa Nordyke called the meeting to order at 1:10 pm on September 21, 2018. The meeting adjourned at 4:30 p.m. Members present from the Board of Governors were John Bachofner, Eric Foster, Eddie Medina, Tom Peachey, Kathleen Rastetter, Julia Rice, Kerry Sharp, Colin Andries, Guy Greco, Per Ramfjord, and David Wade. On the phone were John Grant and Whitney Boise. Not present were Chris Costantino, Liani Reeves, Rob Gratchner, Traci Rossi, and Michael Rondeau. Staff present were Helen Hierschbiel, Amber Hollister, Keith Palevsky, Kateri Walsh, Mark Johnson Roberts (phone), Kay Pulju, Bill Penn, Dawn Evans, Susan Grabe, Danielle Edwards, Jonathan Puente, Judith Baker, Catherine Petrecca, and Lisa Ryan. Also present: Jennifer Nicholls, ONLD Chair, Carol Bernick, PLF; Betty Lou Morrow, PLF; Marilyn Harbur and Leslie Johnson, ABA HOD Delegates; and Maya Crawford Peacock, Campaign for Equal Justice.

1. Call to Order/Finalization of Agenda

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

2. Closed Sessions – see CLOSED Minutes

   A. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report. The board went into closed session. The board reconvened in open session to vote on the action item on the closed agenda.

   Motion: Mr. Greco moved and Mr. Grant seconded to approve the UPL Committee recommendation. The motion passed unanimously.

3. House of Delegates Agenda Approval

   Ms. Nordyke noted that the board needs to make four decisions with respect to the draft HOD Agenda. First, the board must decide whether any of the delegate resolutions are either outside the authority of the HOD or otherwise unlawful such that they should be excluded from the agenda; second, the board must decide whether to take a position for or against any of the delegate resolutions, and if so, who will speak on the board’s behalf; third volunteers are needed to present the two BOG resolutions, and; fourth the board must decide the order of the agenda items. [Exhibit A]

   No one spoke to exclude any resolutions or to take a position on any of the delegate resolutions. With respect to the order of the resolutions, Ms. Hierschbiel explained that the resolutions are presented on the draft agenda in the order that they were received.

   Mr. Levelle volunteered to speak on BOG resolution #2. Mr. Peachey and Mr. Bachofner volunteered to speak on BOG resolution #1.

   Motion: Mr. Bachofner moved the HOD agenda be approved with no changes. Mr. Ramfjord seconded the motion. The motion passed unanimously.
4. **President’s Report**

Ms. Nordyke reported that the Supreme Court was unanimous in its approval of the proposed MCLE rule requiring mental health and substance use education. The rule will go into effect on January 1, 2019. Bar staff is developing a CLE that will qualify for the credit that will be presented early in 2019 and be free for members. Ms. Nordyke reported that she has spoken on the topic at numerous events.

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

A. **Policy and Governance Committee**

In Ms. Costantino’s absence, Mr. Ramfjord presented the Policy & Governance Committee’s recommendation for approval by the Board of Governors of an Event Anti-Harassment Policy.  

**Exhibit B**

**Motion:** The board voted to approve the Policy & Governance Committee motion to adopt an Event Anti-Harassment Policy. The motion passed unanimously.

Mr. Ramfjord summarized various models for editorial oversight of the Bar Bulletin and noted that the current proposal before the Board is to authorize creation of an editorial advisory committee. A discussion ensued. Mr. Greco stated the P&G Committee would determine the exact charge and makeup of the committee at their next meeting.

**Motion:** The board voted to approve the Policy & Governance Committee motion to create an editorial advisory committee. The motion passed unanimously.

Mr. Ramfjord presented the Policy & Governance Committee’s recommendation that the Board waive the one meeting notice requirement and amend the bylaws.  

**Exhibit C**

**Motion:** Mr. Greco moved the Board of Governors to waive the one meeting notice requirement and approve the proposed amendment to OSB Bylaw 11.2.1. Mr. Peachey seconded the motion. The motion passed unanimously.

B. **Board Development Committee**

Mr. Greco asked the board to approve the Board Development Committee’s recommendation to appoint Joseph Hesbrook to the Board of Governors Public Member position beginning January 1, 2019.  

**Exhibit D**

**Motion:** The board voted in favor of accepting the Board Development Committee recommendation. The motion passed unanimously.

Mr. Greco asked the board to approve the committee’s recommendations for the Disciplinary Board.  

**Exhibit D**

**Motion:** The board voted in favor of accepting the Board Development Committee recommendation. The motion passed unanimously.
Mr. Greco asked the board to approve the committee’s recommendations for the State Professional Responsibility Board of Carolyn Alexander, SPRB Chair, David Carlson, Region 6 Member, Michael Wu, Region 7 Member, and Mary Moffit, Public Member. [Exhibit D]

**Motion:** The board voted in favor of accepting the Board Development Committee recommendation. The motion passed unanimously.

Mr. Greco asked the board to approve the committee’s recommendations for the Unlawful Practice of Law Committee. [Exhibit D]

**Motion:** The board voted in favor of accepting the Board Development Committee recommendation. The motion passed unanimously.

Mr. Greco asked the board to approve the committee’s recommendations of Gina A. Johnnie for the attorney position on the PLF Board of Directors. For the public member, the PLF board recommends Patrick Hocking from Medford. [Exhibit D]

**Motion:** The board voted in favor of accepting the Board Development Committee recommendation. The motion passed unanimously.

Mr. Greco updated the board on the Committee’s efforts to identify and schedule a diversity/equity inclusion training for board members before the end of the year.

C. **Budget & Finance Committee**

Mr. Wade gave a financial update. There is no fee increase anticipated at this time. The committee expects to be able to present to the BOG in November a balanced budget for 2019. The committee is recommending that the Policy & Governance Committee amend the bylaws regarding section reserves to encourage spend down of section reserves. The committee will be exploring possible refinance of the building.

The committee also recommends a $5.00 increase to the CSF assessment starting January 1, 2019 in order to maintain CSF reserves. There has been a significant spike in CSF claims over the last year that will likely cause the fund reserve to dip below $1 million.

**Motion:** Mr. Greco moved and Mr. Bachofner seconded that the board approve a $5.00 increase in the CSF assessment starting in 2019. The motion passed unanimously.

D. **Public Affairs Committee**

Ms. Rastetter gave a general update on legislative activity. She will report on a list of proposals at the next board meeting.

6. **Professional Liability Fund**

Ms. Bernick asked the board to approve the PLF changes to the primary coverage plan as outlined in her memo. [Exhibit E]
Motion: Mr. Ramfjord moved and Ms. Rastetter seconded that the board approve the process changes as noted in memo from PLF, August 27, 2018. Mr. Bachofner and Mr. Peachey abstained. The remaining board members voted in favor. The motion passed.

Ms. Bernick asked the board to approve the PLF 2019 budget, assessment and payment deadlines. Ms. Bernick explained her reasoning for a 4% salary pool increase for the PLF and noted that the PLF is lowering their FTE by 1.00 FTE. Ms. Bernick also noted they are recommending a $200 reduction in the assessment. [Exhibit F]

Motion: Mr. Greco moved and Mr. Foster seconded that the board approve the budget, assessment and payment deadlines as outlined. Mr. Bachofner and Mr. Peachey abstained. The remaining board members voted in favor. The motion passed.

Ms. Bernick asked the board to approve a policy change to PLF Policy 5.150 by eliminating the Fidelity Bond. [Exhibit G]

Motion: Mr. Ramfjord moved and Mr. Greco seconded that the board approve the elimination of the Fidelity Bond. Mr. Peachey and Mr. Bachofner abstained. The remaining board members voted in favor. The motion passed.

Ms. Bernick asked the board to approve changes to PLF policy 7.600(H)(2) Excess Program midyear changes as outlined in PLF Memo. [Exhibit H]

Motion: Mr. Greco moved and Mr. Ramfjord seconded that the board approve modifying Policy 7.600 (H)(2) as outlined in the PLF memo attached. Mr. Bachofner and Mr. Peachey abstained. The remaining board members voted in favor. The motion passed.

7. OSB Committees, Sections, Councils and Divisions

A. Oregon New Lawyers Division

Ms. Nicholls updated the board on current ONLD activities.

B. ABA House of Delegates Report

Ms. Harbur and Ms. Johnson updated the board on the ABA Annual HOD meeting.

C. Legal Services Program

Mr. Penn, in Ms. Baker’s absence, asked the board to increase the reserve target for the Annual Unclaimed Fund to $200,000.

Motion: Mr. Ramfjord moved and Mr. Andries seconded to approve the committee’s suggestion to increase the reserve target for the Annual Unclaimed Fund to $200,000. The motion passed unanimously.

Mr. Penn asked the board to disburse $215,000 from the 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. [Exhibit I]
Motion: Mr. Bachofner moved and Mr. Andries seconded to approve disbursement of $215,000 as outlined above. The motion passed unanimously.

8. Campaign for Equal Justice

Ms. Maya Crawford Peacock gave a presentation to the board.

9. Consent Agenda

Ms. Nordyke asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote. No one asked to do so.

Report of Officers and Executive Staff

  Report of the Chief Executive Officer
  As written.

  Report of the Diversity and Inclusion Director
  As written.

Motion: Mr. Peachey moved, Mr. Andries seconded, and the board voted unanimously to approve the consent agenda and past meeting minutes.

10. Good of the Order (Non-action comments, information and notice of need for possible future board action)
October 12, 2018

Dear Oregon State Bar Member:

I am pleased to invite you to the 2018 OSB House of Delegates meeting, which will begin at 10 a.m. on Friday, Nov. 2, at the Oregon State Bar Center.

I am happy to report that the Board of Governors is not requesting an increase in the annual license fee for 2019. As will be explained in the financial report, the annual Client Security Fund assessment is being increased by $5.

The preliminary agenda for the HOD meeting includes resolutions regarding.....

All bar members are welcome and encouraged to participate in the discussion and debate of HOD agenda items, but only delegates may vote on resolutions. If you are unable to attend, please contact one of your delegates to express your views on the matters to be considered. Delegates are listed on the bar’s website at www.osbar.org/_docs/leadership/hod/hodroster.pdf.

If you have questions concerning the meeting, contact Lisa Ryan, executive assistant, by email at lryan@osbar.org or by phone at (503) 431-6386 or (800) 452-8260 ext. 386. Remember that delegates are eligible for reimbursement of round-trip mileage to and from the meeting. Reimbursement is limited to 400 miles, and expense reimbursement forms must be submitted within 30 days after the meeting.

I look forward to seeing you at the HOD Meeting on Friday, Nov. 2, and I thank you in advance for your thoughtful consideration and debate of these items.

Vanessa Nordyke
OSB President
OREGON STATE BAR
2018 House of Delegates Meeting AGENDA
Oregon State Bar Center, 16037 SW Upper Boones Ferry Road, Tigard, Oregon 97224
10 a.m., Friday, Nov. 2, 2018
Presiding Officer: Vanessa Nordyke, OSB President

Reports

1. Call to Order
   Vanessa Nordyke
   OSB President

2. Adoption of Final Meeting Agenda
   Vanessa Nordyke
   OSB President

3. Report of the President
   Vanessa Nordyke
   OSB President

4. Report on behalf of the Chief Justice of the Oregon Supreme Court
   Hon. ____________, Justice Oregon Supreme Court

   David Wade, Chair
   BOG Budget & Finance Committee

6. Overview of Parliamentary Procedure
   James N. Westwood,
   Parliamentarian

Resolutions

7. Support for Adequate Funding for Legal Services to Low-Income Oregonians
   (Delegate Resolution No. 1)
   Kathleen Evans, HOD, Region 6
   Ed Harnden, HOD, Region 5
   Ross Williamson, HOD, Region 2

8. Transparency in Criminal Proceedings
   (Delegate Resolution No. 2)
   Danny Lang, HOD, Region 3

9. Ensuring the Justice Across Oregon Stipend for Summer Employment in Rural Oregon Serves All Rural Communities
   (Delegate Resolution No. 3)
   David Dorfman, HOD, Region 8
   Jake Klonoski, HOD, Region 8

10. New Tier of Annual License Fees for Members Active for Less than 5 Years
    (Delegate Resolution No. 4)
    Jake Klonoski, HOD, Region 8
    David Dorfman, HOD, Region 8
    Evan Gautier, HOD, Region 8

11. In Memoriam
    (Board of Governors Resolution No. 1)
    TBD, BOG, Region

12. Veterans Day Remembrance
    (Board of Governors Resolution No. 2)
    TBD, BOG, Region
5. Report to House of Delegates - 2019 OSB Membership Fee

Based on a recommendation from the Client Security Fund (CSF) Committee, the Board of Governors resolved to increase the CSF assessment for 2019 from $10.00 to $15.00. The new assessment applies to all active Oregon State Bar members.

As of September 30, 2018, the fund balance was $1.342 million. Throughout 2018, there has been a significant increase in the number and dollar amount of claims, which is forecasted to deplete the balance below the $1 million reserve level. To maintain an adequate total reserve, this increase is necessary. All other fees remain unchanged.

This chart shows the Fee Schedule for the 2019 Membership Fees. The due date for the 2019 membership fee is Wednesday, January 31, 2019.

<table>
<thead>
<tr>
<th>Membership Fee Status</th>
<th>Fee Through January 31</th>
<th>Fee Effective February 1</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Over Two Years</td>
<td>$ 557.00</td>
<td>$ 657.00</td>
</tr>
<tr>
<td>Active Under Two Years **</td>
<td>$ 470.00</td>
<td>$ 570.00</td>
</tr>
<tr>
<td>Active Pro Bono</td>
<td>$ 125.00</td>
<td>$ 125.00</td>
</tr>
<tr>
<td>Inactive</td>
<td>$ 125.00</td>
<td>$ 175.00</td>
</tr>
<tr>
<td>Retired</td>
<td>$ 125.00</td>
<td>$ 175.00</td>
</tr>
</tbody>
</table>

**Based on admission date to ANY jurisdiction, not admission to Oregon

7. Support of Adequate Funding for Legal Services for Low-Income Oregonians (Delegate Resolution No. 1)

Whereas, providing equal access to justice and high quality legal representation to all Oregonians is central to the mission of the Oregon State Bar;

Whereas, equal access to justice plays an important role in the perception of fairness of the justice system;

Whereas, programs providing civil legal services to low-income Oregonians is a fundamental component of the Bar’s effort to provide such access;

Whereas, since 1998, pursuant to ORS 9.575, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight for the state statutory allocation for legal aid in accordance with the Bar’s Standards and Guidelines (which incorporate national standards for operating a statewide legal aid program);

Whereas, during the great recession the staffing for legal aid programs was reduced while the poverty population in Oregon increased dramatically, thus broadening “the justice gap” in Oregon;
Whereas, Oregon’s legal aid programs do not have sufficient resources to meet the civil legal needs of Oregon’s poor;

Whereas, Oregon currently has 2 legal aid lawyers for every 14,000 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 legal aid lawyers for every 10,000 low-income Oregonians;

Whereas, assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system; now, therefore, be it

Resolved, that the Oregon State Bar;

(1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for Oregon’s legal aid programs and through support for the Campaign for Equal Justice.

(2) Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation, which provides federal support for legal aid.

(3) Work with Oregon’s legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.

(4) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by the Oregon legal community, by establishing goals of a 100% participation rate by members of the House of Delegates, 75% of Oregon State Bar Sections contributing $50,000, and a 50% contribution rate by all lawyers.

(5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank with financial institutions that are OLF Partners in Justice, meaning that pay the highest IOLTA rates.

(6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.

(7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

(8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

Background

“The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.” OSB Bylaw 1.2. One of the four main functions of the bar is to be “a provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all.” Id.

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolutions in 1996, 1997, 2002, 2005–2017). This resolution is similar to the resolution passed in 2017, but provides updates on the ratio of legal aid lawyers to Oregonians eligible for legal aid services.
The legal services organizations in Oregon were established by the state and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by state and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distribute the state statutory allocation for civil legal services and provide methods for evaluating the legal services programs. The Campaign for Equal Justice works collaboratively with the Oregon Law Foundation and the Oregon State Bar to support Oregon’s legal aid programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

Oregon’s legal aid program consists of three separate non-profits that work together as part of an integrated service delivery system designed to provide high priority free civil legal services to low-income Oregonians in all 36 Oregon counties through offices in 17 communities. There are two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and one county wide program, the Center for Non-Profit Legal Services (Jackson County). Because the need is great and resources are limited, legal aid offices address high priority civil legal issues such as safety from domestic violence, housing, consumer law, income maintenance (social security, unemployment insurance, and other self-sufficiency benefits), health, employment and individual rights. About 31% of legal aid’s cases are family law cases, usually helping victims of domestic violence. All of these programs work to stretch limited resources through pro bono programs and self-help materials. Legal aid’s website, www.oregonlawhelp.com receives about 290,000 unique visitors a year.

Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. An Oregon study concluded that low-income Oregonians who have access to a legal aid lawyer have a much-improved view of the legal system compared with those who do not have such access: 70% of individuals without access to a lawyer had negative feelings about the legal system, but of those who had access to a legal aid lawyer, 69% had a positive view of the legal system regardless of the outcome of their case. The 2014 Task Force on Legal Aid Funding, which included representatives of the Bar, the Law Foundation, the judiciary, the legislature and private practice concluded that legal aid funding should be doubled over the next 10 years. Because funding for legal aid is a state, federal and private partnership, with about 80 different sources of funding, increases in funding must be made across the board to address the justice gap.

Currently, around 20% of lawyers contribute to the Campaign for Equal Justice, but in some Oregon regions (Jackson County and Lane County, for example), participation is as high as 40%.

Presenters:
Kathleen Evans, HOD, Region 6
Ed Harnden, HOD, Region 5
Ross Williamson, HOD, Region 2
8. Transparency in Criminal Case Proceedings
(Delegate Resolution No. 2)

Whereas, “The Mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.” OSB Bylaw 1.2;

Whereas, current protocol for Motion Hearings in Criminal Cases requires that a Defendant must submit “Points and Authorities” in support of a Defense Motion, such as a “Motion to Suppress,” to be considered by Oregon Circuit Courts in Criminal Cases; however, the State has no such requirements;

Whereas, Defendant’s “Points and Authorities” are submitted in written form, and served upon the State (Prosecutor) when a Defense Motion is filed or in advance of the date set for a Hearing on Defendant’s Motion; however, the State may, but is not required to file, any written “Points and Authorities” in opposition prior to or even at the Hearing on a Defense Motion;

Whereas, the foregoing current protocol in Criminal Cases implicates Equal Protection and Due Process concerns, by reason of Counsel for the Defendant being blind-sided; which places both Defense Counsel and Defendant at a marked disadvantage by allowing the State to orally cite and argue previously undisclosed Authorities at the Hearing;

Whereas, the current permissive protocol in favor of the State deprives the Defense Counsel (and Defendant) of not having the opportunity to; read, analyze, and distinguish such previously undisclosed Oral Authorities; and, thereby offends the Presumption of Innocence;

Whereas, Oregon Courts may be hindered by the lack of Pre-Hearing review and analysis of the State’s previously undisclosed Oral Authorities;

Whereas, the current protocol is inherently unfair because, it places the State at an unwarranted advantage upon matters involving; Due Process implicating fundamental fairness, the rule of law, and Equal Access to Justice;

Whereas, as Members of the Oregon State Bar, we have taken an Oath to Support the Constitution; and, are dedicated to supporting the Oregon State Bar Mission providing Equal Access to Justice;

Whereas, as Members of the Oregon State Bar, we owe an ethical duty to zealously represent our Clients in Criminal Cases, most often implicating Liberty Interests;

Whereas, as Members of the Oregon State Bar, Members of the House of Delegates or Members of the Board of Governors, we should seek to provide Equal Access to Justice by abolishing the current one-sided protocol that provides the State with an unfair advantage at critical stages in Criminal Cases; now, therefore, be it

Resolved, that the House of Delegates recommend that the Board of Governors study how the Mission of the Oregon State Bar’s furtherance of Equal Access to Justice and respect for the Rule of Law will be benefited by abolition of the unjust present protocol of allowing the State to submit Oral Authorities during Motion Hearings without disclosing or filing any advance written “Points and Authorities.”
Fiscal Impact

None provided; however, transparency in Criminal Case Proceedings will foreseeably assist Circuit Courts in applying the correct Rule of Law, which in turn may reduce costs by reducing the number of Criminal Case Appeals.

Presenter:
Danny Lang, HOD, Region 3

9. Ensuring the Justice Across Oregon Stipend for Summer Employment in Rural Oregon Serves All Rural Communities (Delegate Resolution No. 3)

Whereas, it is the policy of the Oregon State Bar to advance justice throughout Oregon, in urban and rural communities alike;

Whereas, many rural communities in Oregon face significant unmet legal needs, yet struggle to attract new members of the legal profession who could serve as prosecutors, defense attorneys, pro bono service providers, and practitioners in essential fields such as property law and family law;

Whereas, the Oregon State Bar administers an annual Justice Across Oregon Stipend program, which incentivizes law students to explore summer legal opportunities in rural Oregon by providing students receiving a summer stipend with supplementary funding if they work in less populated areas of the state;

Whereas, law students frequently accept post-graduate employment in the communities or at the organizations where they worked during their summers in law school;

Whereas, for purposes of the Justice Across Oregon Stipend, the Oregon State Bar currently defines “rural Oregon” as “anywhere along the Oregon coast, east of the Cascade Mountains, or south of, and including, Roseburg,” with other communities only eligible on a case-by-case basis;

Whereas, the Oregon Office of Rural Health defines “rural Oregon” as “any geographic area . . . ten or more miles from the centroid of a population center of 40,000 people or more,” and maintains a database designating each Oregon community as either urban or rural;

Whereas, the Justice Across Oregon Stipend’s current definition of “rural Oregon” excludes many jurisdictions considered by the Office of Rural Health to be rural, including northern Douglas County, southern Lane County, substantial portions of the Willamette Valley, and mountain communities within, but not east of, the Cascade Mountains; now, therefore, it be

Resolved, that, for purposes of administering the Justice Across Oregon Stipend, the Oregon State Bar shall henceforth define “rural Oregon” as “any geographic area in Oregon along the coast, east of the Cascade Mountains, or south of, and including, Cottage Grove, or otherwise located ten or more miles from the centroid of a population center of 40,000 people or more.”
Financial Impact

None stated by the delegate.

Presenters:
David Dorfman, HOD, Region 8
Jake Klonoski, HOD, Region 8
Evan Gautier, HOD, Region 8

10. New Tier of Annual License Fees for Members Active for Less than 5 Years
(Delegate Resolution No. 4)

Whereas, the Oregon State Bar understands that the first several years of practice can be financially challenging for newly-licensed legal professionals;

Whereas, the Oregon State Bar 2017 Economic Survey – Report of Findings (available at https://www.osbar.org/docs/resources/Econsurveys/17EconomicSurvey.pdf) demonstrates, both in Oregon and nationwide, that the average attorney earns less during her first six years of practice than in the years thereafter;

Whereas, the average recent law school graduate carries approximately $112,000 in student loan debt, which in many cases impedes the ability of such attorneys to pursue public service, legal entrepreneurship, public interest work, or other careers they might otherwise envision;

Whereas, a diverse group of state bar associations - among them Hawaii, Massachusetts, Minnesota, Nevada, New York, North Dakota, Rhode Island, and Texas - have recognized that after five years of active practice legal professionals are better positioned to financially support their respective state bar organization, and therefore have created a separate tier of membership dues for active members with less than five years of legal practice;

Whereas, ORS 9.191(3) allows the Board of Governors to “consider . . . time periods of membership” in establishing annual membership fees for legal professionals;

Whereas, the annual membership fee is established by the Board of Governors and any increase over the amount established for the prior year must be approved by a majority of delegates voting thereon at the annual meeting of the House of Delegates, pursuant to ORS 9.191(1); now, therefore, be it

Resolved, that
1. the House of Delegates recommends that the Board of Governors of the Oregon State Bar authorize the creation of a separate tier of membership fees for Oregon State Bar members active in any jurisdiction under five years or for a similar duration of time; and that
2. the House of Delegates recommends that the Board of Governors consider an equitable assignment of fees to this new tier of active bar members, as well as consider equitable
changes to fees assigned to existing tiers, reflecting the economic realities of experienced
and newer legal professionals; and that
3. the House of Delegates further recommends that the Board of Governors also consider
other appropriate issues of equity permissible under Oregon statute during the creation
of a separate tier of membership fees for Oregon State Bar members active in any
jurisdiction under five years or for a similar duration of time; and that
4. the Board of Governors shall present the results of its deliberation on the new
membership fee tiers to the House of Delegates at the 2019 House of Delegates meeting
for consideration pursuant to ORS 9.191, provided no such changes shall be implemented
prior to the 2020 House of Delegates meeting.

Financial Impact

None stated.

Presenters:
Jake Klonoski, HOD, Region 8
David Dorfman, HOD, Region 8
Evan Gautier, HOD, Region 8

11. In Memoriam
(Board of Governors Resolution No. 1)

Resolved, That the OSB House of Delegates and members assembled stand for a moment of
silence in honor of the members of the Oregon State Bar who have died since the 2017 House
of Delegates Meeting.

Presenters:
, BOG, Region
, BOG, Region
, BOG, Region
12. Veterans Day Remembrance  
(Board of Governors Resolution No. 2)

Whereas, Military service is vital to the perpetuation of freedom and the rule of law; and

Whereas, Thousands of Oregonians have served in the military, and many have given their lives; now, therefore, be it

Resolved, That the Oregon State Bar hereby extends its gratitude to all those who have served and are serving in the military, and further offers the most sincere condolences to the families and loved ones of those who have died serving their country.

Presenter: 
BOG, Region
Action Recommended

Adopt an event anti-harassment policy, consistent with Article 10 of the OSB Bylaws.

Background

It has long been the policy of the Oregon State Bar, as memorialized in OSB Bylaw Article 10, to maintain an environment at bar events and functions free from all forms of discrimination and harassment. This memorandum proposes that the board consider adopting an anti-harassment policy to help effectuate the bar’s long standing prohibition of harassment at bar events.

To date, while the bar has adopted an anti-harassment employment policy, the bar has not adopted an anti-harassment policy that squarely applies to all bar-sponsored events. The proposed harassment policy would apply to individuals who participate in bar meetings, events and functions, as well as to bar leaders who attend specialty bar or community events in their official capacities. The policy outlines the bar’s anti-harassment stance and provides a transparent explanation of how the bar will investigate and respond to complaints it receives.

Without a policy in place, the bar will be left respond to any complaints received on an ad hoc basis. The lack of a transparent process for reporting and responding to complaints may make it less likely that the bar will learn of harassment promptly, and could result in inconsistent handling of complaints when received.

The Policy & Governance Committee reviewed a number of examples of anti-harassment policies adopted by other bars and government entities that extend beyond the employment context. What follows is a policy that the Committee proposes that the Board of Governors adopt for the Oregon State Bar.

Proposed OSB Event Anti-Harassment Policy

The Oregon State Bar is dedicated to providing a harassment-free experience for everyone at bar-sponsored events, meetings and functions. OSB seeks to provide an environment in which diverse attendees may learn, network and enjoy the company of colleagues in a professional atmosphere. The bar does not tolerate harassment of members or attendees at bar-sponsored events in any form.

1The bar’s employment policies apply broadly to individuals who interact with bar employees. Policy 6.4 from the Bar’s employment handbook provides, “Harassing and intimidating behavior is prohibited by and toward bar employees, visitors, members, contracts, and vendors of all kinds.”
**Definition of Harassment:**

Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward an individual or an individual’s relatives, friends, or associates; that has the purpose or effect of creating an intimidating, threatening, hostile, or offensive environment; has the purpose or effect of unreasonably interfering with an individual’s attendance at or participation in an event. Prohibited harassment may include, but is not limited to:

- Verbal conduct such as epithets, derogatory comments, negative stereotyping, jokes, or slurs;
- Visual conduct such as derogatory posters, photography, cartoons, drawings, or gestures;
- Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with participation in an event, directed at an individual because of any protected basis; or
- Placement anywhere at an event premises of written or graphic material that denigrates or shows hostility or aversion toward an individual or group.

**Definition of Sexual Harassment:**

Sexual harassment refers to verbal, physical, and visual conduct of a sexual nature that is unwelcome and offensive to the recipient. By way of example, sexual harassment may include such conduct as sexual flirtations, advances, or propositions; verbal comments or physical actions of a sexual nature; sexually degrading words used to describe an individual; an unwelcome display of sexually suggestive objects or pictures; sexually explicit jokes; and offensive, unwanted physical contact such as patting, pinching; grabbing, groping, or constant brushing against another’s body.

**Scope of Policy:**

This Event Anti-Harassment Policy applies to all attendees at bar-sponsored meetings and events, including bar members, bar leaders, event participants, guests, contractors, and exhibitors. For purposes of this policy, meetings and events organized by the Board of Governors, CLE Seminars, bar sections, bar committees, or the Oregon New Lawyers Division are considered bar-sponsored.

This policy also applies to bar leaders who attend community, local bar, or specialty bar events as an official representative of the bar, even if the event is not bar-sponsored. For purposes of this policy, bar leaders include officers and members of the Board of Governors.

**Reporting an Incident:**

If you are being harassed, notice that someone else is being harassed, or have any other concerns related to this policy, please contact an OSB staff member immediately.
OSB staff are available to help attendees contact venue security or local law enforcement, or accompany individuals to a safe space, as appropriate based on the specific circumstances.

Response:

Once received by a bar staff member, all reports of harassment are to be directed immediately to the bar staff liaison on site and to be shared with the OSB’s Chief Executive Officer. Bar staff may consult with and engage other bar staff and legal counsel as appropriate. Event security and/or local law enforcement may be involved, as appropriate based on the specific circumstances.

The OSB treats all complaints seriously by conducting a prompt investigation. If a complaint involves a member of the OSB Board of Governors, the OSB’s Chief Executive Officer or OSB General Counsel may enlist the assistance of a third-party investigator to investigate the complaint, when appropriate.

In response to a report of harassment, bar staff may take any interim action deemed appropriate under the circumstances to address the immediate behavior, which may range from a verbal caution to ejection from an event. Attendees asked to stop any harassing behavior are expected to comply immediately. After investigation, the bar may take reasonable and appropriate action, dependent upon the circumstances, to prevent a reoccurrence of the harassment.

The bar prohibits retaliation against individuals who come forward in good faith with complaints under this policy. Complaints of retaliation may also be directed to any OSB staff member, the OSB staff liaison, or the OSB General Counsel.

(Note: Any bar employee who is subject to or is aware of workplace harassment or intimidation should report the information immediately to the employee’s manager or director, the Director of Human Resources, the Chief Executive Officer, or any other manager or director with whom the employee feels comfortable communicating. There is no need to observe any particular chain of command.)

Options

1. **Adopt policy as written.** This option would create a transparent process for investigating and responding to complaints received by the Oregon State Bar about conduct at bar-sponsored events or at community events when BOG members are acting in their official capacity.

2. **Engage in additional study and consider amendments to proposed policy.** If the committee has additional concerns or questions about the policy as written, we could seek additional information prior to proceeding.

3. **Take no action.** This option would keep the status quo, but would leave the bar without a protocol in the event a complaint is received.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
From: Policy & Governance Committee
Re: Editorial Function Review

Action Recommended

1. Approve editorial policies and guidelines.
2. Waive the one meeting notice requirement and approve the proposed amendment to OSB Bylaw 11.2.1.

Background

Editorial Policies

At its meeting on June 22, 2018, the Board of Governors amended its bylaws as follows to require Board approval of editorial policies:

Subsection 11.2.2 Editorial Policies

The Chief Executive Officer may establish editorial standards for bar communications and material permitted by the Bar to be included in its communications concerning All editorial policies will be approved by the Board. Editorial policies may address such matters as advertising, political communication, profanity and obscenity, letters to the editor, use of artwork, photographs and illustrations, story placement, headlines and scheduling, advertising content and rates and similar topics. Editorial policies must be consistent with Article 10 Diversity and Article 12.1 Guidelines.

Subsection 11.2.3 Review by Chief Executive Officer

The Chief Executive Officer has sole discretion to determine whether material submitted for publication meets the standards set forth in or adopted pursuant to this policy section and to accept or reject material submitted to the Bar for publication based on that determination. Editorial standards must comply with Article 10 Diversity.

The Policy & Governance Committee has reviewed and recommends that the Board approve the attached Editorial and Advertising Guidelines.

Bylaw Amendments

In addition, the Policy & Governance Committee recommends that the Board of Governors establish an editorial advisory standing committee to provide input on future editorial policies and content of the Bulletin. In order to implement this recommendation, the Board of Governors would have to amend the OSB Bylaws as follows:
Section 11.2 Editorial Standards

Subsection 11.2.1 Editorial Advisory Committee Policy

The Board will appoint an Editorial Advisory Committee. The Editorial Advisory Committee will review and recommend editorial policies for bar communications to the Board for approval. The Committee will also provide input to editorial staff as to content for the Bulletin.

Creation of an Editorial Advisory Committee would provide greater Board accountability for the Bulletin and a vehicle for a broader range of member (and perhaps public) input on content and editorial policies. In particular, it would provide a forum for discussion of those editorial decisions that are most sensitive and difficult and ensure that multiple perspective are considered before making those decisions. Further, discussion of editorial policies and content at public meetings would increase transparency of the editorial process.

The Policy & Governance Committee recommends that the Board waive the one meeting notice requirement and amend the bylaws as stated above. If the Board approves the proposed bylaw amendment, the Committee will bring to the Board at its next meeting a committee charge and recommendation for its size and constituents.

Attachments: The Bulletin Editorial and Advertising Guidelines
Definitions and Purposes
The Bulletin is published for members of the Oregon State Bar. The purpose of the Bulletin is to provide the members of the Oregon State Bar with information that will directly affect their practice of law in Oregon, will aid and improve their business, and will keep them informed on activities and issues in the legal profession. Humor and human-interest articles are also published. It is not a consumer magazine, nor a law library text/review book. We strive to publish articles that are topical, thought-provoking, and address issues and topics of interest to significant segments of the bar. We aim to be read, be quoted and be retained.

The Bulletin is published 10 times a year – monthly, except for two-month issues in February-March and August-September. The print version is published in a standard magazine format, 8 1/2 x 11 inches, about 56-72 pages per issue, and the online version is published in manner intended to replicate the presentation of the print version. As a general rule, each issue contains two main feature articles, regular and semi-regular columns, and regular departments, such as "Among Ourselves" and "Moves." The Bulletin also contains a section known as “Bar News.” The purpose of this section is to update members on state bar meetings, events and policies; and law-related developments, law-related organizations, judicial updates, and other news items of potential interest to OSB members.

Article Submission
Articles should be approximately 1,500-2,500 words in length, unless another arrangement between the editor and author(s) is made. All submitted articles should be delivered electronically using standard word-processing software. An emailed cover letter should accompany the article containing: a) name(s) of author(s); b) a suggested title and appropriate subheads for the article; c) an outline of the article; and d) a brief (2-3 sentence) biography of the author(s). Authors must fully disclose any personal or professional involvement in the subject of any article. If any such disclosure involves a pending legal matter, that information will be published as an editor’s note to the article.

Footnotes should be typed on a separate page at the end of the article, although every attempt should be made by the author(s) to incorporate necessary information within the body of the article. Footnotes are used only to amplify a point in the text or cite a source and should not become a separate article in themselves. Generally, the Bulletin uses "A Uniform System of Citation," a reference guide published by the Harvard Law Review Association, for footnote style. If possible, footnotes should be limited to no more than 15 per article.
Upon receipt of an unsolicited article, idea outline or query letter, the author will receive an "acknowledgement" message from the editor stating that the article, idea outline or query letter will be reviewed by the editor to determine whether it answers the majority of the guidelines listed below. The editor will contact the author within two to three weeks regarding the possible publication of the article. Query letters are strongly encouraged prior to the submission of articles.

Submitted articles become the property of the Oregon State Bar, unless a different arrangement is made between the editor and the author(s). Artwork, photographs and illustrations accompanying unsolicited or solicited articles are gladly accepted, but their use is not guaranteed. Submitted artwork, photographs and illustrations, whether published or unpublished, will only be returned at the sender’s request.

**General Publication Policies**

In general, all articles published in the Bulletin must be germane to the law, lawyers, the practice of law, the courts and judicial system, legal education or the Oregon State Bar. All opinions, statements and conclusions expressed in submitted articles appearing in the Bulletin are those of the author(s) and not necessarily those of the editorial staff, employees of the Oregon State Bar, or members of the Board of Governors. Publication of any article is not to be deemed an endorsement of those opinions, statements and conclusions expressed by the author(s). Any content attributed to the Oregon State Bar Board of Governors must be approved by the bar’s CEO or General Counsel.

All submitted material is subject to editing by the editor. Material is edited for style, clarity and accuracy, and for purposes of space considerations. Some editing may involve selective omission of portions deemed by the editor to be less important than others. References to personal characteristics (e.g., age, race, ethnicity, gender identity) of any person described or quoted in an article submitted for publication will be removed unless the description is germane to the article and has been reviewed and approved by the person described. The editor will make every reasonable effort to inform the author of changes and to involve the author in any editing of technical, controversial or sensitive material. The editor retains at all times authority regarding story placement, headlines and article scheduling.

**Feature Articles**

The following guidelines will be applied to every major article submitted for publication, whether unsolicited or solicited, and the author should edit his or her own work if it does not meet the following criteria:

1. Does the content of the article directly affect the practice of law in Oregon?
2. Will the information in the article help Oregon State Bar members in their daily business activities?
3. Is the topic of timely importance?

4. Is there broad interest to the majority of Oregon State Bar members?

5. Does the author(s) of the article have the necessary expertise to write about the subject in question, or has he or she conducted sufficient research to do so?

6. Is the article of an appropriate length to fully (but not overly) cover the subject? If determined by the Bulletin editor to be overly long, can it be shortened? If determined to be too brief, can it be expanded upon?

7. Is the subject matter new material, not something already covered in the Bulletin within the last year or two?

8. Does the author present ideas in a balanced manner rather than presenting one side of an issue? If not, has the opposing viewpoint also been presented alongside the main feature?

9. Does the article contain information not already covered in another publication, such as in a local daily, weekly or monthly?

10. Would the article be more appropriately published in a section newsletter or other law-related publication than the Bulletin?

There are occasional cases where established guidelines will be waived and material need not satisfy all of the guidelines set forth above. Examples include: human-interest articles about persons in the legal community; humorous or anecdotal articles; historical pieces; and creative writing. Such submissions are evaluated on a case-by-case basis by the editors, who retain responsibility for story evaluation.

**Non-Feature Articles**

*Moves and Among Ourselves:* As a courtesy to OSB members, the Bulletin provides at no charge separate columns announcing lawyer relocations and promotions (*"Moves"*), and other news of attorney members (*"Among Ourselves"*). Subjects of both columns must be members of the Oregon State Bar. (Paid announcements are discussed below in "Advertising; Lawyer Announcements.") Because of the volume of mail received, individual submissions for these columns will not be acknowledged by the editor, except where a specific request for response is made by the author(s). Photographs are published for a fee.

*Columns:* Space is made available for publication of columns, some of which may recur from issue to issue, e.g., Managing Your Practice, Practice Tips, Legal Heritage, On Professionalism and Law & Life. Columns are subject to all policies outlined here. Publication of columns does not constitute a permanent agreement for ongoing publication; the status of all columns is subject to review by the editor and the publications team (See "General Publications Policies; Story Development").
Departments: The Bulletin also includes some dedicated article department that appear in most if not all issues, such as Bar Counsel and Legal Writer columns. It also saves room for President's Messages a particular bar president may wish to submit during his or her term and Chief Justice messages from time to time.

Opinions: Opinion pieces are published in the column “Parting Thoughts.” Opinion pieces must be arranged in advance with the editor, before consideration of publication. Opinion pieces may address any topic of law or legal practice, but may not contain language constituting an attack upon an individual, group or organization, and may not promote individual products, services or political candidates.

Continuing Legal Education (CLE) Information: Coverage of Legal Publications and CLE seminars sponsored by the Oregon State Bar is provided on a space-available basis. The Bulletin places a low priority on providing editorial coverage of non-Oregon State Bar CLE activities and publications; display and classified advertising may be purchased to publicize non-Oregon State Bar CLE activities and publications.

Letters to the Editor
The Oregon State Bar realizes that a wide range of subject matters are to be expected in letters to the editor. The Bulletin strives to print as many letters as possible. Therefore, brevity is important, and preference will be given to letters that are 250 or fewer words. Preference will be given to letters in response to articles, columns or letters to the editor recently published in the Bulletin. Letters from Oregon State Bar members receive top priority for publication in the next available issue.

Guidelines are designed to set a standard for acceptable material. Letters must be addressed directly “To the Editor” and original to the Bulletin. No unsigned or anonymous letters will be printed; the executive director may waive this requirement, if such waiver is requested.

When responses occur over several issues, the editor reserves the right to cease printing letters on the subject in question. The editor also reserves the right to hold a letter to the editor until a subsequent issue. Letters from non-Oregon State Bar members are published if space permits and if the subject matter is deemed to be of interest to Oregon State Bar members.

Letters to the editor may be edited for grammatical errors, style or length, or in cases where language or information is deemed unsuitable or inappropriate for publication. The editor reserves the right to select or withhold letters for publication, and to edit any and all letters chosen for publication. Profane or obscene language will not be accepted. The Bulletin will not publish letters containing language constituting an attack upon an individual, group or organization. Letters may not promote individual products, services or political candidates.
Copyright and Compensation
All material published in the Oregon State Bar Bulletin is copyrighted. Unless other arrangement is made between the editor and author(s), all material published remains the property of the Oregon State Bar and/or the author(s). The Bulletin holds right of first publication for all solicited articles and all unsolicited articles accepted for publication.

Permission for reprinting must be requested in writing; permission to reprint must be granted prior to publication. Any material originally submitted to and published in the Bulletin may be reprinted by another publication with appropriate credit given to both the author(s) (if appropriate) and the Oregon State Bar Bulletin as original source(s) for the material.

The Oregon State Bar will not compensate for any unsolicited or solicited articles, published or unpublished artwork, photographs, illustrations, etc., unless agreed upon between the sender of the material and the editor.

Advertising
Advertising is sold to OSB members, and to advertisers in the general public as well. Except where noted, all advertising policies and pricing apply to OSB members and non-members equally.

Classified Advertising: Firms or organizations offering professional employment opportunities or services are available at the same rate to OSB members and non-members. The Bulletin will not publish employment announcements for employers who do not comply with OSB Bylaw 10 (diversity). Advertising for alcohol, tobacco and tobacco products, and firearms of all kinds are not accepted for publication. The Bulletin will not publish advertising for law-related services provided by disbarred attorneys. Non-position and non-service classifieds are available to OSB members at a reduced rate. The editor reserves the right to reject any advertisement at any time.

Display Advertising: Display advertising is available for purchase by both OSB members and non-members. Contact information is available in each issue of the Bulletin and current rates are available from the bar’s website.

Lawyer Announcements are available to announce changes in law firms or practices and are available only to members of the Oregon State Bar, or their law firms or offices.

House and Filler Advertising. Advertising space may be available at no charge for Oregon State Bar programs, legal community partners and nonprofit organizations.
by the State of Oregon as nonprofit organizations, or possessing the nonprofit status outlined in IRS Code 501(c)(3), may qualify for discounted or free advertising in the Bulletin. Free advertising is offered available on a space-available basis; the amount of space available for each issue will be determined only after layout is complete for all editorial content and other advertisements. Requests for free advertising space must be made to the Editor, camera-ready basis only; such space will not be guaranteed. Guaranteed paid advertising is available at a discount to recognized nonprofit organizations. The editor reserves the right to reject any advertisement at any time.

Subscriptions and Circulation
The Bulletin is mailed to all active, inactive, active pro bono, retired and student members of the OSB and is also available in electronic format on the bar’s website. Subscriptions are available to non-OSB members at the rate of $50 per year. Complimentary copies of the publications are mailed to Oregon’s law schools, a number of other state bars who reciprocate for mutual editorial benefit, and local law libraries, on request. Complimentary copies are available at the discretion of the editor or the executive director.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
From: Guy Greco, Board Development Committee Chair
Re: Recommendations for Disciplinary Board and UPL Committee Appointments

Action Recommended

Approve the Board Development Committee’s recommendations for member and non-member appointments to the Disciplinary Board and Unlawful Practice of Law Committee. All recommendations approved by the BOG will be sent to the Supreme Court for consideration.

Recommendations

Unlawful Practice of Law Committee
The UPL Committee investigates complaints of unlawful practice and recommends prosecution where appropriate. The committee is in need of officers and three new members for terms beginning January 1, 2019. Of the three new member appointments, no more than one can come from private practice based on the requirements set forth in BR 12.1 and the existing committee membership.

Chair: Mary Briedé
Chair-Elect: John Marandas
Secretary: Jennifer Schade

Members with terms expiring December 31, 2022
Jacob Kamins
Mitzi Naucler
Brentley Foster

Disciplinary Board
Unless otherwise noted, chair terms are one year beginning January 1, 2019 and member terms begin January 1, 2019 and end December 31, 2021.

Region 1
Ronald Roome, Region Chair
Danielle Lordi, Member

Region 2
Jet Harris, Region Chair
Frank R. Alley, Member (term expires December 31, 2020)
Bryan Boender, Member

Region 3
John “Jack” Davis, Region Chair
Marlene Yesquen, Member
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
From: Guy Greco, Board Development Committee Chair
Re: Board of Governors Public Member Recommendation

Action Recommended

Approve the Board Development Committee’s recommendation to appoint one of four candidates interviewed for the Board of Governors Public Member position.

Background

During the July meeting the Board Development Committee reviewed applications for 16 candidates interested in serving as a public member on the Board of Governors. Of those who applied, four were selected to move forward to the interview process.

On September 11 and 21 the committee conducted interviews which lasted 30-minutes and included eight questions. The candidates included:

Charles Bennett, Mayor, City of Salem
Clark Haass, Director of Strategic Transactions at Intel in Beaverton
Joseph Hesbrook, Emergency Management Consultant from Bend
April Wallace, Bookkeeper for Floor Décor in Bend

After interviews were conducted and a discussion of the candidates was held, the committee unanimously voted to recommend the appointment of Joseph Hesbrook for the 2019 public member position.

Candidate applications and comments from each candidate’s references are available in the July Board Development Committee materials posted online.
OREGON STATE BAR
Board Development Committee Agenda

Meeting Date: September 21, 2018
Memo Date: August 28, 2018
From: Dawn M. Evans, Disciplinary Counsel
Re: Recommendations for appointment to the State Professional Responsibility Board

There are three openings for 2019 on the State Professional Responsibility Board (SPRB) – one lawyer position each for Region 6 and Region 7, and one public position. In addition, a chair must be selected. With changes to the Bar Rules that were effective January 1, 2018, the Board of Governors makes recommendations to the Supreme Court for these positions. With the exception of the chair recommendation (who is a current member), the other people identified came from the volunteer pool of applicants through the Bar’s website.

The chair is typically a lawyer member serving in his or her fourth year on the SPRB. There are two lawyer members whose terms expire at the end of 2019; however, only one of them will be serving in her fourth year. Richard Weill was appointed on June 20, 2018, to serve an unexpired term, so will have about six months’ experience coupled with a one-year term served in 2015 as of January 2019. The other member, Carolyn Alexander, will be serving her fourth year in 2019 and has expressed both interest in and willingness to serve as chair. Ms. Alexander, who began her term a few months after having retired from many years’ service at the Department of Justice Appellate Division, has been a conscientious and thoughtful member. She is well-respected by her co-members and will be a fair-minded and even-tempered chair. She is recommended for appointment as chair for 2019.

Of the applicants from Region 6, David Carlson (Salem), who would be replacing Elaine D. Smith-Koop from Salem, practices in the areas of estate planning, elder law, and probate. He is a nationally-certified guardian and is routinely appointed by the court to act as guardian and/or conservator for persons who are no longer able to manage their own affairs. As these subject matter areas arise with some regularity in complaints reviewed by the SPRB, the SPRB would benefit from Mr. Carlson’s expertise. Mr. Carlson is a past treasurer and chair of the Solo and Small Firm Section of the Bar; a past treasurer and chair of the New Lawyers Division; and former member and chair of a Local Professional Responsibility Committee. He is recommended for a four-year term beginning 1/1/19 and ending 12/31/22, representing Region 6.

Of the applicants from Region 7, Michael Wu (Lake Oswego), who would be replacing Ankur Doshi from Portland, practices in the area of criminal law, which is a frequent subject matter of complaints. He has previously served on the Advisory Committee on Diversity and Inclusion and is former member and chair of Oregon’s Board of Pardon and Post-Prison
Supervision. He also worked for eight years at the Clackamas County District Attorney’s Office. He is recommended for a four-year term beginning 1/1/19 and ending 12/31/22, representing Region 7.

For the public member, Dr. Mary Moffit, an associate professor in the psychiatry department of Oregon Health and Science University, who has a Ph.D. in clinical psychology from The Wright Institute in Berkeley, California, has expressed an interest in serving. Dr. Moffit is a licensed clinical psychologist in Oregon and has been working at OHSU in various capacities for more than twenty years. In addition to teaching, she is Director of the Resident and Faculty Wellness Program and of the Peer Support Program. Her expertise will benefit the SPRB, which is frequently confronted with lawyers who are addressing mental health and substance use issues. She is recommended for a four-year term beginning 1/1/19 and ending 12/31/21, as a public member at large.
MEMORANDUM

DATE: August 27, 2018
TO: BOG Development Committee
FROM: PLF Board of Directors
       Carol J. Bernick, Chief Executive Officer
RE: 2019 Board Appointments

The Board of Governors is charged with appointing the PLF Board members. For the 2019-2023 Board term, the BOG must appoint one lawyer and one public member.

Article 3.4 provides that:

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

In general, past PLF boards have felt that in-house corporate attorneys, attorneys in positions that do not require the practice of law, out of state attorneys, attorneys with less than ten-years’ experience, and attorneys who have not been in private practice were less likely to have the experience most helpful to the PLF. This has been especially true when other candidates meet the PLF’s geographic, subject matter and diversity criteria.

This year, 13 individuals expressed interest in serving on the PLF board. As part of the selection process, the names of potential board members were circulated to PLF staff, informal inquiries were made and, when appropriate, inquiries were made to OSB staff. Carol Bernick met either by phone or in person with all interested applicants. The PLF Board Nominating Committee met to discuss the nominations and settled on its recommendation to the Board. Finally, the full Board discussed the qualified applicants at its August 24, 2018 meeting and adopted the recommendations of the Nominating Committee.
Our current Board demographics (with the departure of the two members whose terms are expiring) are:

**Geography**
- Four Portland lawyers; one Portland public member
- One Mid-Valley lawyer
- One Central/Eastern Oregon lawyer

**Gender**
- Five women
- Two men

**Firm Size**
- Zero large (20+)
- Three medium (10-20)
- Two small (2-6)
- One solo

**Practice Area**
- Domestic Relations
- Complex Litigation (insurance defense)
- Litigation (plaintiff)
- Mediation
- Criminal
- Estate Planning
- Small Business

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1 Our departing lawyer member is a male plaintiff’s personal injury attorney in a small firm in Medford. Our departing public member is from Salem.
Based on the due diligence of the work described above, the PLF Board recommends the BOG appoint one of the following individuals to the PLF Board (in order of preference):

**LAWYER MEMBER**

**Gina A. Johnnie. OSB #872630, Salem.**

Gina is a creditor’s rights and banking lawyer in Salem at Sherman Sherman Johnnie & Hoyt, a seven lawyer firm. She is a 1987 graduate of Willamette University College of Law. Before moving to a transactional practice, Gina did construction litigation. Her primary focus now is putting together and, when necessary, taking apart commercial loans. She also serves as outside counsel to many small businesses. Gina is a former BOG member (2008-2011), president of the Marion County Bar and an active volunteer in many community organizations. Bankruptcy and creditor’s rights are frequent areas for claims. As the law in this area is quite specialized, it is helpful for Claims Attorneys to have bankruptcy expertise on our board.

**Carolyn G. Wade. OSB #832120, Salem/Eugene.**

Carolyn is a 1983 graduate of the University of Oregon School of Law. After clerking for Lane County Judge Merten for a year, she was in private practice for 25 years in Eugene at a number of firms (including her own), practicing for all sides in debtor/creditor relations. Her last private firm employment was with Hershner Hunter where she remained until in 2000 when she left to join the Oregon Department of Justice in the Civil Enforcement/Recovery Division. She is now the lead bankruptcy counsel for the state. Although Carolyn is not currently in private practice, she was for most of her career, is actively interested in serving on the PLF Board, comes highly recommended by Julia Manela (former Board Chair) and practices in an area that would be particularly useful to the Claims Attorneys.

**Tom Kranovich. OSB #824497, Lake Oswego.**

Tom is a seasoned Clackamas County civil litigator (primarily insurance defense). He began his practice in 1979. In 1982 he moved in-house for an insurance company for 15 years. He remained an active trial lawyer during that time. He also served as a pro tem Circuit Judge. He returned to private practice in 2002. Tom is an active volunteer in a variety of bar activities, both with Clackamas County and for the Oregon State Bar, including serving on the BOG from 2010-2014, the last year as President. He is a strong advocate for the unified (mandatory) Bar and for the PLF. He wants to serve on the PLF board in part due to what he sees as increasing attacks on our legal institutions, including the Oregon State Bar. He is interested in the challenges ahead for the PLF with the possible licensing of paralegals to perform limited legal work and changes to bar admission (e.g. allowing people to sit for the bar without attending law
school). Tom is particularly active in and has been recognized by the Bar for his commitment to and work towards diversity, equity and inclusion.

PUBLIC MEMBER

We only had two applications for the open public member position. Both are qualified. The PLF Board recommends the BOG appoint one of the following public members to the PLF Board (in order of preference):

Patrick Hocking. Medford.

Patrick retired as the Chief Finance and Administrative Officer of Asante Health System in 2017, where he had worked for thirty years. Before joining Asante in 1987 as the Director of Finance, he was an auditor for four years at Deloitte Haskins & Sells. He has a Bachelors of Science in Business with an accounting emphasis from Southern Oregon University (1983) and a Masters in Finance from Northeastern University (2012). The PLF Board has greatly benefitted from the finance expertise of current Board member, Tom Newhouse.

Michael B. Batlan. Salem.

Michael’s professional career has mostly been as a Chapter 7 and Chapter 11 Bankruptcy Trustee. He retired in 2017, although is wrapping up some cases. His interest in the position stems from his work with lawyers professionally as well as the fact that he is “surrounded by lawyers” at home. His wife, Kathy Evans, is an estate planning lawyer in Salem and a former BOG president. His daughter is also a practicing lawyer. He met PLF staff and BOD members when his wife was on the BOG and found the work of the PLF interesting. His has an MBA from Willamette University (1981) and a BS in Economics from Willamette. He is also a Pac-12 football referee. Although he will no longer be in the field, he will be in San Francisco most Saturdays in the fall to serve in the centralized playback booth.

Attachments

1. List of all Applicants (copies of resumes for any applicants not listed above are available by request)
2. Resumes for applicants listed above

CJB/clh
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<thead>
<tr>
<th>Name</th>
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<th>Firm/Other</th>
<th>Comments</th>
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<td>Smith Freed &amp; Eberhard Portland</td>
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<td>040660</td>
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<td>751929</td>
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<td>Kranovich, Tom</td>
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<td>Kranovich &amp; Lucero LLC Lake Oswego</td>
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</tr>
<tr>
<td>Levinson, Aurora</td>
<td>135705</td>
<td>Legal Aid Services of Oregon Salem</td>
<td></td>
</tr>
<tr>
<td>Nelson, Roscoe</td>
<td>732218</td>
<td>Nelson &amp; Nelson Portland</td>
<td></td>
</tr>
<tr>
<td>Philips, Rachel</td>
<td>053489</td>
<td>Philips Consulting Group Oregon City</td>
<td></td>
</tr>
<tr>
<td>Wade, Carolyn G.</td>
<td>832120</td>
<td>DOJ Civil Enf Civil Recovery Salem</td>
<td></td>
</tr>
<tr>
<td>Zammetti, Jen</td>
<td>165208</td>
<td>Law Office of Donald L Scales Medford</td>
<td></td>
</tr>
<tr>
<td><strong>Public Applicants</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Batlan, Michael</td>
<td>N/A</td>
<td>Salem</td>
<td></td>
</tr>
<tr>
<td>Hocking, Patrick</td>
<td>N/A</td>
<td>Medford</td>
<td></td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td>15</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Gina Anne Johnnie

Practice

Gina focuses her practice in banking and lending law, creditor’s rights, agriculture, construction, and real estate law.

Gina’s background in construction litigation and project financing is an asset in serving financial institutions and efficiently managing complex, multi-state business transactions. Though she enjoys working across many areas of law for clients facing different kinds of legal issues, the bulk of her work is focused on putting together and, if necessary, taking apart commercial loans. In addition, she serves as outside counsel to small to medium businesses and assists individual clients on select issues.

Professional and Community Service

- Oregon State Bar Board of Governors (2008-2011)
- Willamette Valley American Inn of Court – Current President
- Habitat for Humanity of the Mid-Willamette Valley – Pro Bono Volunteer
- Habitat for Humanity of the North Willamette Valley – Pro Bono Volunteer
- Boys & Girls Club of Salem, Marion & Polk Counties Foundation Board – Board Chair
• Marion County Bar Association – Former President
• YWCA Salem – Former Board Member
• Salem Kiwanis Club – Former President
• Salem Outreach Center – Former Board Member

Recent Publications

• All Lenders Should Be Aware of the MERS Decision, August 2012, SSJH Updates
• Reaffirming Debts in Bankruptcy, March 2012, SSJH Updates
• Oregon State Bar’s Board of Governors: The Ending of a Term, February 2012, SSJH Updates
[Instructions to Applicant: Please insert the information requested based upon that which you supplied in the full application form].

APPLICATION SUMMARY

Name: Carolyn G. Wade
City of Residence: Eugene, Oregon

Present Affiliation: Oregon Department of Justice

Position: Senior Assistant Attorney General
Since: 2005

5 year Practice History
Bankruptcy 83 %; Commercial Law 5 %; Gen. Civil Law 10 %; Other 2 %

Previous Affiliations (last 15 years)

<table>
<thead>
<tr>
<th>Dates</th>
<th>Organization</th>
<th>Location</th>
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<tr>
<td>2001-2005</td>
<td>Hershner Hunter, LLP</td>
<td>Eugene, Oregon</td>
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<tr>
<td>1993-2001</td>
<td>Muhlheim Palmer &amp; Wade, PC</td>
<td>Eugene, Oregon</td>
</tr>
<tr>
<td></td>
<td>(also Muhlheim Palmer Zennaché &amp; Wade PC)</td>
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</tr>
</tbody>
</table>

Education

Undergraduate: Dartmouth College Degree: A.B. Year: 1980
Law School: University of Oregon Degree: J.D. Year: 1983

Special achievements, recognition, publications (academic or otherwise):

Board Certified - Business Bankruptcy Law - American Board of Certification, 1994-2008*
Board Certified - Consumer Bankruptcy Law - American Board of Certification, 1994-2008*
(*I allowed both certifications to lapse December 31, 2008)
AV rating by Martindale-Hubbell for ten consecutive years
Registered qualified mediator with the U.S. Bankruptcy Court for the District of Oregon
Claims, Supplement to Chapter 5 in Bankruptcy Law (Oregon CLE 1989, 1995 Supplement, Oregon State Bar)
"Whom Can I Pay?" the Client Asks, OSB Debtor-Creditor Newsletter, Summer, 1998

Professional, community, or public service activities/awards:

Attorney Admission Fund Committee, U.S. District Court for the District of Oregon, Member, 2000 to present
Roland K. Rodman, American Inns of Court, Member, 1994-2006, 2007 to present
Executive Committee 2000-2006, 2007 to present
Northwest Bankruptcy Institute Planning Committee Member, 1995-1996, 2009-present
Planning Committee Co-Chair, 1997-1998
APPLICATION FORM

UNITED STATES BANKRUPTCY JUDGE
IN THE DISTRICT OF OREGON

A. Biographical Information

1. Name Wade Carolyn Graff
   (Last) (First) (Middle)

   Carolyn Anne Graff
   Maiden Name, if any

2. Residence 3977 Sundial Road
   Street
   Eugene, Oregon 97405
   City, State and Zip Code

   (541) 485-0172
   Home Telephone

   onehsancare@yahoo.com
   Email Address

   (____) (____) (____) 373-7067
   Home Fax

3. Business address Department of Justice
   Name
   1162 Court Street, NE
   Street
   Salem, Oregon 97301
   City, State and Zip Code

   (541) 686-7846
   Business Telephone

   Carolyn.G.Wade@doj.state.or.us
   Email Address
4. The Circuit Executive's Office should send correspondence to:

☐ Business  ☒ Home  ☐ Email

5. Length of residence in state 45 years

6. Country of citizenship  U.S.A.

If you are a naturalized citizen, please state the date and place of naturalization:

________________________________________________________________________

7. Have you applied for any other bankruptcy judgeship vacancy in the Ninth Circuit within the last five years?  ☐ Yes  ☒ No

If yes, please list the year(s) of your application(s) and the district(s) in which the vacancy(ies) existed:

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

How did you first learn of this vacancy?


☐ Publication/Ad? Name of publication?

☐ Bar Association? Which one?

☐ Other (please specify):  _____________________________________________________________________________
B. **Present Affiliation**

1. Your title or position  **Senior Assistant Attorney General**

2. Name of Firm/Employer  **Oregon Department of Justice**

3. Your supervisor's or managing partner's name  **Michael Grant**

4. His/her title or position  **Assistant Attorney-in-Charge, Civil Recovery Section**

5. Dates of affiliation  **August 1, 2005 to present**

6. Salary or net income (annual)  **$154,966**

7. May this firm or employer be contacted about your application for this position?  

   X Yes  ____ No

8. Give a synopsis of this position including nature of practice and types of matters accounting for most of your time.

   I have the primary responsibility for all bankruptcy cases involving the State of Oregon. That work is extremely varied and multi-faceted. Many of the cases that the State becomes involved in are consumer cases, while other, larger cases (such as Enron, Delta Airlines, Washington Mutual Bank, Lehman Brothers, etc.) involve complex business and financial matters. The State's interest in bankruptcy cases can involve anything from defending the priority or non-dischargeability of tax debts, to negotiating with debtor's counsel to move feral cattle off of state lands, to ensuring that the State's police powers are not impaired.

   I represent the Division of Child Support in bankruptcy courts across the country. By far, the majority of those cases (about 75%) are motions to dismiss chapter 13 cases or objections to confirmation for debtor’s failure to pay post-petition child support. Individually, these cases do not have significant recoveries, but collectively, this has been part of my most significant work at the Department of Justice. My steady focus on these matters has led the debtor’s bar to appreciate how seriously the State takes its obligation to protect children, and allowed us to resolve many more similar cases without having to file a motion to dismiss.

   Occasionally the governor asks for advice about signing a bill that has bankruptcy implications; it is my responsibility to research and draft the memo that the attorney general uses as the basis for his memo to the governor. If the attorney general contemplates taking a position on an amicus brief filed by a group of states on an appeal to the United States Supreme Court that involves a bankruptcy question, I research and draft a memo regarding that decision. I co-wrote and researched the states’ amicus brief for certiorari and the amicus merits brief to the United States Supreme Court in *United Student Aid Funds v. Espinosa*.

   In addition to this work, I do all of the State's collection work in Washington and Idaho.
C. **Past affiliations**

Prior Positions (List experience for last fifteen years, excluding your current position)

C.1 Employer: Hershner Hunter LLP

Address: 180 E. 11th

Eugene, OR 97401

Telephone: (541) 686-8511

Supervisor/Managing Partner: K. Patrick Neill

Position(s) you held: Of Counsel
(e.g., associate, partner)

Dates of employment: December 31, 2001 – June 30, 2005

Salary or net income (annual): $92,504

Duties:

I joined a Creditors’ Rights practice group that represented business clients in collection matters, drafting forms, and some transactions. Those clients ranged from major financial institutions and credit unions to material suppliers, equipment renters, private lenders, lumber yards, general contractors, subcontractors, architects, and engineers. While I was there, we began representing chapter 7 trustees in adversary proceedings. I had primary responsibility for the firm’s bankruptcy cases.

Reason for leaving:

The firm did not want to continue to represent chapter 7 trustees, as such representation is both contingent on success and limited to an hourly rate. The other bankruptcy work had slowed and I thought I would be more challenged by the work I knew was available at the Department of Justice.
The firm focused its practice on complex debtor-creditor issues. We divided ourselves into three (flexible) teams. I led a bankruptcy team, which consisted of three lawyers, a legal assistant, and a secretary. The bankruptcy team represented debtors and creditors in all aspects of Chapters 7, 11, 12, and 13.

I generally met with clients at their first appointment to learn about their business and do a preliminary determination of the best course of action. So that they understood their options and my recommendations, I spent a considerable amount of time describing the bankruptcy process, and the purposes and effects of the different chapters.

Depending on the course of action, I may have retained primary responsibility (as I did for most Chapter 11 and all Chapter 13 cases) or assign another lawyer to that role. In addition to supervising the drafting of schedules and ensuring that all filing requirements were met, I developed strategies, negotiated with creditors, and drafted plans. I litigated if necessary, and monitored cases through closing.

Reason for leaving:

The firm dissolved when communication and decision-making among the shareholders broke down. Our landlord filed an involuntary bankruptcy against the firm and our lender filed a collection action.
D. **Description of Legal Practice**

1. Approximately what percentage of your time in the last five years concerned:
   
<table>
<thead>
<tr>
<th>Matter</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bankruptcy matters</td>
<td>83</td>
</tr>
<tr>
<td>Other commercial law</td>
<td>5</td>
</tr>
<tr>
<td>General civil law</td>
<td>10</td>
</tr>
<tr>
<td>Other*</td>
<td>2</td>
</tr>
</tbody>
</table>

2. Estimate the percentage of your total time in legal work during the last five years that was:
   
<table>
<thead>
<tr>
<th>Activity</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Spent in litigation (trial, motions, depositions)</td>
<td>30</td>
</tr>
<tr>
<td>Spent in negotiations</td>
<td>34</td>
</tr>
<tr>
<td>Spent in legal research</td>
<td>15</td>
</tr>
<tr>
<td>Spent in legal drafting and writing</td>
<td>15</td>
</tr>
<tr>
<td>Spent supervising the legal work of others</td>
<td>4</td>
</tr>
<tr>
<td>Spent in office management/administration</td>
<td>2</td>
</tr>
<tr>
<td>Other*</td>
<td></td>
</tr>
</tbody>
</table>

3. Considering only your practice of bankruptcy law within the last five years, please estimate the percentage of your time spent within your bankruptcy practice in each category. *All entries combined should equal 100%.*

<table>
<thead>
<tr>
<th>Representing ----------&gt;</th>
<th>Debtors</th>
<th>Creditors</th>
<th>Trustees**</th>
<th>Other</th>
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<tbody>
<tr>
<td>Under Chapter 11</td>
<td></td>
<td>20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under Chapter 7</td>
<td></td>
<td>40%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Under Chapter 13</td>
<td></td>
<td>40%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Chapter(s) (specify)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* If any single activity occupied more than 10% of your time, indicate the nature of that activity.  
** Includes serving as a Trustee.
3.1 Summarize your bankruptcy experience and practice, if any.

I have practiced bankruptcy law since 1985, representing debtors in Chapter 7 and 13, trustees in Chapter 7, DIPs and creditors' committees in Chapter 11, family farmers in Chapter 12, and other secured and unsecured creditors in virtually all chapters. My clients have been the State of Oregon, individuals, physicians, accountants, large manufacturing facilities, wood products companies, and utilities. My business bankruptcy cases include some of the largest ever filed in Oregon. My cases range from straightforward bankruptcies which follow a predictable path to cases involving complex legal questions requiring extensive research and creative thinking. I was certified in business and consumer bankruptcy from 1998 to 2008, and continue to meet the requirements for certification.

4. Provide the following information on five significant cases in which you were involved during the past five years.


Court and case citation number: U.S. District Court, S.D.NY. Adv. Pro. 09-00511 (if any)

Nature of case: declaratory and injunctive relief under 28 USC §2201, to declare state statute preempted by Bankruptcy Code and prior ruling of Bankruptcy Court

Your role in case: defended the Oregon defendants

Results of your activities in this case:

This case arose out of the adoption of state statutes intended to protect car dealers from the effect of Chrysler Corporation's wholesale rejection of dealer contracts, giving the cancelled dealers a right of action against Chrysler. I opposed plaintiffs' motion for summary judgment arguing that the Oregon defendants were not the proper parties (unlike the other states' statutes, the Oregon statute did not give the state any enforcement right), and that the court did not have subject matter jurisdiction over the dispute, in that plaintiffs did not have standing and that the claim was not ripe.

North Carolina settled. Summary judgment was granted in favor of Chrysler against Illinois and Maine. Judge Castel agreed that the Oregon defendants were not the proper parties and denied Chrysler's motion for summary judgment. The parties entered into a stipulation for dismissal.

Co-counsel(s): Elizabeth J. Wyman, AAG

Name
Opposing counsel(s)  Gwen J. Young  
Name  
1801 California Street, Suite 3600  
Street  
Denver, CO 80202-2617  
City/State/Zip Code  
(303) 244-1843  
Phone  

4.2 Case name  In re Stewart and Charlotte Nussbaum  
Court and case citation number  U.S. Bankruptcy Court, Oregon, 09-36080-fra13  
(if any)  
Nature of case  Chapter 13, confirmation hearing  
Your role in case  represented Department of Consumer and Business Services, a priority creditor  

Results of your activities in this case:  
Mr. Nussbaum was the sole proprietor of a contracting business and did not maintain workers’ compensation insurance. An employee of the business was injured on the job and Mr. Nussbaum was assessed by DCBS with civil penalties, claims costs, and other miscellaneous fees totaling over $78,000. The debtors filed a chapter 7. Because the date of the injury was less than three years before the date the bankruptcy was filed, the bulk of DCBS’s claim was a priority claim under §507(a)(8)(E)(ii), and was not dischargeable under §507(a)(1)(A).  

Mr. Nussbaum learned for the first time that the bankruptcy might not relieve him of the liability underlying DCBS’s claim in this case when the Construction Contractors Board suspended the license of NT Contractors LLC, Mr. Nussbaum’s employer and an LLC of which he is a member. Mr. Nussbaum filed a motion to convert the case to one under Chapter 13 about a month later.  

At the hearing on confirmation, it became clear that debtors could not propose a confirmable plan. The court could then, on request of a party in interest, convert or
dismiss the case, for cause, whichever was in the best interests of creditors and the estate, under §1307(c). Debtors moved to dismiss the case. I objected, citing §1307(b) and §707(a). There were no cases directly on point, and the court was inclined to dismiss the case. After briefing and argument, the court converted the case, preserving my client’s claim.

Co-counsel(s) N/A

Name

Opposing counsel(s) John D. Curtis

Name

55 N. Third Street

Street

Central Point, OR 97502 (541) 664-1218

City/State/Zip Code Phone

4.3 Case name In re Mathew Ray, Ray v. State of Oregon et al.

Court and case citation number U.S. Bankruptcy Court, Oregon, 05-71986-fra7, Adv. Pro. 06-6025-fra

Nature of case declaratory and injunctive relief regarding stay violation, §525

Your role in case defended the State

Results of your activities in this case

The important issue this case presented was whether the anti-discrimination provisions of §525 would override the Construction Contractors Board’s ability to limit who was entitled to be licensed as a contractor. The CCB took the position that the provisions of ORS 701.102, which along with the regulations interpreting it, required it to deny a license to Mathew Ray, on account of the unpaid construction debts of his prior corporation, Matt Ray Construction, Inc.

My cross-motion for summary judgment was denied, but the case was significant in that it clarified an area of the law that had been problematic for both contractors and the CCB for many years, and suggested in Judge Alley’s opinion that other methods to protect the public, such as requiring an increased bond, would likely not be viewed as discriminatory under §525.
The ruling also helped other state agencies understand the proper scope of their police powers in their ability to deny licenses and other permits to debtors in bankruptcy.

Co-counsel(s)  N/A

Name

Opposing counsel(s)  Keith Karnes

Name

PO Box 12829

Street

Salem, OR 97309-0829  (503) 362-9393

City/State/Zip Code  Phone

4.4 Case name  In re Ellen Willfley

Court and case citation number  U.S. Bankruptcy Court, Oregon, 04-43811-tmb7, Adv. Pro. 06-03231-tmb
(if any)

Nature of case  Declaratory and injunctive relief, determination of extent, validity, and priority of liens, avoidance of fraudulent transfers

Your role in case  represented Oregon Department of Revenue

Results of your activities in this case

Mrs. Willfley and her now-deceased husband were taxpayers with a long history of constitutional issues. They moved to Oregon from California in 1979, already having transferred all of their assets to a trust and already being deeply in debt to the IRS. Their large property in Mulino had been transferred among several closely-held LLCs and family trusts and was subject to a judgment lien in favor of one of the trusts. The trustee of her chapter 7 estate sued those entities to avoid the transfers and the judgment lien and sued the IRS and ODR for a declaration of everyone’s respective rights in the property.

The debtor’s answer raised frivolous affirmative defenses. Summary judgment was denied. I worked cooperatively with counsel for the IRS, Anton Janik, now in private practice, to develop evidence about the Willfleys’ income, to support the basic amount of our claims, about the formation of and transfers to the trusts, to aid the trustee’s arguments that they were fraudulent, and to establish the technical proof to determine the dates our taxes were due, to assign priority to each authority’s tax period’s obligations. The IRS and ODR consensually resolved the relative priorities of
their liens. The court declared that the estate owned the property, and that the IRS was secured by its judgment lien not its notices of federal tax lien. All that was left for trial was the ODR claim. After several days of trial, the court took the matter under advisement.

We had a settlement conference with Judge Dunn. We ended up agreeing to cap the ODR claim at $90,000; when the property eventually sold, we received almost $77,000.

Co-counsel(s) Anton Janik

Name

425 West Capitol Avenue, Suite 1800

Address

Little Rock, AR 72201-3525 (501) 688-8888

City/State/Zip Code Phone

Opposing counsel(s) Tara Schleicher

Name

121 SW Morrison, Suite 600

Street

Portland, OR 97204 (503) 228-6044

City/State/Zip Code Phone

Opposing counsel(s) James Leuenberger

Name

PO Box 1684

Street

Lake Oswego, OR 97035 (503) 542-7433

City/State/Zip Code Phone

4.5 Case name In re Richard F. and Patricia G. Munoz

Court and case citation number U.S. Bankruptcy Court, Oregon, 07-60061-fra13 (if any)

Nature of case Motion to dismiss chapter 13 for failure to pay post-petition taxes

Your role in case represented Oregon Department of Revenue
Results of your activities in this case

Three and a half years into their chapter 13 case, the debtors had accrued three years of post-petition tax debt, each year incurring a larger tax than the year before. A payment plan with ODR had been broken, Mr. Munoz's Oregon withholding status had remained at “married with 20 exemptions” for almost two years after he had been instructed to correct it, and efforts to work with the debtors had been unavailing.

We had a trial on the motion to dismiss. Debtors argued that ODR should have changed their exemptions for them. Debtors asked the court to require ODR to file §1305 claims for the post-petition tax years, so the more than $6,000 in post-petition taxes could be paid through the plan over the remaining life of the plan, without interest and without penalties.

The court found grounds to grant the motion to dismiss, gave the debtors six months to pay all of the post-petition taxes plus interest and penalties in full, and required that the 2010 income tax return be filed on time with full payment for any tax due. The court ruled that only the taxing authority can choose to file a §1305 claim.

Co-counsel(s) N/A

Name

Opposing counsel(s)  R. Brooke Holstedt

Name

P.O. Box 3018

Street

Salem, OR 97302  (503) 363-8959

City/State/Zip Code
E. **Education**

1. Undergraduate institution(s) __Dartmouth College__
   
   Dates attended __September 1976 to June 1980__
   
   Degree(s) received and date graduated __A.B., June 8, 1980__
   
   Major field(s) of study __Religion__

2. Law school name* __University of Oregon School of Law__
   
   Law school address __1221 University of Oregon Street__
   
   Eugene, OR 97403-1221
   
   City/State/Zip Code
   
   Class standing (if known) __unknown__
   
   Dates attended __August, 1980 to May 1983__
   
   Degree received and date graduated __J.D., May 1983__

3. Other law or graduate education received __N/A__
   
   Institution attended
   
   Course of study
   
   Degree received and date graduated

4. Describe any honors, awards, law review or other activities or achievements.

   Student Bar Association representative
   
   Justice, University Elections Court
   
   Advisory Committee on Financial Aid and Pre-Law Curriculum (member)
   
   Phi Delta Phi, member 1981-1983, Historian 1982-83
July 6, 2018

Carol J. Bernick  
Professional Liability Fund  
P.O. Box 231600  
Tigard, OR 97281-1600  

Carolb@osbplf.org  

RE: PLF Board of Directors

Dear Ms. Bernick:

Please forgive my last minute expression of interest but if the PLF is so inclined, I would deem having a seat on the PLF Board to be both a privilege and honor.

I have been a member of the Oregon State Bar since 1982 and I clerked in Clackamas County Circuit Court for three years while in law school so I have been a part of the legal community for 38 years a variety of positions.

Upon passing the bar I was hired as a general litigation attorney by a small firm in Canby where I did civil and criminal trial work, along with a bit of estate work, for five years. I left Canby to work as in-house counsel for a large insurance company where after eight years of trial work I became the managing attorney for seven years.

Towards the end of my tenure with the insurance company I was appointed and served as a Circuit Court Judge Pro Tempore in Clackamas County. In 2002 I went back into private practice as a sole practitioner and after a year hired Angela Franco Lucero as an independent contractor. Within a year Angela became my associate and ultimately my business partner.

I am a past secretary and past president of the Clackamas County Bar Association and I have served on several OSB committees over the years including the Judicial Administration Committee, of which I was chair for two years, and the Affirmative Action Committee (as it was then known). I resigned my pro tempore judicial appointment so that I could serve on the Oregon State Bar Board of Governors. My term on the BOG ended in 2014.

For the last 20 years I have been involved in the bar’s diversity initiatives. I have been awarded two President’s Awards. I have been an adjunct professor at Lewis and Clark Law School.
The Oregon State Bar has many distinguishing attributes but the one that universally stands out is PLF. In my travels around the country on behalf of the Board of Governors the first thing officers from other state bars would mention was how fortunate Oregon was to have the PLF. In my four years on the board I never heard one complaint about the PLF. I also know that there are challenges ahead for the PLF not the least of which are movements that are afoot to provide greater access to justice through the use of Limited Liability Legal Technicians and allowing people to sit for the bar by reading for the law. For these reasons, and more, I am interested in furthering the work of the PLF. If allowed, I would gladly serve a five year term.

Sincerely yours,

Tom Kranovic
Patrick Hocking
1562 Cypress Point Dr, Medford 97504
541-601-5555
patrick.hocking5@gmail.com

Overview
Retired healthcare finance executive with a passion for finance who is excited to share his passion and financial knowledge with individuals pursuing a career in finance or healthcare.

Education
- Southern Oregon University, Bachelors of Science in Business, accounting emphasis, 1983
- Northeastern University, Masters of Science in Finance, 2012

Experience
- Asante Health System
  - 2012-2017 – Chief Finance and Administrative Officer. Responsible for overseeing all financial and regulatory issues for Asante, including accounting, budgeting, finance, investments, materials management, billing and collections, payer contracting, debt, capital structure, insurance, licensure and compliance.
  - 2002-2012 – Director of Strategy and Business Development. Oversaw strategy development and implementation, business development activities including mergers and acquisitions, program development and major capital investments.
  Met with individual clients and assisted them in the development of their retirement plan.
- Deloitte Haskins and Sells, Auditor, 1983-1987
  Performed audits in a number of industries, ultimately progressing to Senior Auditor specializing in healthcare audits.

Skills and Licensure
- Excellent communicator skilled at taking complex financial concepts and simplifying them, making them understandable and applicable to an audience. Thoroughly enjoyed the internal training and educational opportunities I was given at Asante and was used extensively by the organization for this teaching purpose.
- Proficient in Excel and PowerPoint.
- Have been a licensed CPA in Oregon, passing the exam in 1983. As of July 2017, transitioned to an inactive license status due to my retirement in January 2017.
Experience

**Panel Chapter 7 Bankruptcy Trustee**
- Appointed to the Panel for the District of Oregon in 1989
- Report annually to the U.S. Trustee’s Office
- Audited regularly by the U.S. Department of Justice

**Court-appointed Chapter 11 Trustee**
- Reorganized various businesses after proposing plans confirmed by the U.S. Bankruptcy Court
- Completed liquidations under confirmed plans

**Fiduciary in Non-Bankruptcy Cases**
- State court appointed receiver in many cases over the years in various Oregon circuit courts, beginning in 1985
- Selected to serve as Assignee for the Benefit of Creditors in various out-of-court liquidations

**Oregon Bank**
- Commercial Loan Officer, 1976 to 1980
- Worked in banking operations, 1974 to 1976

Education

MBA, Willamette University, 1981
BS, Economics, Willamette University, 1975

References

References and names of cases handled both available on request.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
Memo Date: August 27, 2018
From: PLF Board of Directors
Re: PLF Primary Coverage Plan

Action Recommended

The PLF Board of Directors requests the BOG approve the following changes to the PLF Primary Coverage Plan for 2019. Because the Primary Plan is incorporated into the Excess Plan, these changes would also apply to the Excess Plan for 2019.

1. **Amendment of the Defense Provision**

We propose to amend the defense provision to make it less confusing to some of our Covered Parties. This is simply a change to the order of the language on page 1 of the 2018 Plan. We do not intend this change to have any substantive effect.

B. **Defense**

1. The PLF will defend a Covered Party against any Suit seeking Damages to which this Plan applies until the Claims Expense Allowance and the Limit of Coverage are exhausted, the PLF will defend a Covered Party against any Suit seeking Damages to which this Plan applies. The PLF is not bound by any Covered Party’s agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.

| Suit means a civil lawsuit. Suit also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.
2. **Amendment of Exclusion 2 – Wrongful Conduct**

The PLF issues Plans individually, to each lawyer. Under the more recent Plan language, the only Covered Parties under each of these Plans are the individual lawyer, named on the Declaration page, and any Law Entity that is legally liable for any Claim against that individual lawyer. Exclusion 2, on page 8 of the 2018 Plan, excluding certain wrongful acts, contains a provision intended to say that innocent Covered Parties are not subject to Exclusion 2. We would like to clarify this provision in order to state the PLF’s intent as to when a Law Entity, sued for the wrongful conduct of a member of the firm, qualifies as an innocent Covered Party. To clarify the PLF’s intent in this regard, we propose the following amendment:

2. **Wrongful Conduct.** This Plan does not apply to any Claim based on or arising out of:

   a. any criminal act or conduct;
   
   b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct;
   
   c. any intentional tort; or
   
   d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

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

However, this Exclusion 2 does not apply to You if You: did not commit or participate in any acts or conduct set forth in subsections (a) through (d); had no knowledge of any such acts or conduct at the time they occurred; and did not acquiesce or remain passive after becoming aware of such acts or conduct.

Exclusion 2 does not apply to any Law Entity covered under this Plan unless a member of the Control Group of the Law Entity:

(1) committed or participated in any acts or conduct set forth in subsections (a) through (d); or
(2) had knowledge of any such acts and acquiesced in them or failed to take, or attempt to take, corrective action.

Control Group includes all persons who are managers or officers of the Law Entity, and/or all persons with authority to act, make decisions or enter into agreements on behalf of the Law Entity.

3. Amendment of Exclusion 6 – Business Interests

The intent of Exclusion 6 is to ensure that the Plan excludes claims where the lawyer has a significant connection with the business enterprise making the Claim, beyond providing legal representation or services, or had such significant connection with the business enterprise at the time of the acts errors or omissions on which the Claim is based. To allow coverage under those scenarios invites collusion as the Covered Party may essentially be both the plaintiff and the defendant, or the Covered Party may have an incentive not to defend the Claim. Recently, we concluded that this long-standing intent was not articulated as clearly as would be ideal and therefore recommend the following change:

6. Business Interests. This Plan does not apply to any Claim relating to or arising out of any business enterprise:

a. In which You are a general partner, managing member, or employee, or in which You were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the Claim is based;

b. That is controlled, operated, or managed by You, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by You at the time of the alleged acts, errors, or omissions on which the Claim is based; or

c. In which You either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the Claim is based unless: (i) such interest is solely a passive investment; and (ii) You, those controlled by You, Your spouse, parent, stepparent, child, sibling, or any member of Your household, and those with whom You are regularly engaged in the practice of law, collectively own, or previously owned, an interest in the business enterprise of less than 10%.

6. Business Interests. This Plan does not apply to any Claim by a business enterprise:
a. In which You have an Ownership Interest; or in which You are a general partner, managing member, or employee; or in which You control, operate or manage, either individually or a fiduciary capacity, any property that is owned, managed or maintained by the business enterprise; or

b. At the time of the alleged acts, errors or omissions on which the Claim is based: You had an Ownership Interest in the business enterprise; You were a general partner, managing member, or employee of the business enterprise; or You controlled, operated or managed, either individually or a fiduciary capacity, any property that was owned, managed or maintained by the business enterprise.

Ownership Interest means either You, those controlled by You, Your spouse, parent, stepparent, child, stepchild, sibling, any member of Your household, or those with whom You are regularly engaged in the practice of law collectively own more than 10% of the business enterprise or owned more than 10% of the business enterprise at the time of the alleged acts, errors or omissions on which the Claim is based.

4. Amendment of Exclusion 16 – Harassment and Discrimination

The current language of Exclusion 16, on page 16 of the 2018 Plan, is overly broad because, for example, it could apply to employment lawyers who work on investigations for clients regarding workplace harassment or discrimination. We propose to narrow the language of the exclusion as follows:

16. Harassment and Discrimination. This Plan does not apply to any Claim based on or arising out of harassment or discrimination by any Covered Party on the basis of race, creed, age, religion, sex, sexual orientation, sexual identity, disability, pregnancy, national origin, marital status, or any other basis protected by law.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
Memo Date: August 27, 2018
From: PLF Board of Directors
Re: 2019 PLF Budget, 2019 Assessment, and 2019 PLF Payment Deadlines

I. Action Recommended

The PLF Board of Directors approved the following actions at its August 24, 2018 meeting and requests the BOG also approve them:

1. The 2019 PLF budget as attached as Exhibit A
2. The 2019 PLF Assessment of $3,300
3. The deadlines for payments of the PLF assessment

II. Executive Summary

1. The PLF Board of Directors is recommending a 4.0% salary pool. The Bureau of Labor Statistics report for Urban areas in the Western Region (Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming) states the CPI has increased 3.6% from a year ago. In large urban areas, the rate is 3.9%. The salary pool is separate from budgeted dollars for salary reclassifications (explained in detail on page 4).

2. Indicators point toward a larger increase to the cost of medical benefits in 2019 than was experienced in 2018. The increase from 2017 to 2018 was approximately 7.1%. The budgeted increase for 2019 is 8.0%.

3. PERS Tier 1 and 2 rates increased by almost 5% from the biennium ending June 30, 2017 to the one ending June 30, 2019. The increase for OPSRP employees was 3.5%. We anticipate this trend will continue. Therefore, we are budgeting a 5.42% increase for Tiera ½ employees and 3.48% for the OPSRP group.
4. Operations expenses are budgeted to increase in 2019 by about 14%. This is due largely to increased healthcare premiums; increased PERS contributions; and budgeting the PERS pension and interest expense for the first time.

5. The PLF ended 2017 approximately $7 million above its net position goal of $13.3 million. In light of that, the BOD recommends reducing the 2019 assessment to $3,300.

III. **2019 PLF Budget**

**Number of Covered Attorneys**

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

For the Primary Program, new attorneys paying reduced primary assessments and lawyers covered for portions of the year have been combined into “full pay” attorneys. We project 6875 “full-pay” attorneys for 2019. The actual number of covered parties in 2019 is budgeted at 7150.

In 2019 the PLF Excess Program will be focused on reducing exposure within the current book of business. The number of budgeted covered attorneys in 2019 will decrease by approximately 1.5% from the 2018 total to 2036 attorneys. Ceding commission is budgeted to remain flat from the 2018 projection.

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

The Excess Program assets, liabilities, revenues and expenses are accounted separately from the Primary Program. The Excess program reimburses the Primary Program for services to ensure the Primary Program does not subsidize the cost of the Excess Program. A portion of Primary Program salary, benefits, and other operating costs are allocated to the Excess Program. Salary and benefit allocations are based on a review of the time PLF staff spends on Excess Program activities. The Excess Program also pays for some direct costs, including printing, promotion, and reinsurance related travel.

**Primary Program Revenue**

Projected assessment revenue for 2019 is based upon a reduced basic assessment of $3300, down from $3500. There are 6875 “full pay” attorneys budgeted for 2019, bringing the annual assessment revenue to $22,687,500, down by 5.96% from the 2018 projected assessment.
The difference in revenue for 2019 between a $3500 assessment and a $3300 assessment is $1,375,000. The PLF outside actuaries support a reduction in our assessment.

Investment returns have been down considerably in 2018 compared to 2017. Additionally, the FMV of the portfolio has decreased in value. Mid-term elections, increased import/export tariffs, and destabilization of the European economy could all lead to a volatile market in 2019. We are being conservative in our expected return for 2019 setting it at 1.5%. Based on the value of the portfolio at June 30, 2018, a .5% change in the rate of return equates to approximately $287,651.

**Primary Program Claims Expense**

The most significant cost category for the PLF is claim costs for indemnity and defense. Since claims often do not resolve quickly, these costs are often paid over several years after the claim is first made. The ongoing calculation of estimated claim costs, along with investment results are the major factors in determining the Primary Program’s positive/negative in-year net position.

Budgeted claims expense is the estimated cost of new claims. When claims develop in a positive or negative way, reserves are released or need to be increased. For 2019, we are estimating a release of reserves of $500,000. This number is comparable to the release of reserves in June of 2018.

Our projections of claim costs for 2019 are based on a projected claim count of 850 claims. At August 31, 2018 the PLF annualized claim count was 835. The cost of each new claim in 2019 has been budgeted at $21,000, slightly above the June 30, 2018 actuarial recommendation of $20,800. The claims frequency anticipated for 2019 is 11.9%. By way of reference, a .05% difference in the number of claims equates to 42.5 claims or $892,500.

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

We have included “full-time equivalent” or FTE statistics to show PLF staffing levels from year to year. On the Budget document, each department is shown prior to Excess staff allocations. The FTE net of Excess allocations is shown below.

<table>
<thead>
<tr>
<th>Department</th>
<th>2018 Projections</th>
<th>2019 Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration</td>
<td>7.3 FTE</td>
<td>6.45 FTE</td>
</tr>
<tr>
<td>Claims</td>
<td>19.72 FTE</td>
<td>19.72 FTE</td>
</tr>
<tr>
<td>Loss Prevention (includes OAAP)</td>
<td>13.8 FTE</td>
<td>13.8 FTE</td>
</tr>
<tr>
<td>Accounting</td>
<td>7.34 FTE</td>
<td>7.34 FTE</td>
</tr>
<tr>
<td>Excess Allocations</td>
<td>2.67 FTE</td>
<td>2.52 FTE</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>50.83 FTE</strong></td>
<td><strong>49.83 FTE</strong></td>
</tr>
</tbody>
</table>


Salary Pool for 2019

We recommend a 4% cost of living increase for 2019. The Bureau of Labor Statistics no longer provides a CPI for Portland. Instead, it reports a CPI for the Western Region. The July 2018 report reflects an increase of 3.6% for all western states and 3.9% for large urban areas in the West. Last year, the year over year increase was 4.4% and the PLF Board and BOG agreed to a 4% salary pool. Our finance committee discussed the 4% pool at some length. PLF CFO Betty Lou Morrow reported that over the last five years, although the average salary pool increase was 3%, actual salary costs have increased only 1.96% due to attrition and how the salary pool was allocated. Moreover, the evidence shows that the delta between wages and housing costs in Portland is among the highest in the country. The blended “Western States” statistic does fully reflect that. The National Low Income Housing Coalition recently issued a report concluding that to afford a 2 bedroom house or apartment in Portland requires an income of $53,830 per year. Eight PLF employees make less than that and six others are within 10% of that rate. Finally, for those employees who have their spouse and/or children on our health plan, their out of pocket costs continue to go up by more than our average salary pool, essentially reducing the effect of their increase.

The budget also reflects planned reclassifications with a cost of $25,000. The salary reclassification includes the following:

1. Those employees who changed status (e.g. Claims Attorney I to Claims Attorney II).
2. An increase to salaries for recently hired employees hired at “probationary salaries.”
3. Address a historical lack of parity between the salaries of employees in positions with equivalent responsibilities.
4. Salaries for entry-level hires of exempt positions are significantly lower than experienced staff. As new staff members become proficient, their salaries are adjusted appropriately.

Benefit Expense

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

The employer contribution rates for PERS will increase on July 01, 2019. The table below reflects these estimated changes.

<table>
<thead>
<tr>
<th></th>
<th>2017-2019</th>
<th>2019-2021</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tier 1 and 2</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OPSRP</td>
<td>17.84%</td>
<td>23.26%</td>
<td>5.42%</td>
</tr>
<tr>
<td></td>
<td>10.78%</td>
<td>14.26%</td>
<td>3.48%</td>
</tr>
</tbody>
</table>

Unlike most state and local employers, the PLF does not “pick up” the mandatory 6% employee contribution to PERS. PLF employees have the 6% employee contribution deducted from their biweekly remuneration.
The PLF covers the cost of medical and dental insurance for PLF employees. We are budgeting for an 8% increase to the employer’s portion of the healthcare premiums.

A new budget item for 2019 is recognition of the development of pension usage through reserve increase and decreases. For 2019 the PLF is estimating an increase to reserves of $700,000. In 2017, the reserves increased by $741,371. We are projecting an increase to reserves of $700,000 for 2018 as well. Another new budget item, also related to PERS is recognition of PERS interest expense. This is the interest allocated to the PLF for unfunded actuarial PERS debt. In 2017 this expense was $44,000. We are budgeting the same amount for 2019. The State of Oregon annually supplies relevant data on which the calculations for these two expenses are calculated.

**Capital Budget Items**

The 2019 budget is for replacement of office furniture, desktop computers, network servers and printers. This budget also includes anticipated repurposing of office space and the costs associated with that work.

**Primary Operating Expenses with Changes from 2018 Budget +/- 10%**

Overall, operating expenses are increasing by 14.1% (approximately $1.2M). The primary drivers of the increase are explained below.

**Benefits and Payroll Taxes**

As noted previously, there are budgeted increases to healthcare premiums as well as PERS contributions. Additionally, there is recognition for the PLF’s portion of PERS liabilities and interest on unfunded PERS liabilities. Benefits and payroll taxes increased by $883,289 from the 2018 budgeted level.

**Office Expense**

Beginning with the 2019 renewal season, a new payment portal will be implemented that offers covered parties’ access to additional methods of payment, and offers Excess firms the ability to make payments online. There are approximately $36,000 in additional fees associated with this software.

**Defense Panel Program** occurs bi-annually. There was no conference in 2018. The conference for 2019 is budgeted at $50,000.

**Excess Program Budget**

The major revenue item for the Excess Program is ceding commissions. These commissions represent the portion of the Excess premium that the PLF retains and is shown in the table below.
Coverage Limits | Ceding Commission
---|---
Up to $1.7 Million | 17.50% 
Up to $4.7 Million | 15.00% 
Up to $9.7 Million | 15.00% 
Increased Cyber Limits | 20.00%

A portion of the Excess premium (10.5%) goes to the PLF brokers, AON Benfield. However, the largest portion of the premium goes to the reinsurers who cover the cost of excess claims. We are budgeting $945,000 for 2019 ceding commissions.

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

**IV. Assessment**

The PLF assessment remained at $3,500 for nine years, the longest period without a change in the PLF’s history. At the end of 2018, the PLF had over $20 million in its net position (“retained earnings”). Two years ago, the PLF established a net position goal of $13.3 million. Given that, the PLF Long Range Planning Committee met to evaluate the assessment. The Committee evaluated a number of points, including the components of the net position goal, analyses about future trends in claim development, claim frequency and number of Covered Parties. The Committee and the Board concluded that a reduction of the assessment to $3,300 would be economically prudent, releasing excess funds to the Covered Parties while maintaining PLF financial stability. The Board values keeping a stable assessment and felt reasonably confident we could maintain this assessment level for at least three years, even if investment income and/or claim development is somewhat worse than predicted.

**V. Deadlines**

The BOD asks the BOG to approve the following deadlines for payment of the 2019 PLF assessment.

- **January 10** Deadline to pay full assessment or first quarterly assessment with finance and service charges, or file exemption.
- **April 10** Deadline for second quarterly assessment.
- **July 10** Deadline for third quarterly assessment.
- **October 10** Deadline for fourth quarterly assessment.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
Memo Date: August 27, 2018
From: PLF Board of Directors
Re: PLF Policy 5.150 Fidelity Bond

Action Recommended

We request the BOG approve the elimination of PLF policy requiring a Financial Institution Bond. The fidelity bond is expensive, duplicative of coverage we already have, and is unnecessary given the other safeguards we have in place.

Background

The 2018 Bylaws and Policy Manual states the following:

5.150 FIDELITY BOND
The Professional Liability Fund will maintain a fidelity bond with limits for any single defalcation of not less than $1 million. If financially advantageous, the PLF may purchase a fidelity bond jointly with the Oregon State Bar.

Our fidelity bond is consistent with what a fidelity bond typically covers:

- dishonest or fraudulent acts committed by employees acting alone or in collusion with others;
- losses resulting from burglary, robbery, misplacement, or mysterious unexplainable disappearance of property (except while in transit). Damage to our furniture or fixtures resulting from the above-listed acts is also covered under our Insuring Agreement (unless caused by fire);
- losses of certain defined property, including money, while in transit. Losses must be a direct result of robbery, larceny, theft, misplacement, mysterious unexplainable disappearance, damage or destruction to the property;
- losses resulting from counterfeit currency, received in good faith;
- losses resulting from false securities.
The annual cost of our fidelity bond is $6,330 (50.4% of total portfolio premium). The per incident limits are $2,000,000 with a $25,000 deductible.

As you can surmise, much of this is inapplicable to the PLF with the exception of the first category. We already have coverage under our general liability plan which provides for computer fraud, employee theft, forgery or altercation, money and securities, and counterfeit money orders and currencies. These components of the coverage have per incident limits ranging from $25,000 to $250,000 with a $25,000 deductible. The total cost of our general liability coverage is $6,238. While the per incident coverage under our general liability plan is significantly lower than what the fidelity bond provides, we believe the internal controls at the PLF, as well as those at Wells Fargo and with our investment funds (as described below) make the risk of loss in any of these areas so remote that a higher limit is not warranted.

The fidelity risk – employee dishonesty and/or fraud – component of the policy is covered not only by the property policy, but internal and banking controls as well. Moreover, the PLF is protected from large value transaction fraud by means of dual custody controls on all outgoing wires, regardless of amount. There are also safeguards on our investment portfolio that prohibits any transfer to any account other than the PLF primary bank account.

Wells Fargo ensures that banking transactions are subject to electronic scrutiny for any anomalies. “Positive Pay” is the comprehensive secure service provided by Wells Fargo to protect all check transactions. The PLF no longer accepts cash for assessments. Any cash received is in such small amounts ($50-$100 per deposit) so as not to total anything near the deductible on the policy.

Our risk of loss on our investment portfolio is also small given our use of an outside investment consulting firm which vets all investments and only places us in well established funds.

The requirement for a fidelity bond has been in place at least since 1990 and likely earlier.1 These requirements were not uncommon for commercial financial institutions, including insurance providers, which is presumably why the requirement was placed on the PLF. But, for the reasons set forth above, we believe the cost of the bond is not warranted and thus recommend deleting it from our by-laws.

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1 We do not seem to have copies of our Bylaws and Policy Manuals before 1990.
OREGON STATE BAR
Board of Governors Agenda

Meeting Date: September 21, 2018
Memo Date: August 29, 2018
From: PLF Board of Directors
Re: Excess Program – Changes to PLF Policy 7.600(H)(2) Regarding Midyear Changes

Action Recommended

The PLF Board of Directors requests that the BOG approve the following recommendations regarding changes to PLF Policy 7.600(H)(2) pertaining to midyear changes for the Excess Program. The PLF Board of Directors approved the recommendations at its August 24, 2018 board meeting.

Background

The excess coverage year runs from January 1 (or the date of application) until December 31 of a given year. Changes that occur after January 1, or the firm’s application date, are considered midyear changes. Presently, firms are required to notify the Excess Program of midyear changes as set forth in PLF Policy 7.600(H)(2). We propose the following changes to these Policies to address changing issues in underwriting risk.

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

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

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

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

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

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

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

(g) An attorney continuing to practice law with, or maintaining an affiliation with, a Law Entity other than the Law Entity listed on the Excess Declarations joins or leaves the firm.

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

(i) An attorney practicing in areas that present risk of claims (including aiding and abetting) under Oregon Securities Law joins or leaves the firm.

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

The changes to subsections (f) and (g) work to clarify when it is important for firms to notify us of “of counsel” additions or departures to a firm. The addition of subsection (i) reflects our growing need to be aware of changes in firms relating to Oregon Securities risk such that we can adequately underwrite, and charge for, that risk.

CJB/clh
OREGON STATE BAR
Legal Services Program Committee

Meeting Date: Sept 21, 2018
Memo Date: Sept 6, 2018
From: Legal Services Program Committee
Re: Disbursing Unclaimed Client Funds from the Legal Services Program

Action Recommended
1) Increase the reserve target for the Annual Unclaimed Fund to $200,000.
2) Disburse $215,000 from the 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.

Background
Unclaimed or abandoned client funds held in lawyers’ trust accounts are sent to the Oregon State Bar (OSB), pursuant to ORS 98.386. Revenue received is used for the funding of legal services by legal aid providers, the payment of claims, and the payment of expenses incurred by the OSB in the administration of the Legal Services Program.

In 2012 the committee and subsequently the BOG approved a recommendation regarding the distribution of unclaimed client funds. The distribution method is that the LSP will hold $100,000 in reserve to cover potential claims and distribute the revenue that arrives each year above that amount. The amount disbursed has changed from year to year depending on the unclaimed funds received and claims made (see attached ULTA 2017 Report). In addition, the OSB entered into an agreement with the legal aid providers in which the legal aid providers agreed to reimburse the OSB if the remaining reserve gets diminished or depleted.

In January 2014, the LSP received approximately $520,000 unclaimed client funds from the Strawn v Farmers Class Action. The BOG initially approved distributing these funds in equal amounts over three years. 1/3 of the funds were disbursed in 2014 and 1/3 in 2015. In 2016 and 2017, the BOG did not disburse any funds from the Strawn v Farmers Fund because of remaining potential claims.

Annual Unclaimed Fund
At the end of 2017, there was $532,402 in the Annual Unclaimed Fund (see attached ULTA 2017 Report). The fund balance grew in 2017 largely due to a receipt of $360,000 related to foreign insurance companies. There are two recommendations regarding Annual Unclaimed Funds.
1. It is recommended that the reserve policy be increased to a $200,000.

When the previous reserve target of $100,000 was adopted in 2012, there was a potential known claims liability of approximately $334,000 for the Annual Unclaimed Fund. Since that time, the fund has received additional money. With additional money also comes additional potential claims; the potential known claims liability of the Annual Unclaimed Fund has increased to approximately $900,000\(^1\) at the end of 2017. The increase in potential claims liability indicates that it is time to increase the reserve target.

2. It is recommended that $215,000 be distributed from the annual fund to the legal aid providers and held by the OSB until the providers request disbursement and advise on an allocation method between the providers. This will leave the annual fund reserve of $200,000 and approximately $150,000 as an additional reserve that can be also be used for Strawn Farmers Class Action Claims.

**Strawn Farmers Class Action Claims**

During 2017, $84,849 was paid in Strawn Farmers Class Action Claims; this is a ten-fold increase over the amount paid out in 2016. Prior to 2017, a total of $35,153 had been claimed. The increase in claims appears to be a result of the Department of State Lands sending letters to potential claimants of the Strawn v Farmers Fund during 2017. It is unclear if the Department of State Lands will repeat their mailing in 2018.

As noted above, after the two recommended actions approximately $150,000 beyond the annual fund reserve will be held and can be used for Strawn Farmers Class Action Claims without diminishing the amounts held as an annual unclaimed fund reserve.

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\(^1\) $900,000 includes potential claims liability for the amount received related to foreign insurance companies. It is expected that these funds are of lower likeliness to be claimed than most. Without the potential claims related to foreign insurance companies, the potential claims liability at the end of 2017 for the Annual Unclaimed Fund was $536,000.