

Oregon State Bar



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2013 COMMITTEE  
Annual Reports



# 2013 Committee Annual Reports

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The Oregon State Bar would like to thank all Committee volunteers for their service. Committees are vital to the ability of the bar to provide both member and public services and to keep the organization responsive to the needs of its members, the courts, and the bar. To all 2013 Committee members, thank you for your time and expertise.

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## Advisory Committee on Diversity & Inclusion

### **Activities and accomplishments:**

Diversity and Inclusion Assessment Increase. At the 2013 House of Delegates meeting, the HOD voted to increase the D&I assessment to help fully fund the programs of the D&I department. This was the first increase in the assessment in 23 years and was critical to maintaining the programs and staffing of the D&I Department. This vote followed a coordinated outreach strategy by the D&I committee members to educate the HOD about the D&I program and the importance of the assessment.

OLIO Transitions. Due to budget restrictions, the flagship “Opportunities for Law in Oregon” or “OLIO” program needed to be cut by one day/night. This provided an opportunity to reassess the core values of the program and recommend changes to the program to streamline the schedule and save resources. The planning committee composition also changed to incorporate more ACDI members on the planning committee and greater ACDI committee involvement. Despite being in a year of transition in both format and planning structure, the 2013 OLIO program was still very successful.

OLIO Fundraising. A subcommittee of volunteers raised over \$50,000 to fully fund the OLIO program with non-bar dues.

### **Matters considered/Matters pending:**

OLIO Eligibility Transition in light of *Fischer v. University of Texas* and other affirmative action jurisprudence. A subcommittee is working on developing criteria for OLIO eligibility to be approved at a January 2014 meeting.

Joint Retreat with Diversity Section. The respective chairs of the ACDI and Diversity Section will meet to plan a joint retreat in February 2014.

Explore the Law Expansion. The “Explore the Law” Program is a pipeline program that encourages diverse college students to pursue a career in law. The ACDI and PSU have had a successful partnership program since 2011. The University of Oregon is interested in pursuing a similar program.

*Respectfully submitted: Liani JH Reeves (CH), John M. Haroldson (SEC), Jacqueline Lizeth Alarcon, Amanda J. Austin, David F. Bartz, Deborah M. Butler, H. Roland Iparraguirre, Linda Meng, Janice R. Morgan, Honorable Thomas J. Rastetter, Michelle Gates Rudd, Cynthia J. Starke, Diane S. Sykes, Lisa M. Umscheid, Michael Y. Wu, Charles J. Lopez (PM),*

*Shari R. Gregory (OAAP), Jennifer Nicholls (NLD), Tom Kranovich (BC), Mariann Hyland (BL).*

## Client Security Fund Committee

### **Activities and accomplishments:**

The Client Security Fund Committee (CSF Committee) reviews claims of clients who lawyers have misappropriated their money or other property. The CSF Committee discharges its duties by investigating claims and, in appropriate cases, recommending to the Board of Governors that a client be reimbursed for some or all of the loss. The Client Security Fund is an important part of the Oregon State Bar’s public protection activities. The ability to reimburse clients even in part for losses caused by their lawyers promotes confidence in the profession and improves the public view of lawyers.

The Fund is comprised entirely of annual member assessments (increased from \$15 to \$45 per member in 2013) and earnings on invested reserves. The maximum award is \$50,000 on any one claim. Clients are expected to exhaust their remedies against the lawyer before seeking an award from the Fund. In exchange for a reimbursement from the Fund, claimants assign all of their rights against the defalcating lawyer; the OSB attempts to recoup on those assigned claims to the extent possible, but in most cases such efforts are fruitless.

### **Matters considered/Matters pending:**

In 2013, the CSF Committee received 51 new claims involving the conduct of 19 lawyers. One lawyer (Jason McBride) was responsible for 25 claims and another (Bryan Gruetter) for 4 claims. These are the same two lawyers involved in the majority of claims in 2012 as well. Last year, claims from Gruetter’s clients totaled more than \$800,000, which exceeded the Fund’s reserve balance as well as its 2012 assessment revenue. Claims from McBride’s clients were smaller on average, and the total of awards to his clients is expected to be approximately \$330,000. Prior to 2012, the most the CSF had ever paid on behalf of one lawyer was \$179,000 in 1989. Only seven lawyers have ever caused claims in excess of \$100,000 in the Fund’s previous forty years of operation.

In 2013 most of the remaining claims involving Gruetter and McBride were wrapped up.

Total awards were: \$281,470.68 to Gruetter clients, \$140,515.00 to McBride clients, and \$192,488.94 to others.

On the Committee's recommendation, the BOG approved awards in 75 cases, 57 of which were carried over from 2012 and 1 from 2011. The awards ranged from \$500 to \$50,000 and totaled \$614,474.62.

**Recommendations for 2014:**

Continue reviewing claims. Review fund reserve and make a recommendation to the Board of Governors.

*Respectfully submitted: Steven R. Bennett (CH), Elaine J. Brown (SEC), Jane E. Angus, Ronald W. Atwood, Jessica L. Cousineau, William A. Davis, Christopher J. Eggert, Deanna L. Franco, Eric A. Kekel, Lisa Almasy Miller, Mark G. Reinecke, Bradley V. Timmons, Carlos G. Calderon (PM), Theresa M. Kohlhoff (BC), Sylvia E. Stevens (BL).*

**Federal Practice & Procedure Committee**

**Activities and accomplishments:**

The committee met every two months in 2013. This included a July meeting, which was a departure from past practice. The work of the committee between meetings was done by members of subcommittees with support of the full committee. Therefore, much of the summary of the work of the committee is discussed as the work of individual subcommittees.

The Pro Bono Subcommittee continued to focus its efforts on supporting the U.S. District Court's federal pro bono panel program. The subcommittee worked together with Nicole Munoz, the administrator of the program, to come up with a three-part plan to increase the number of lawyers and firms on the panel. First, we developed talking points and made plans to begin a calling tree to Oregon State Bar members and firm contacts in an effort to persuade more attorneys to join the panel. Each FPP committee member will be asked to commit to calling a number of lawyers and firms to inform them about the program. Over the course of the year, we contacted several firms to discuss joining the panel. Second, we began drafting an article for publication in the Oregon State Bar Bulletin or a similar publication highlighting the positive experiences of panel members. Third, we continued to work with Ms. Munoz to brainstorm additional ways that we can advertise and recruit for the program, for example by organizing suitable CLE programs and providing other resources to attorneys who join the panel. A

resource for attorneys who join the panel that we created was a system to match law students with pro bono attorneys. We contacted faculty at Lewis and Clark Law School and the University of Oregon Law School about setting up this matching. There was interest from both schools. At Lewis and Clark, Professor William Penn will post requests for law student assistance on specific cases received from Nicole Munoz to a public interest list serve that he moderates. He will select a student from volunteers who respond to the request to pair with the pro bono attorney. If the matching program grows to a point where additional organization or support would be helpful, Bobbin Sing of the Oregon Justice Resource Center said that organization would be available to support the matching program. Subcommittee members also attended a "thank you lunch" for pro bono panel participants and talked to many of the participants about their experience representing clients through the panel.

The Judicial Nominations Subcommittee tried to schedule a CLE for new attorneys on how to orient one's practice toward being appointed to the federal bench. This was intended to build on our work last year comparing practices for nominating candidates for federal judicial positions in all 50 states and proposing ways to increase the transparency of Oregon's process. Unfortunately, our intended speaker for the CLE, former chair of the Oregon Senators' committee for selection of nominees, Lou Savage, moved to Tunisia. Thereafter, we reached out to the chairperson of the Oregon Women Lawyers about coordinating with them to present the CLE. The jointly sponsored CLE is projected to occur in approximately March or April of 2014.

The committee discussed topics for publications to be facilitated by the Information Exchange Subcommittee including the Ninth Circuit's switch to electronic records, unforeseen consequences from the heightened pleading standards described by the U.S. Supreme Court in *Iqbal* and *Twombly*, and an article on the District Court's Pro Bono Program. The information exchange subcommittee offered support to committee members if they volunteered to write on this topic. However, no members volunteered to write. Subcommittee members also worked with members of the pro bono committee on raising awareness of the opportunities and need for attorneys to volunteer for the federal court's pro bono panel.

A significant achievement of the full committee was to add a member from the bench, the Honorable

Anna Brown. Judge Brown has added valuable insight about topics discussed at every meeting since she joined. Her participation has served to motivate members to be active on the committee.

The committee explored the usefulness of forming a Local Rules Subcommittee to comment on and publicize proposed amendments to the federal court's supplemental local rules. Benjamin Haile discussed the possibilities with David Bledsoe, the chairperson of the Federal Court Local Rules Committee. Mr. Bledsoe stated that his committee has a heavy workload, and its work is already reviewed by several other entities. Therefore, he urged interested members of the Federal Practice and Procedure Committee to join his committee rather than being involved in the process in another manner.

***Matters considered/Matters pending:***

We anticipate that the Pro Bono Subcommittee's efforts will continue along the same lines in 2014.

A member of the Information Exchange Subcommittee is working with the Chairperson of the Oregon Women Lawyers to co-sponsor the event described above.

The paragraph under the heading "Any other comments" describes a pending discussion about the purpose and future of the committee.

***Recommendations for 2014:***

The thorough work of the Pro Bono Subcommittee on a three point plan to support the court's pro bono program should be moved forward. For details of this three point plan, members should refer to a four page memorandum prepared by Anna Sortun.

The Judicial Nominations Subcommittee will continue its work in organizing a CLE for March or April of 2014 for members of the bar interested in learning how to increase their chances of being appointed to the federal bench.

The paragraph under "Any other comments" includes additional recommendations for 2014.

***Any other comments:***

At the last Federal Practice and Procedure Committee meeting (11/13/13), we examined our committee charge from the Board of Governors and discussed the purpose of our group and the role it plays in contrast to other groups such as the Oregon Chapter of the FBA, the Local Federal Rules Committee, and the OSB Pro Bono section. This last year, much of our group's efforts has been dedicated

to supporting the federal district court's pro bono program by recruiting more participants, planning CLEs for pro bono counsel, and meeting with the law schools to pair up law students to assist attorneys who volunteer to take on pro bono cases from the U.S. District Court. It seemed to many of us that a good deal of the items listed in our committee charge are already being handled by the Oregon FBA (monthly lunches with the judges, the FBA Newsletter, CLEs geared for federal practitioners, communication between the federal courts and federal practitioners), the Ninth Circuit lawyer representatives (the district conference), and the federal local rules committee (gathering ideas from practitioners, amending local rules, and publicizing rule changes). And as for the federal court's pro bono program, we wondered if this might be a better focus for a federal court subcommittee of the OSB pro bono group.

*Respectfully submitted: Benjamin Wright Haile (CH), Marjorie A. Elken (SEC), James Stanley Baldock, J. Channing Bennett, Honorable Anna J. Brown, Timothy MB Farrell, Nadine A. Gartner, Joseph J. Haddad, Calvin L. Keith, Sara S E Lora, Kevin Ray McConnell, Edward S. McGlone, Nancy J. Meserow, Terry Scannell, Anna Sortun, Kelly Alexandre Zusman, David Wade (BC), Martha M. Hicks (BL).*

**Judicial Administration Committee**

***Activities and accomplishments:***

JAC's foremost accomplishment is twofold: (1) finalization of written materials and (2) implementation of the Speakers Bureau. The Speakers Bureau connects circuit court judges with local organizations to generate greater awareness of the impact of the courts on their communities. The written materials consist of a PowerPoint presentation complete with a "teacher's manual" for its speakers. Secretary Boutin completed the formidable task of updating the materials from approximately ten years prior. JAC Chair Nordyke and the Oregon Judicial Department provided revisions. JAC Member Hunsaker drafted a form letter to judges and other interested persons to invite them to participate in the Speakers Bureau. Chair Nordyke organized and attended the first Speakers Bureau presentation, lead by Hon. Mary Mertens James and assisted by the Oregon Judicial Department, at the Rotary Club of Salem. Chair Nordyke travelled to Benton and Linn Counties and received interest from three sitting judges to participate in the Speakers Bureau. Chair Nordyke also received interest from a sitting Court of

Appeals judge. Chair Nordyke and Secretary Boutin stayed in touch with Chief Justice Thomas Balmer from the previous year, and drafted Speakers Bureau talking points for CJ Balmer to use at the annual judicial conference in the fall of 2013. Other JAC members (Hunsaker, Sewell, and O'Brien) contacted judges and local bar associations in Washington, Multnomah, Deschutes, and Lane counties. JAC is now positioned to implement several more Speakers Bureau presentations in 2014.

JAC's other activities and accomplishments largely concern legislative matters. JAC provided written and oral testimony concerning the impact of the bail bond bill in the Oregon State Legislature. JAC members reviewed pending legislation for potential testimony, white papers, and/or discussion. JAC members formed subcommittees to address three potential legislative bills with a demonstrative impact on the legal profession. JAC Boutin participated in OSB's annual day at the capitol. JAC Members Judge Leggert and Nordyke provided OSB legislation highlights at OSB's invitation. Chair Nordyke provided an overview of resolutions from the annual House of Delegates convention. In addition to legislative matters, JAC member Dielschneider attended E-Court sessions and provided regular updates.

***Matters considered/Matters pending:***

JAC is completing its subcommittee work on three potential 2014 legislative bills. JAC is positioned to implement several more Speakers Bureau presentations in 2014.

***Recommendations for 2014:***

JAC should continue growing the Speakers Bureau. The JAC should continue monitoring legislation, eCourt, the State's budget, and its impact on the courts, with an eye towards supporting a healthy court system that can equally, efficiently, and effectively administer justice.

*Respectfully submitted: Vanessa A. Nordyke (CH), Roderick A. Boutin (SEC), Danielle J. Hunsaker, Dexter A. Johnson, Honorable Terry Ann Leggert, Michael Thomas McGrath, Danielle J. O'Brien, Wendy J. Paris, Matthew Powell, Travis Taylor Sewell, Kim Sugawa-Fujinaga, Theresa L. Wright, Carla C. Piluso (PM), Travis S. Prestwich (BC), Susan Evans Grabe (BL).*

**Legal Ethics Committee**

***Activities and accomplishments:***

The committee submitted the advertising rule amendments to the Board of Governors at its February 2013 meeting. The committee also submitted proposed amendments to RPC 1.12 and 2.4 to address an internal inconsistency in the rules. The committee reviewed the ABA Commission on Ethics 20/20 changes to the model rules and submitted a package of proposed rule revisions to the Board of Governors at its July 2013 meeting. Finally, the committee finalized a proposed revision to RPC 8.4 that would prohibit a lawyer from knowingly manifesting bias or prejudice in connection with a lawyer's representation of a client. All of the proposals were approved by the Board and sent to the House of Delegates for final approval. All proposals were adopted by the HOD and all but RPC 8.4 were adopted by the Oregon Supreme Court. In addition, the committee redrafted, and the Board of Governors approved, OSB Formal Op No 2013-189 Accessing Information about Third Parties Through a Social Networking Website.

***Matters considered/Matters pending:***

The committee continues to work on opinions dealing with conflicts in elder law and estate planning matters, conflicts in third party actions that arise out of workers compensation matters, and ethics issues for plaintiff's lawyers who are asked to sign indemnification agreements for Medicare costs. The committee is also still considering revisions to the opinions dealing with client files and with insurance billing.

***Recommendations for 2014:***

In addition to the pending projects, the committee will be reviewing old opinions on advertising and others that may need revision given the recent changes to the rules of professional conduct. Also, the committee or its members may be involved in revising the proposed amendment to RPC 8.4 to address bias, prejudice, and discrimination in the practice of law. Finally, the committee will address any new requests or suggestions for opinions, together with any issues referred to it by the BOG.

*Respectfully submitted: Kurt F. Hansen (CH), Shannon Riordan Armstrong (SEC), Kristin Asai, Robert G. Burt, Kathleen A. Cushing, Ankur Has Mukh Doshi, Sean K. Downey, David J. Elkanich, David M. Gorgon, Lori A G Hellis, Chas Horner, Michael D. Levelle, Wilson C. Muhlheim, Caitlin Mitchel-Markley (BC), Helen M. Hierschbiel (BL).*

## Legal Heritage Interest Group

### **Activities and accomplishments:**

During 2013, LHIG scheduled and held three business meetings at the Oregon State Bar Center: March 9, May 18, and October 12. On March 8, LHIG Co-Sponsored a well attended CLE at the Oregon State Bar Center. The CLE was entitled Guantanamo and Beyond: Oregon Lawyers Litigating the War on Terror.

Potential topics were identified for the Legal Heritage periodical column of the Bar Bulletin, and a new subcommittee was created to collaborate with the District Court Historical Society's Oral History Program. In addition, progress continues to be made on the Diversity History Wall, which is in the research phase. Chet Orloff was hired to compile research. Bill Chin continues to work with new partner bar organizations as this project evolves.

### **Matters considered/Matters pending:**

The LHIG is planning another CLE for Fall 2014. The proposed topic is civil rights and the history of racial bias in Oregon laws. Potential sessions include Native American fishing and water rights, African American zoning and housing discrimination, and Japanese American internment during WWII. The CLE subcommittee has contacted the Civil Rights Section of the bar to invite them to partner with LHIG in co-sponsoring the CLE.

LHIG continues to hold 3 business meetings at the OSB Center and to plan for periodic visits to historical sites and a 4th business meeting outside of the Portland Metro area, so that non-Portland LHIG members have an easier time participating in person.

### **Recommendations for 2014:**

LHIG recommends Katharine von Ter Stegge as Chair and Rachel Hull as Secretary.

*Respectfully submitted: Mary L. Dougherty (CH), Katharine von Ter Stegge (SEC), Mary Anne Anderson, Robyn Ridler Aoyagi, Bill Y. Chin, Mary Ellen Page Farr, Rachel Lynn Hull, Jamie Lynn Pfeiffer, Brandy Pirtle-Guiney, Elizabeth D. Wright, Paul Martinez (PM), Jay Mullen (PM), R. Ray Heysell (BC), Paul Nickell (BL).*

## Legal Services Committee

### **Activities and accomplishments:**

The committee reviewed and recommended a disbursement policy for the unclaimed client funds which was approved by the BOG.

The committee reviewed and approved the accountability report which was forwarded to the BOG.

Legal aid reported to the committee about their strategic planning efforts and draft report.

### **Matters considered/Matters pending:**

The Standards and Guidelines need to be updated.

### **Recommendations for 2014:**

Review and update the Standards and Guidelines

Recommend a disbursement strategy for the unclaimed client funds including the class action funds received from Landye Bennett Blumstein.

*Respectfully submitted: Michael B. Hallinan (CH), Josh Newton (SEC), Kristin L. Bremer, Amy Edwards, Timothy C. Gerking, Laurence H. Hamblen, Eva J. Temple, Karen J. Lord (PM), R. Ray Heysell (BC), Judith Baker (BL).*

## Minimum Continuing Legal Education Committee

### **Activities and accomplishments:**

The Committee reviewed and made decisions on requests for review of the MCLE administrator decisions. The Committee discussed issues facing different groups in meeting their MCLE requirements. The Committee also reviewed and considered changes to the following Rules and Regulations: MCLE Regulations 1.115(a) and (b), 3.260, 3.300(d), 7.200(a) and (b); MCLE Rules 3.5(a), 5.2, 7.4(b), 7.5(a) and (b) and 8.1(c). The Committee began to consider how best to craft MCLE requirements in response to the legislative change for the new mandatory elder abuse reporting requirement for attorneys.

### **Matters considered/Matters pending:**

This Committee plans to hold four meetings during the 2013 calendar year. These meetings were held on March 8th at the OSB Center in Tigard; June 7th at the League of Oregon Cities building in Salem; and Sept. 20th at the OSB Center in Tigard. The final meeting of the year is scheduled for Dec. 13, 2013, at the League of Oregon Cities building in Salem. At

each meeting the Committee reviewed the Minutes of the previous meeting and reviewed the Statements of Review and Expenses provided by Ms. Cline.

The following is a brief overview of the other matters considered at each meeting:

March 8, 2013, meeting

Consider a request by the Board of Governors (BOG) to help draft a rule that would require judges to take a certain number of CLE credits in judicial temperament. The Committee heard from Sylvia Stevens regarding the reasoning behind the request. The Committee inquired about what other states require, and learned that no other state had a similar requirement. The Committee voted to table the issue unless requested to address it by the Chief Justice.

Request for Review (OSB Member Eldon Rosenthal): Mr. Rosenthal requested the Committee consider a rule change that would require continuing legal education (CLE) courses longer than three hours in duration to include a block of instruction on ethics that is related to the topic of the CLE. The Committee considered drafting a letter that could be provided to CLE providers which would recommend that they offer ethics credits in their seminars. The Committee voted not to consider a rule change, pending production of a letter for the MCLE Committee's consideration that would strongly recommend CLE providers include a section on ethics that directly pertained to the overall topic of the CLE program.

June 7, 2013, meeting

Request for Review (OSB Member Melissa Jaffe): The member sought to appeal the decision to impose a late fee for her failure to return the compliance report and minimum payment before the deadline. The Committee reviewed the materials submitted by the member in advance of the meeting and as collected by Ms. Cline. The Committee voted to uphold the decision to impose the late fee.

Request for Review (OSB Member Eldon Rosenthal)—continued: The Committee reviewed a draft of the proposed letter to CLE seminar providers regarding ethics credits. The Committee heard from Ms. Cline with statistics regarding the number of half-day CLE programs in Oregon included ethics credit (23%), and how many full-day programs in Oregon included ethics credit (31%). The Committee felt it was not difficult to obtain ethics credit and decided not to take any action on mandating ethics portions at this time.

Request for Review of Rule 5.2 (OSB Member Mark Anderson): Mr. Anderson proposed to amend the MCLE Rules to permit members to gain CLE credit for judging mock trial competitions at the high school and college level. Under the current MCLE Rules, credit is available only for judging mock trial at the law school level. The Committee expressed concern that judging high school or college mock trial competitions would not expand attorney knowledge or skills. The Committee took no action with respect to amending the rule about CLE credits available for judging mock trials.

Request for Review of Regulation 3.300(d) (OSB Member James Herald): Mr. Herald proposed an amendment to Regulation 3.300(d) in order to permit OSB members to skip access to justice credits in a current reporting period if they completed 3.0 access to justice credits in the reporting period immediately preceding the current one. The committee reviewed Rule 3.2(c) and considered whether this presented any conflict with Regulation 3.300(d). The Committee noted that while there is a potential for misinterpretation, the ease of administering the rule and regulation as written outweighed those concerns. The Committee took no action on the proposal to amend Regulation 3.300(d).

Consider rule revision proposed by Denise Cline (Rules 7.4(b), 7.5(a) and (b) and 8.1(c), and Regulations 1.115(a) and (b), 7.200(a) and (b)): Ms. Cline proposed to revise certain rules to (1) align the delinquency dates for MCLE noncompliance with the delinquency dates for the payment of fees and IOLTA compliance, and (2) allow the OSB to send notices of MCLE noncompliance by email rather than by certified mail. Ms. Cline believes these changes advisable and that they represent minor changes only. Ms. Cline reported that of the notices of noncompliance sent each year; approximately half of these mailings become unnecessary because in the interim mailing time the individuals have already submitted the missing materials. Ms. Cline reported that the cost of certified letters is approximately \$3/letter. The Committee also noted that court notices are also moving toward being sent by email. The Committee voted to approve the proposed rule revisions.

Consider rule revision proposed by Denise Cline (Rule 7.5): Ms. Cline proposed an amendment to Rule 7.5 in order to clarify that compliance reports may be audited after noncompliance has been cured. This suggestion was made after a situation in which

Ms. Cline needed to refer a compliance report to Disciplinary Counsel's office for questions regarding accuracy, after it had been processed by the MCLE department. The Committee approved the proposed rule change to Rule 7.5

September 20, 2013, meeting

Request for Review (OSB Member Rebecca Mehringer): Ms. Mehringer applied for CLE credit for a program involving bicycle and transportation law, which was initially not approved for credit because it was a program intended for the general public, and the program was not intended to educate lawyers. The Committee expressed concern about giving credit for programs intended for another profession, as there may be too many programs and trainings that would become eligible for OSB CLE credit, without meeting the primary objective set forth in the MCLE rules to increase competence as a lawyer. The Committee voted to affirm the denial of credit.

Request for Review of Rule 3.5(a) and Regulation 3.260 (OSB Member Peter Scott): The OSB received an inquiry regarding whether an OSB member, whose primary practice is in a state without reciprocity with Oregon, can meet the MCLE requirements for Oregon by meeting the MCLE requirements for another state with Oregon reciprocity (like Washington) while not primarily practicing in that state. The Committee reviewed proposed amendments to MCLE Rule 3.5 and Regulation 3.260 and will continue the discussion at the December meeting.

Consider Proposed Rule Amendment Regarding Child Abuse and Elder Abuse: The Committee discussed what rule changes would be necessary to implement the new statute that requires OSB members to complete training for mandatory elder abuse reporting. The Committee considered: (1) whether to recommend a single requirement for elder or child abuse instead of two separate requirements for each type of education; (2) how many hours of training should be required; and (3) how often OSB members would have to report, whether alternating or consecutive reporting periods. After discussion, the Committee is considering a rule which would require one hour of abuse training each reporting period, with the type of abuse training (child or elder) to alternate each reporting period. The Committee will review proposed rule amendments at the December meeting.

### ***Recommendations for 2014:***

In the year ahead the Committee will continue to assist the MCLE administrator with the evaluation of requests for review of the administrator's decision concerning CLE accreditation and earned credits by program providers and OSB members. The Committee will also continue to evaluate and recommend revisions to the MCLE rules on an as-needed basis. Finally, the Committee will continue its work to recommend a proposed rule change regarding child and elder abuse reporting education requirements.

*Respectfully submitted by: Cecelia L. Batlan (CH), Sean E. O'Day (SEC), Allison W. Banwarth, Joel Fischer, Kristie L. Gibson, Christy Alisa King, Linda J. Larkin, Matthew Powell, Claudia Pieters (PM), Joshua L. Ross (BC), Denise Cline (BL).*

## **Procedure & Practice Committee**

### ***Activities and accomplishments:***

The committee met monthly, although we cancelled two committee meetings late in the year. During the legislative session, the committee tracked approximately 10 bills that it felt had the potential to negatively or positively affect the efficient practice of law. We discussed the bills' strengths and weaknesses, and weighed what we considered their beneficial effects versus their unintended and/or negative consequences.

Although most of the bills we tracked had the potential to negatively affect the efficient practice of law, it turned out that none of them made it out their various committees. Thus, the need for action on the committee's part became moot.

### ***Matters considered/Matters pending:***

At the committee's last meeting of the year, attorney Erin Olson asked the committee to consider advocating for a change to ORS 12.160. The committee previously advocated for a change to the statute in 2007, and the legislature ultimately changed the statute in part based on the committee's backing.

The committee decided to gather additional information from Matt Shields, at the Oregon State Bar, and from Ms. Olson. The new information consists mostly of additional legislative history. The committee will review that information at the next meeting and decide whether to continue evaluating the change, to decline Ms. Olson's request or to sponsor the change Ms. Olson seeks.

*Respectfully submitted: Jason L. Posner (CH), Jason M. Pistacchio (SEC), John R. Bachofner, Steven C. Berman, Craig M. Cowley, Dirk E. Doyle, Susan R. Gerber, Neil W. Jackson, Jason Llewellyn Kafoury, Michael C. Lewton, Steven D. Olson, Matthew Alan Rowan, Emily Q. Shults, Melissa Lopeman Tahir, Emery Wang, Theresa M. Kohlhoff (BC), Matthew Shields (BL).*

## **Quality of Life Committee**

### **Activities and accomplishments:**

Planned and presented the CLE “Recharging your Career – the Importance of Sabbaticals” on February 7, 2013 at Stoel Rives. QOL member Patrick Ehlers presented in a panel with two other attorneys about their sabbatical experiences.

Planned and presented “10 Minute Fix: Stress Reduction for Attorneys” in cooperation with the MBA YLS Professional Development and Education Committee on May 16, 2013 at Perkins Coie LLP. QOL Chair Heather Decker presented on and led participants in relaxation breathing techniques and chair yoga, and Kathleen Bell, RN led a guided meditation practice. Personal Management Assistance CLE credit was sought by the MBA but declined by the OSB MCLE Department for this program. QOL Secretary Eva Marcotrigiano wrote an article summarizing the presentation that was published in the Multnomah Lawyer, September 2013, p. 12.

QOL member Amy Miller evaluated and supplemented the Committee’s website with new materials and articles, and continued work on decommissioning the old website.

Evaluation and revision of the Committee’s Charge to better incorporate the breadth of meaning that “quality of life” may have for lawyers attempting to integrate their personal and professional lives beyond the concept of “work/life balance.”

At monthly Committee meetings, members discussed the various meanings of “quality of life” and shared progress on their own “quality of life” goals.

The Committee visited the law schools to present on quality of life and networking:

September 18, 2013, Lewis & Clark Northwestern College of Law: Law School Presentation Subcommittee members Mindy Stannard and Cody Elliott staffed an informational table at the law

school’s inaugural “Bar Prowl” event showcasing OSB organizations. 15-20 law students visited our table.

September 19, 2013, University of Oregon School of Law: “How to Network and Work a Room” presented by Law School Presentation Subcommittee Chair Kyle Dukelow with assistance from three local attorneys, followed by speed networking. 25 law students attended.

October 16, 2013, Willamette University College of Law: “10 Minute Fix: Stress Reduction Techniques” presentation by QOL Chair Heather Decker, followed by speed networking. Attended by Subcommittee Chair Kyle Dukelow, QOL Chair Heather Decker, QOL Secretary Eva Marcotrigiano, and QOL Member Mindy Stannard, and five local lawyers. 12 law students attended.

### **Matters considered/Matters pending:**

Transitions Subcommittee sought and obtained sample work/life balance and leave policies from local employers as resources for publication on the Committee’s website.

Committee member Anne Villella is drafting an article on compassionate listening for publication on the Committee’s website and for submission to the OSB Bulletin.

Chair Yoga, Relaxation Breathing and Meditation practices from the “10 Minute Fix” will be added to the website as individual 10 minute segments.

### **Recommendations for 2014:**

Engage in strategic planning and vision work for the Committee’s website to more fully utilize it to promote and share the Committee’s work and website content.

Promote participation in a technology holiday for lawyers (e.g., the National Day of Unplugging, <http://www.sabbathmanifesto.org/unplug>)

CLEs focused on personal finance issues, such as: personal finance hygiene habits, “Finding your financial footing” for recent graduates, and retirement planning.

Potential CLE/article topics: sleep hygiene; Sabbaticals part 2 – planning and preparing for a sabbatical; social networking addiction; what “quality of life” means to you?

### **Any other comments:**

This was a year marked by turnover with pre-term resignation of several veteran Committee members

and our long-term OSB Liaison. We recruited and nominated candidates for appointment to fill those positions and oriented our new members to the Committee. Adina Flynn, JD was appointed as an Advisory Member to assist the Committee in addressing personal finance issues as they relate to a lawyer's quality of life, un/underemployment of recent graduates and lofty law school debt, and the needs of older lawyers approaching retirement. These issues have taken greater importance in, and influence over, quality of life in the wake of the "Great Recession."

*Respectfully submitted: Heather Wright Decker (CH), Eva M. Marcotrigiano (SEC), Kyle B. Dukelow, Cody J. Elliott, Amy Saeger Miller, Michael B. Reid, AnneMarrie Sgarlata, Mindy S. Stannard, Anne E. Villella, Damon F. Tempey (PM), Adina R. Flynn (ADV), Tanya R. Hanson (PLF), Maureen Claire O'Connor (BC), George D. Wolff (BL).*

## Uniform Civil Jury Instructions Committee

### **Activities and accomplishments:**

In early 2012, the committee determined that a comprehensive global review of existing instructions would be a project worth pursuing. In 2013, the committee agreed this project would be its primary focus, and honed in on a review of the instructions which had not been updated since the 2005 version of the Red Book was printed.

In this process 84 instructions were reviewed. Of those instructions, 31 were determined to be fine, without the need for any changes in 2013. (UCJI Nos. 10.02, 10.05, 11.01, 13.02, 15.01, 20.06, 20.08, 21.05, 35.03, 35.07, 35.09, 35.14, 41.01, 46.11, 46.12, 55.08, 55.11, 55.14, 55.15, 56.03, 56.04, 65.02, 65.03, 65.14-65.19, 65.21, and 65.22.) These instructions have been re-published, as-is, with 2013 revision dates.

Another 30 instructions were found to be substantially accurate with only minor revisions necessary, such as needing to update the cases or statute numbers cited in the comments. The committee made and approved necessary changes to 19 of those instructions. (UCJI Nos. 5.03, 13.01, 13.04, 20.04, 20.05, 21.06, 35.04, 35.06, 35.08, 35.10, 35.11, 35.13, 40.01A, 40.03, 40.04, 41.02, 55.05, 55.06, 55.09, 55.10, 55.12, 65.01, 65.04, 65.05, 65.12, 65.13, 65.17A, 65.20, 70.02, and 70.05. The instructions in bold type are the instructions we did not have time to address.)

The final 19 instructions required more substantial work. (UCJI Nos. 20.01-20.03, 20.07, 21.02-21.04, 35.12, 40.01, 41.03, 47.01, 47.02, 53.01, 55.01-55.04, 55.07, 55.12A, 56.01, 56.05, 65.02, and 65.17B.) The biggest changes we made were to the Chapter 20 instructions. These were substantially revised, re-titled, and re-ordered. There was significant discussion within the committee about whether we should mess with instructions which are used very regularly and no case law has come out saying the instructions are incorrect. Members had strong feelings for and against changing these instructions, but in the end, everyone agreed the instructions could be made better, and we developed consensus as we moved forward.

As the committee performed these revisions, members saw need for a brand new instruction. Thus, we created UCJI 40.06 – Intent Defined.

In addition, the committee continued working on the new OFLA instructions which were a carry-over from 2011 and 2012. While we had the best of intentions, due to scheduling constraints of the members on the committee who are experienced in this area of law, we were unable to get through them fully. It is hoped that the committee will be able to finalize these instructions early in 2014, as newer committee members have volunteered to take over where the outgoing members are leaving off.

### **Matters considered/Matters pending:**

There are 25 instructions which have been reviewed and determined to need revision (either minor or substantial) and are either in the process of being revised and approved by the committee, or need the revision process started. (UCJI Nos. 21.02-21.04, 21.06, 47.01, 47.02, 53.01, 55.01-55.07, 55.09, 55.10, 55.12, 55.12A, 65.01, 65.02, 65.04, 65.05, 65.17A, 65.17B, and 65.20.)

### **Recommendations for 2014:**

It is recommended that in 2014, the committee continue the review process, with a focus on finishing the revision process for those instructions which have already been identified as needing work, and continuing with other instructions that have not been reviewed since the 2005 printed update, as it has been more than a decade since some of those instructions have been reviewed.

It is also recommended that the OFLA instructions be a focus for completion.

The committee members, under the new leadership team, will determine how much of its focus will be on review versus drafting new instructions that the committee will identify.

Respectfully submitted: Holli K. Houston (CH), Matthew E. Malmsheimer (SEC), Courtney W. Angeli, Michael A. Casper, John Thomas Devlin, Timothy J. Heinson, Jennifer L. Hunking, Thomas B. Powers, Christopher B. Rounds, John A. Schwimmer, Jason A. Skelton, Julie A. Smith, Julie R. Vacura, Kristen West McCall, John C. Young, Hunter B. Emerick (BC), Linda L. Kruschke (BL).

## **Uniform Criminal Jury Instructions Committee**

### ***Activities and accomplishments:***

Drafted new introductory instructions to make the instructions more easily understandable for jurors.

Amended current instructions to reflect recent court opinions regarding venue requirements.

Added more instructions regarding enhancement factors.

Revised instructions to reflect current statutory changes (ie – aggravated harassment).

### ***Matters considered/Matters pending:***

Considered: Discussed whether an additional instruction for eyewitness testimony was necessary in light of Lawson. Currently considering whether a change to Sex Abuse instructions is necessary to reflect a requirement that the defendant know the victim is not consenting. The Reasonable Doubt subcommittee is continuing to revise the reasonable doubt instruction and should have a recommendation for the full committee shortly.

Pending: Completion of review of enhancement factor instructions. The committee was also reviewing and double checking venue instructions to ensure all mentions of venue in the instructions have been removed where appropriate. A draft of the sex abuse instruction reflecting the knowledge requirement is currently being submitted.

### ***Recommendations for 2014:***

Continue to foster a positive culture and collaborative environment as the committee continues its mission to review and create jury instructions in light of the constantly evolving legal landscape.

*Respectfully submitted: Kara K. Davis (CH), Terry Ann Leggert (SEC), Russell S. Barnett, Jamie Contreras, Stephanie J. Engelsman, Kelly Rose Glenn, Rankin Johnson, Melanie Kebler, Harrison Latto, Justin W. Nelson, William Bryan Porter, Steven L. Price, Courtney L. Quale, Jason Glenn Short, Michael R. Washington, Ethan D. Knight (BC), Dean P. Land (BL).*

## **Unlawful Practice of Law Committee**

### ***Activities and accomplishments:***

The Committee continued to maintain stricter docket control, with cases being closed more efficiently. To this end, we instituted a new rule that instructed members to turn reports around in a three-month window. If an investigator was unable to meet this three-month window, the investigator had to request an extension.

We continued to welcome a diverse array of Committee members from varied backgrounds and the public and private sector. We had investigators from all corners of the State, working for government agencies, large law firms, and small law firms. The breadth of experience covered every arena from criminal law to family law to employee benefits. The staff worked well together and engaged in high-level, spirited discussions. Staff Liaison Amber Hollister continued to be an essential asset, providing helpful legal input and counsel.

With the advent of the Cautionary Letter last year, members felt more liberated to use that as a tool when the conduct warranted a more compelling response than just a Notice Letter, but did not yet rise to the level of negotiating a Cease and Desist or prosecution.

This year the Committee received an increased number of complaints relating to debt resolution schemes. These complaints are especially troubling because they involve vulnerable populations facing foreclosure or bankruptcy who could truly benefit from good legal advice. The Committee has sought to refer consumer victims to the Oregon Department of Justice, the Oregon Department of Consumer and Business Services, and the Federal Trade Commission, as appropriate.

Finally, the Committee saw its first UPL Opinions approved by the BOG this year. The first rode on the heels of a lot of activity with Notarios last year. UPL Opinion #2013-01 addressed the limits notaries, translators, and accredited professionals have. The

second opinion addressed the oft-questioned issue of non lawyers representing companies. UPL Opinion #2013-02 addressed the limits these non lawyers have when representing corporations, unincorporated associations, nonprofits, trusts, and partnerships.

***Matters considered/Matters pending:***

As of November 26, 2013, the Committee had received 58 complaints. We closed 66 cases, including negotiating once Cease & Desist Agreement, and have three other agreements pending approval. We sent five cases to prosecution, in which two of them we obtained injunctions. Two others are in prosecution, and the other one was rescinded.

There are 10 pending cases, all of which were filed in 2013, except for the two cases in prosecution, which were filed in 2012.

We issued six cautionary letters, seven notice letters, four "advertising only" letters, and 14 dismissals. We referred four cases to other agencies for action, took "no action" on three cases for insufficient evidence, and tabled one case for further information.

***Recommendations for 2014:***

The Committee suggests members stay on top of the new three-month turnaround rule. This keeps investigations fresh, and provides timely resolution to the complainant and respondent.

The Committee would like to draft several additional UPL Advisory Opinions, including opinions on representation by friends and independent paralegals.

The Committee would like to redouble its efforts to educate the public about the dangers of the unlawful practice of law, especially in the notario and debt reduction contexts.

The Committee also suggests maintaining a diverse group of investigators with varied background and experience. Having at least one investigator at DOJ has continued to prove helpful in allocating helpful resources to investigators, such as people locate services. It has also been helpful having members who have family law experience and immigration law experience.

To the extent possible, the Committee also encourages members to be present for meetings in lieu of telephonic appearances. While that is not always feasible, particularly in light of the distances some members would have to drive, in-person meetings were always much more helpful in terms of engaging in meaningful discussions about investigations.

*Respectfully submitted: Britney Ann Colton (CH), Laura B. Rufolo (CH-Elect), Katharine von Ter Stegge (SEC), Joel C. Benton, Haley B. Bjerk, Jermaine F. Brown, David F. Doughman, Frank H. Hilton, Roland A. Johnson, Alan S. Lanker, P. Andrew McStay, Jane E. Mopper, Karen M. Oakes, Mary A. Overgaard, Lillian Suelzle Watson, Ellen Marie Weintraut, Lisa J. Douglass (PM), Robert P. Latham (PM), Travis S. Prestwich (BC), Amber Autumn Hollister (BL).*



16037 SW Upper Boones Ferry Rd  
PO Box 231935, Tigard, OR 97225

(503) 320-0222 or toll-free in Oregon: (800) 452-8260