

Oregon State Bar

2018 COMMITTEE
Annual Reports

2018 Committee Annual Reports

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 2018 Committee members, thank you for your time and expertise.

Table of Contents

Bar Press Broadcasters Council.....	1
Client Security Fund	1
Legal Ethics Committee	2
Legal Services Program Committee	3
Minimum Continuing Legal Education Committee.....	3
Pro Bono Committee	4
Oregon Bench Bar Commission on Professionalism.....	4
Public Service Advisory Committee	5
State Lawyers Assistance Committee	6
Uniform Civil Jury Instructions Committee	7
Uniform Criminal Jury Instruction Committee	7
Unlawful Practice of Law Committee	8

Bar Press Broadcasters Council

Activities and accomplishments:

The Council worked throughout 2018 to finalize amendments to Uniform Trial Court Rule 3.180, which directs courts on the use of electronic recording equipment in Oregon courts. The new rule was adopted by the Oregon Supreme Court in the fall. The amendments modernize the rule to account for modern electronic devices such as cell phone cameras, and evolving mediums such as Twitter, which are increasingly in use by media outlets.

The Council hosted the annual Building a Culture of Dialogue event in April. The gathering brought together 45 professionals – journalists, lawyers and judges – for a facilitated discussion of the coverage of high profile criminal cases in Oregon. Facilitated by the Honorable Michael Simon of United State District Court, the program helped participants discuss areas of conflict and tension that have arisen over the past several years in the state.

Recommendations for 2019:

The Council will host its annual event on April 6, and planning is under way.

The Council will also work throughout 2019 to educate all stakeholders and the public about the new UTCR 3.180, and its impact around the state courts.

Respectfully submitted: John Tierney (CH), Dawn Andrews, Duane Bosworth, Nancy Cozine, Amy Cook, Erik Hasselman, Scott Healy, Robert Johnson, Steven Krasik, Lisa Ludwig, Kevin Ray McConnell, Sydney Moore, Joshua Nasbe, Rachel Philips, Gregory Silver, Rodney Underhill, Whitney Patrick Boise (BC), Kateri Walsh (BL).

Broadcasters: Corey Hanson, Nick Bradshaw, Kyle Iboshi, Sarah Rothenfluch, John Tierney, Dan Tilkin.

Press: Steve Bagwell, Therese Bottomly, Tim Gleason, Laurie Hieb, Mike McNally, Brad Thompson, Vance Tong.

Client Security Fund

Activities and accomplishments:

The Client Security Fund is established under ORS 9.625 to relieve or mitigate pecuniary losses incurred by the clients of Oregon lawyers and caused by the dishonest conduct of lawyers in their practice of law. The Client Security Fund Committee (“CSF

Committee”) oversees the fund, investigates claims, and either takes final action on claims (of less than \$5,000) or makes a recommendation to the Board of Governors (claims of \$5,000 or more). The Client Security Fund is an important component of the Oregon State Bar’s obligation to protect the public. The ability to reimburse clients (in full or 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 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 Bar attempts to recoup on those assigned claims to the extent possible.

The CSF Committee also conducted a review of its fund balance and the abnormally high pending activity, attributable to a large number of high dollar claims from primarily two attorneys. In light of this review, the committee recommended to the Board of Governors that the annual assessment paid by active members of the bar be increase from \$10 to \$15. The Board accepted this recommendation effective for the 2019 membership cycle.

Matters considered/Matters pending:

As of December 31, the Client Security Fund had received 85 new claims in 2018, involving 24 lawyers. In addition, six claims were carried over from 2017. During 2018, the CSF Committee approved or recommended approval of 16 claims, totaling \$189,492.97. The committee also denied or recommended denial of 16 claims. One claim was withdrawn after payment by the Professional Liability Fund, and one claim was withdrawn or closed after it was found to be a duplicate request from a Husband and Wife. Six cases from 2017 are being carried over to 2019 totaling \$51,600.00 and Seventy-three claims, requesting a total of \$2,025,837.03, will be carried over to 2019.

A summary of individual claims paid was published in the January 2019 Bulletin, which is available at <https://www.osbar.org/bulletin/issues/2019/2019January/index.html?page=9>.

As of September 30, 2018 (the most recent period for which financial statements are available to the CSF Committee), the Client Security Fund balance

is approximately \$1.39 million. As noted above, there are pending claims of \$2,025,837.03. The CSF Committee believes that with the increase in the annual assessment, the present fund balance is adequate to assure the solvency of the fund for the foreseeable future.

Recommendations for 2019:

The Committee had just begun review of implementation of check lists to streamline and standardize investigations. The Committee should continue to assess the viability of such forms for 2019.

Respectfully submitted: Nancy Cooper (CH), Douglas Stamm (SEC), Richard Braun, Jennifer Hisey, Rod Jones, Ann Ledgerwood, David Roy, Lucille Sage, Daniel Steinberg, Steven Taylor, Stephanie Thompson, Richard Whitlock, Raymond Young, Carrie Hooten (PM), Kerry Sharp (BC), Amber Hollister (BL).

Legal Ethics Committee

Activities and accomplishments:

The committee held six meetings in 2018. It continued work on five projects from prior years and initiated six new projects. The committee completed work on five projects, including a revision of 15 formal ethics opinions impacted by the 2017 amendment to RPC 7.3, which permitted lawyers to solicit clients in person or by any other means, except in certain circumstances. It completed a substantial draft of a new opinion to exemplify the new rule on in-person solicitation.

Matters considered:

The committee took action on the following projects:

Project No. 15-05, Revisions to OSB Formal Op No. 2007-180: opinion withdrawn.

Project No. 18-01, Consider elimination or revision to RPC 8.3: project withdrawn.

Project No. 18-02, Edit opinions to accord with changes to Oregon RPC 7.3 regarding in-person solicitation. The committee passed revisions to the following opinions:

- OSB Formal Ethics Op. No. 2005-127;
- OSB Formal Ethics Op. No. 2005-70;
- OSB Formal Ethics Op. No. 2005-79;
- OSB Formal Ethics Op. No. 2005-100;
- OSB Formal Ethics Op. No. 2005-106;

- OSB Formal Ethics Op. No. 2005-130;
- OSB Formal Ethics Op. No. 2005-175;
- OSB Formal Ethics Op. No. 2005-2;
- OSB Formal Ethics Op. No. 2005-3;
- OSB Formal Ethics Op. No. 2005-35;
- OSB Formal Ethics Op. No. 2005-73;
- OSB Formal Ethics Op. No. 2005-129;
- OSB Formal Ethics Op. No. 2005-112;
- OSB Formal Ethics Op. No. 2005-70; and
- OSB Formal Ethics Op. No. 2005-106.

Project No. 18-04, Credit Card Processing / Revision to OSB Formal Op. 2005-172: revisions passed.

Project No. 18-06, Amend OSB Formal Op 2007-168 to withdraw Question No. 4, the discussion therein, and the last sentence of the fact section: revisions passed.

Matters pending:

Project No. 15-02, Interpretation of RPC 8.5/ Choice of Law for RPCs.

Project No. 17-01, Responding to social media posts.

Project No. 17-04, Allocation of settlement authority when representing multiple clients.

Project No. 18-03, new opinion explaining in-person solicitation restrictions in light of changes to RPC 7.3.

Project No. 18-05, Combine OSB Formal Op. Nos. 2005-171 and 2005-63 re fee agreements.

Project No. 18-06, Possible Revisions to OSB Formal Op. Nos. 2005-130 re lawyer's solicitation to a witness

Project No. 18-08, Combine OSB Formal Op. Nos. 2005-2 re quid pro quo referral arrangements.

Recommendations for 2019:

I recommend that the committee expressly form designated subcommittees to work on projects in between bimonthly meetings. Also I recommend the committee continue to use DropBox or some other file sharing site to allow all committee members to have access to organized information on all projects.

Respectfully submitted: Daniel L. Keppler (CH), Justin Thorp (SEC), Walter Fonseca, Andrea Goodwin, Samia Haddad, Sarah Harlos, Raquel Hecht, Kyann Kalin, John Klor, Greg Lockwood, Tara Kaylene Millan, Jonathan Monson, Adam Peterson, Barbara Smythe, Guy Thompson, Dayna Underhill, Eddie Medina (BC), Helen Hierschbiel (BL).

Legal Services Program Committee

Activities and accomplishments:

The Legal Services Program Committee (LSP Committee) met five times over the course of the year.

The LSP Committee forwarded a recommendation to the Board of Governors (BOG) for the disbursement of the unclaimed funds. The recommendation was to disburse \$200,000 from the fund to the legal service providers and increase the reserve target for the Unclaimed Fund from \$100,000 to \$200,000 due to the increase over the years in potential claims liability.

Staff and the committee conducted an accountability review of the legal services providers throughout Oregon including self-assessment reports and site visits at a regional office of each of the three service providers. A draft accountability report was drafted and reviewed by the providers. The report was not presented to the BOG in 2018 because the LSP was still meeting with the providers on potential findings.

Matters considered/Matters pending:

The LSP Committee and staff will continue to work with the providers into 2019 to address the findings outlined in the Accountability Report. The Accountability Report will be finalized after next steps are determined.

Recommendations for 2019:

The LSP Committee will make a recommendation to the BOG about the disbursement of any unclaimed funds and any recommendations for changes to the current disbursement policy.

Work with the bar's Public Affairs Department to achieve the goal for the 2019 Legislative Session which is to increase the statutory appropriation by \$3 million for the biennium and establish an annual cost of living increase on the statutory appropriation.

Be prepared to make recommendations regarding a possible cy pres award that may be forthcoming from the Scharfstein V. BP West Coast Products lawsuit in 2019.

Respectfully submitted: Brent Hall (CH), Sara Kobak (SEC), Kristin Bremer Moore, Laurie Craghead, Timothy Gerking, Kamala Shugar, Andrea Thompson, LaFreda Ceasar (PM), David Wade (BC), Judith Baker (BL).

Minimum Continuing Legal Education Committee

Activities and accomplishments:

The Committee met on March 9, June 8, and October 5. Our final meeting of the year is scheduled for December 14. The October 5 meeting was held at the Oregon State Department of Justice in Eugene. All other meetings were held at the Oregon State Bar Center in Tigard. The Committee formed a subcommittee to consider how to revise the Minimum Continuing Legal Education ("MCLE") purpose and rules in furtherance of the OSB Diversity Action Plan.

During this year, the committee: recommended a proposed revision to the MCLE rules to adopt a requirement for mental health / substance use training, which was adopted by the BOG and Supreme Court; considered and resolved appeals and other requests for MCLE accreditation and credits; and continued to propose amendments to the MCLE rules for consistency and numbering.

Matters considered/Matters pending:

In addition to the accomplishments listed above, the committee began considering the following matters, which remain pending: how to revise the purpose of the MCLE rules and the rules themselves in furtherance of the OSB Diversity Action Plan; whether to charge a fee for attorneys to obtain a comity certificate; and how to streamline the New Lawyers Mentoring Program reporting requirement and integrate it into the MCLE rules.

Recommendations for 2019:

The only recommendation is to continue working with the MCLE Program Manager and bar staff to resolve appeals and issues relating to the interpretation of the MCLE rules and continue moving forward the pending matters.

Respectfully submitted: Adam Adkin (CH), John Mellgren (SEC), Nicole Abercrombie, Denise Fjordbeck, Sandy Kuenzi, Douglas Olsen, Eugene Thompson, Camilla Thurmond, Oksana Davletshina (PM), Julia Rice (BC), Jade Priest-Maoz (BL).

Pro Bono Committee

Activities and accomplishments:

The full committee met the second Tuesday of every other month at Stoel Rives. Each subcommittee met during the months in which there was no full committee meeting. The Events Subcommittee was renamed the Day of Service Subcommittee, and the Special Projects Subcommittee was renamed the Outreach Subcommittee. The Publicity Subcommittee was eliminated, and each subcommittee agreed to handle its own publicity. Tiffany Blackmon was named chair of the Day of Service Subcommittee, and David Avison was named chair of the Outreach Subcommittee.

Day of Service planned and executed a “Lawyers in Libraries” event in Portland and Hood River, in which lawyers gave presentations on several topics of interest to indigent persons. The topics included family law, estate planning, immigration, contract law, and renters’ rights.

The Outreach Subcommittee began efforts to connect with other committees and organizations at the state and local level to facilitate participation in the day of service and in other pro bono activities and opportunities. It also began planning an advertising campaign to raise awareness for the availability of CLE credit for pro bono work.

The full committee also reviewed the Bar’s Diversity Action Plan to analyze how it should inform ongoing pro bono activities by the committee and more broadly.

Matters considered/Matters pending:

Both activities considered by the newly-named Outreach Subcommittee remain ongoing, and the groundwork laid by the subcommittee this year will allow next year’s committee to start the year quickly and efficiently. The Day of Service is also an ongoing project that the committee hopes to expand in 2019.

Additionally, the Pro Bono Committee has taken responsibility for planning the annual Pro Bono Fair. This has been handled in the past by a special committee but will be transferred to the Pro Bono Committee.

Finally, the committee discussed how it can help facilitate implementation of the pro bono website under consideration by the Bar. The committee believes this would be a valuable resource for people

in need of pro bono legal services and is committed to doing what it can to make the project a reality.

Recommendations for 2019:

In addition to following up on the progress and accomplishments discussed above, the committee needs to continue work more closely with the ONLD. An ONLD liaison was established toward the end of the year, and the prospects of that relationship look more promising for 2019. The committee should find ways to help resolve obstacles to implementation of the pro bono website, and expand the Day of Service to other cities in the state. The committee will also need to incorporate the Pro Bono Fair into its workload. Even though much of the preparation for the Fair is self-sufficient at this point, its inclusion in the committee’s activities will be an adjustment.

Any other comments:

The committee also requests that the OSB consider providing some funding in order to host CLEs, publicize in various media outlets, and cover the expenses of holding a service day. Without funding, the projects the committee can facilitate are limited and often must rely on funding from outside sources.

Respectfully submitted: Stephen Galloway (CH), Natalie Hedman (SEC), Mary Beth Allen, David Avison, Sandra Gustitus, Tiffany Blackmon, Kevin Kress, Nicholas Reed, Mathew dos Santos, Michael Shin, Laura Westmeyer, Christine Zeller-Powell, Heather Kemper (ADV), Traci Rossi (BC), William C. Penn (BL).

Oregon Bench Bar Commission on Professionalism

Activities and accomplishments:

The Professionalism Commission is engaged in numerous activities to advance the professionalism, equality and efficiency of Oregon’s justice system. The commission met bimonthly, with committees meeting as needed throughout the year. 2018 accomplishments:

Participated in Law School Orientation programs at all three Oregon law schools, welcoming new students to the study of law and introducing them to the concepts and importance of professionalism in their chosen profession. The commission also took a leadership role in reviewing the hypotheticals used by the law schools in their professionalism

programming, and making substantial recommendations for changes where appropriate.

Drafted similar scenarios for use by the Oregon Judicial Conference for a study of professionalism issues confronting the bench.

Hosted a CLE in December under the theme, "What If I'm the Other Guy?" and focusing on knowing one's own vulnerabilities to unprofessional conduct.

Presented the Edwin J. Peterson Professionalism Award to Stephanie Striffler, in conjunction with the Oregon State Bar Awards Luncheon.

Established a collaboration with OSB Legal Publications Department, with goal of including professionalism content into all OSB Bar Books through annual updating calendar.

Under recommendation of former Chief Justice Edwin Peterson, approved a revision of the OSB Statement on Professionalism, and submitted to the Board of Governors for adoption.

Established a new tradition of having the commission featured through a speaking role at all OSB Swearing-in ceremonies.

Updated the "History of the Commission" and published to the web site.

Recommendations for 2019:

There is one outstanding action item from 2018: the adoption of the revised Statement on Professionalism, which will be considered by the Board of Governors in February 2019.

The agenda for 2019 will otherwise mirror the above mentioned activities, and will address new business/new projects as needed.

Respectfully submitted: Parna Mehrbani (CH), Hon. John V. Acosta, Carol J. Bernick, Dominic Campanella, Hon. Eric Dahlin, Jennifer Espinola, Hon. Meagan Flynn, Joseph Franco, Hon. James Fun Jr., Sandy Hansberger, John Haroldson, Helen Hirschbiel, Steve Johansen, Hon. Mustafa Kasubhai, Hon. Marilyn Litzenber, Stephen McCarthy, Vanessa Nordyke, Hon. Edwin Peterson, Mark Johnson Roberts, Alycia Sykora, Yvonne Ana Tamayo, Hon. Douglas Tookey, Lisa Umscheid, Jade Priest-Maoz (BL), Kateri Walsh (BL).

Public Service Advisory Committee

In 2018, the Public Service Advisory Committee (committee) continued its focus on advancing the Oregon's State Bar's (OSB) public service and outreach goals. It continued to advise on the administration of the following six programs: (1) Lawyer Referral Service (LRS), (2) Modest Means Program, (3) Lawyer-to-Lawyer, (4) Military Assistance Panel, (5) Problem Solvers, and (6) FEMA Response.

The committee discussed the bar's Diversity Action Plan and its charge to increase awareness of the Modest Means Program (MMP) and LRS to underserved communities. The committee recommended over a dozen organizations the LRS manager should contact as part of his outreach efforts.

The committee worked to create a "Refugee Legal Assistance Panel" that will provide limited pro bono legal assistance to the refugee/immigrant community. Catholic Charities and a private immigration attorney will work with bar staff to create an advisory panel, recruit attorney volunteers and obtain interpreter services. Bar staff will also coordinate to plan a kick-off event that will include information and training for volunteer attorneys and interpreters. The committee's goal is to have the new panel fully implemented in early 2019.

The committee provided advice and support on the development of a series of short Legal Q&A videos for the public on the OSB's website, oregonstatebar.org. The committee also contributed input on several public education projects, including an effort to reduce the reading level of text on the bar's website. Several committee members volunteered to review and edit legal topics on the public site.

The committee discussed updating LRS policies regarding the bar's fee dispute resolution program. The committee decided general counsel's office will notify the LRS manager when a fee dispute is filed against an LRS panelist, along with the client name and the amount in controversy.

Matters considered/Matters Pending:

The committee will continue to monitor and advise on all of the issues described above.

Recommendations for 2019:

At the December 2018 meeting of the committee, bar staff gave an update on the board's upcoming

program review. The committee's consensus recommendation is that as a matter of general policy, LRS revenue should be directed towards expanding access to justice in ways that also have the potential to increase referrals to LRS. The committee also indicated they preferred that option to the possibility of lowering percentage remittance fees.

The committee will continue its review and oversight of bar materials and information designed to convey information about the law to the general public.

Respectfully submitted: Diana Winther (CH), Janay Haas (SEC), Rachel Bertoni, Steven Boender, Tiffany Johnson, Andrew Kalloch, Ann Lechman-Su, Keith Leitz, Loretta Mabinton, Bonnie Palka, Jovanna Patrick, Kimberlee Petrie Volm, Emily Pringle, Maxine Tuan, Lisa Umscheid, Leanne L'Hommedieu (PM), Rob Gratchner (BC), Sheila Blackford (PLF), Kay Pulju (BL) Eric McClendon (BL).

State Lawyers Assistance Committee

Activities and accomplishments:

During 2018, the committee received approximately seven new traditional referrals from attorneys, judges, the SPRB, and members of the public. Each referral was investigated in accordance with the OSB Bylaws and the SLAC authorizing statute, ORS 9.568. The committee continues to accept jurisdiction and to monitor remedial programs for a number of attorneys. Much of the business conducted by the committee involved confidential discussions surrounding these cases. Those confidential discussions cannot be revealed in this report. The committee continues to monitor approximately seven other traditional referrals. The committee closed 11 traditional referrals in 2018.

Additionally, the committee evaluates and monitors lawyers who are referred from Disciplinary Counsel's Office (DCO) as part of the conditional admission/reinstatement and diversion/probation process. In 2018, the Committee took on the role of monitor for one new lawyer who was a conditional admittee, and continued to monitor five lawyers from the previous year. The committee received three new probation assignments, and continued to monitor two probation referrals from previous years. The committee continued to monitor two lawyers who entered into diversion agreements last year. SLAC continues to utilize the assistance of former

committee members and attorneys throughout the state to assist in lawyer monitoring.

Also in 2018, the committee contracted with Reliant Behavioral Health to provide uniform substance abuse testing procedures and access throughout the state.

Matters considered/Matters pending:

The committee continues to weigh how to best evaluate and monitor referred attorneys experiencing age-related cognitive impairments.

In fall 2018, the SLAC Secretary, who is functionally the Chair-Elect, attended the ABA National Conference on Lawyer Assistance Programs. He reported that the programming was on point and helped him place the SLAC efforts in context. We continued that practice this year, again sending the committee secretary to this important conference.

Recommendations for 2018:

Continue to develop protocol for evaluating and assisting lawyers who may be experiencing cognitive decline. Explore partnerships with local medical research facilities on these issues.

Continue the training for the committee chair and/or secretary related to ABA CoLAP programs.

Continue to look for and implement improvements to the SLAC monitoring process such that SLAC becomes a reliable and skilled resource for monitoring agreements between impaired lawyers and DCO.

Continue to improve communication and cooperation between SLAC and OAAP.

Continue to improve communication and cooperation between SLAC and the Board of Bar Examiners.

Continue to seek creative ways to help impaired lawyers and protect the public.

Endeavor to let bar members know what SLAC is, why it exists, and how it can help.

Respectfully submitted: John Parsons (CH), Edward Versteeg (SEC), Mark Baskerville, Sara Butcher, Robert Cleland, Michael Cougar, Cynthia Botsios Danforth, Stephen Doyle, William Horner, Kevin Lucey, Sharon Maynard, Jered Reid, Laura Rufolo, Elizabeth Schwartz, Josh Soper, Jonathan Strauhull, Michael Villanueva (PM), Douglas Querin (OAAP), Christine Costantino (BC), Mark Johnson Roberts(BL).

Uniform Civil Jury Instructions Committee

Activities and accomplishments:

The Committee determined that the entire set of disability-discrimination instructions needed overhauling and reorganizing. This set of instructions is particularly complex and consumed a great deal of time. As part of the overhaul, the committee withdrew two instructions (59.03 and 59.04).

The Committee also continued its work of reviewing instructions that have not been reviewed since 2005. In particular they spent considerable time working on the liquor-liability instructions (47.01 and 47.02) and an instruction dealing with breach of fiduciary duty—self-dealing or conflict of interest (50.03). Due to attendance issues and matters that arose with a case in the liquor-liability arena, the instructions were tabled and will continue to be worked on in 2019.

Matters considered/Matters pending:

In 2019 the Committee will continue working on overhauling the disability-discrimination instructions and will complete its work on the liquor-liability and breach-of-fiduciary-duty instructions.

Recommendations for 2019:

The Committee's goal is to finish the disability-discrimination instructions and then complete review of all remaining instructions with a 2005 review date.

Respectfully submitted: Jeffery Armistead (CH), Jeffery Young (SEC), Sheri Browning, Robert Beatty-Walters, Beth Creighton, John Geil, Michael Hallinan, Katie Johnson, Anthony Kuchulis, Daniel LeRoux, Eva, Marcotrigianom David Park, David Rosen, Blair Townsend, Ulanda Watkins, Colin Andries (BC), Lorianne Jacobs (BL).

Uniform Criminal Jury Instruction Committee

Activities and accomplishments:

Over the past year we worked to update the older instructions in the General Instructions chapter, as well as other instructions, updating the following instructions:

1002 (use of an interpreter)

1003 (use of a sign language interpreter or assistive communication device for a juror)

1006 (evaluating witness testimony)

1007 (requirements for electronic recording)

1010 (affirmative defense—defendant's burden of proof)

1012 (lesser included offense order of deliberation)

1013 (multiple lesser included offenses order of deliberation)

1014 (lesser included offense[s] explanation or comparison)

1017 (sample criminal jury verdict form—one charge, no lesser included offense)

1018 (subcategory classification factors and offense-specific enhancement facts)

1019 (sample special verdict form—subcategory classification factors or offense-specific enhancement facts)

1020 (sample criminal jury verdict form—one charge, one or more lesser included offenses)

1024 (defendant's statements)

1027 (jury view)

1032 (criminal charge)

1033 (nonexpert opinion evidence)

1034 (expert opinion evidence)

1045 (possession)

1046 (preponderance of the evidence)

1047 (public place)

1048 (deadly physical force)

1049 (admission of confession—voluntariness)

1050 (confession—corroboration)

1054 (accomplice witness—definition)

1055 (accomplice witness—burden of proof)

1056 (accomplice—corroboration)

1057 (accomplice testimony—view with distrust)

1065 (voluntary act or omission)

1400 (definition related to assault)

1417 (assault in the third degree—subsection (1) (g))

3000 (definitions related to animal offenses)

3003 (animal abuse in the first degree—subsection (4))

In addition to updating the foregoing instructions, we created an instruction pertaining to the "extreme

indifference” element that pertains to various criminal offenses.

Matters considered/Matters pending:

Matters that we considered but ultimately decided not to pursue included:

creating a jury instruction on the “distracted driver” statute; remove outdated instructions predating marijuana legalization and create a new chapter for marijuana offense;

creating a jury instruction for statutory counterparts from other jurisdictions.

Recommendations for 2019:

I recommend that the next year’s committee try again to update the uniform instructions to conform with changes related to marijuana legalization.

Respectfully submitted: Gregory Rios (CH), Anna Belias (SEC), Lisa Donnell, Matthew Dyal, Graham Fisher, Henry LeSueur, Sarah Lunstedt, Paul Maloney, Mark Millard, Lauren Nweze, Ryan O’Connor, Tippr Pearse, Courtney Quale- Conrad, Stacey Reding, Joel Wirtz, Whitney Boise (BC), Dean Land (BL).

Unlawful Practice of Law Committee

Activities and accomplishments:

The Committee continues to investigate reports of the unlawful practice of law (“UPL”) under the amended bylaws, adopted by the Board of Governors.

The Committee continued advocacy and advisory opinion work via two subcommittees established in 2016. The advocacy subcommittee has been heavily involved in notario fraud issues, especially in light of the immigration law changes that occurred in 2017. Members of the subcommittee attended and represented the bar at events hosted by community members, such as the Mexican Consulate, Catholic Charities, DPSST, and Russian Radio. In addition, the subcommittee arranged to have speakers at Committee meetings to help educate the members of the Committee and to brainstorm ways the Committee can help with these issues in the community. Speakers included Quinn Andrus, United States Customs and Immigration Service Community Relations Officer/Liaison, and Helietta Gonzalez Hernandez and Briseida Rayon Baza, both from the Mexican Consulate.

The advisory opinion subcommittee worked on drafts of various topics and presented two draft

opinions, one on Advertising and one on direct care staff for adults with disabilities, to the Committee for review. Further edits are being made and it is expected that both opinions will be approved by the Committee in early 2018. Each member of the subcommittee continues to work on draft opinions, with an expectation that additional draft opinions will be presented to the Committee in early 2019.

Additionally, the subcommittee discussed issues surrounding the dissemination of family law forms by court clerks. The subcommittee determined that a document that the court clerks could provide to pro se litigants to help them best select the form they need would alleviate the current concern of clerks selecting forms for a pro se litigant and potentially committing UPL. The subcommittee will continue to work on that document in 2019.

Matters considered/Matters pending:

41 cases were opened this year as of December 1, 2018. There are 7 matters still currently open with one of those cases being from the end of 2017. The Committee issued five closure letters, 13 Informational letters, four dismissal letters, and four advertisement letters. The Committee recommended nine cases for prosecution, one case was closed after being prosecuted by the DCBS in which an Order was received. The other eight are still pending. The Committee also took no action on five cases.

The Committee also approved submission of a proposed Continuing Legal Education (CLE) course to the MCLE Committee on the subject of UPL reporting and investigation, for accreditation. In addition, in response to inquiries from several judges and court staff members, the Committee prepared a memorandum for dissemination to the Oregon Judicial Department, for the benefit of trial court judges and administrators, explaining the Committee's investigative process and details of UPL reporting.

Recommendations for 2019:

The Committee encourages members stay on top of the sixty day turnaround rule. This keeps investigations fresh, and provides timely resolution to the complainant and respondent.

The Committee will continue 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 will retain the subcommittees as these provide an efficient way

to address public outreach and the creation of advisory opinions. The advocacy subcommittee will continue to network and work collaboratively with local organizations, including engaging speakers for Committee meetings, regarding notario fraud and UPL.

Because complaints of notario fraud often involve Spanish speakers, we recommend that the BOG continues to recommend members with Spanish language skills for appointment to the Committee. Fraud among Russian speakers is also an issue, and ideally the BOG will continue to take this into account when recommending members. The Committee currently has at least one member fluent in Spanish and one member fluent in Russian.

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 are always much more helpful in terms of engaging in meaningful discussions about investigations.

The Committee encourages the Board of Governors to include a representative from the Committee as part of the Paraprofessional Licensing Exploratory Committee.

Respectfully submitted: Jay Bodzin (CH), Mary Briede (CH-Elect), John Marandas (SEC), Amanda Benjamin, James Brown, Vanessa Crakes, Martin Fisher, Travis Flynn, Monica Goracke, Halah Ilias, Jacob Kamins, Andrea Malone, Stephen Rahe, Jennifer Schade, Theresa Wright, Morad Noury (PM), Samuel Reese (PM), Jason Specht (Ex Officio Member) John Grant (BC), Mark Johnson Roberts (BL).



16037 SW Upper Boones Ferry Rd
PO Box 231935, Tigard, OR 97281
(503) 620-0222 or (800) 452-8260