

**REPORT OF THE
OREGON STATE BAR
TASK FORCE ON SUSTAINABILITY**

*Respectfully submitted
to the OSB Board of Governors
October 2009*



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I. EXECUTIVE SUMMARY

In February 2009, the Board of Governors of the Oregon State Bar (the OSB) appointed an OSB Task Force on Sustainability (the Task Force) composed of 14 Oregon lawyers to recommend whether and how the OSB might integrate sustainability measures into its structure and activities. The broad charge to the Task Force is attached as Appendix 1.

Before turning to the question of how to integrate sustainability into the OSB, the Task Force first considered whether the OSB should do so. In reviewing that question, the Task Force considered: (1) the definition of sustainability; (2) the current role of sustainability within the practice of law and the legal profession; and (3) the implications of *Keller v. State Bar of California*, which provides guidance on what matters may be funded by an integrated state bar.

In considering the definition of sustainability, the Task Force found it instructive to review Oregon's own statutory definition found in ORS 184.421:

"[S]ustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

While this definition applies to a wide range of administrative agencies and is not statutorily binding on the OSB, the Task Force found it was a useful guide in its deliberations. Other definitions of sustainability considered by the Task Force are discussed in more detail within the report.

During its research and deliberations, the Task Force also found that interest in sustainability has burgeoned within the American legal profession generally, and in Oregon specifically, since 2006. In response, the American Bar Association has partnered with the Environmental Protection Agency to promulgate the ABA-EPA Climate Challenge. An organization of Oregon attorneys interested in sustainability, but not affiliated with the OSB, has generated heightened interest in Oregon through training sessions and other strategies. Law offices, both small and large, are pursuing sustainability initiatives throughout the state and region. The Oregon Department of Justice (DOJ) is adopting sustainability policies, as are many city attorneys and county counsel. All three Oregon law schools have incorporated sustainability into their law courses, and two are developing special concentrations in sustainability. Lawyers are increasingly providing legal services to clients and employers that have sustainability as a distinguishing characteristic of their businesses. The OSB has accredited numerous Continuing Legal Education (CLE) programs related to sustainability and has embraced sustainable practices to reduce paper usage and to increase distance learning options for CLE programs. And, in response to client and societal interest, a growing number of law offices around the state emphasize lawyer interest and expertise in sustainability as distinguishing characteristics of their firms.

Based on these and other findings contained within this report, the Task Force concluded that the integration of sustainability into the structure and activities of the OSB was appropriate and timely. Given the increasing integration of sustainability principles and standards into a

growing number of societal, economic, and political systems in this nation and around the world, there is an inevitable confluence with both the practice of law and development of jurisprudence within this state. As a starting point, the Task Force has proposed two structural recommendations that will provide a long-term framework for sustainability considerations within the OSB.

First, the Task Force recommends that the OSB form a new Sustainable Future Section (SFS). This section would be organized around the overarching societal goal of sustainability, which has been embraced by the State of Oregon, the Oregon Business Summit, other professions, and institutions around the state. In view of the expanding reach of sustainability into law office operations, many areas of substantive law, judicial and administrative proceedings, and new legal theories to protect future generations, the SFS would be in a position to respond to these developments on behalf of the OSB and its members as appropriate. In reaching the conclusion to recommend a new section, the Task Force carefully considered the alternative of making sustainability a specific responsibility of an existing section or simply allowing sections to address the issue at their own discretion. However, the Task Force found that no current section, or even small subset of sections, could represent the broad sweep of lawyers and law offices now engaged in sustainability efforts.

Second, the Task Force recommends adoption of a new OSB sustainability bylaw. This bylaw would provide both guidance and assurance to future members, bar leaders, and staff regarding the OSB's commitment to sustainability. The Task Force also recommends: (1) that the Board of Governors (BOG) direct the OSB staff to develop a written sustainability policy and amend an existing performance standard to incorporate sustainability criteria; (2) a minor modification to Rule 2.1 of the Oregon Rules of Professional Conduct, which specifies permissible considerations in giving legal advice, by adding sustainability to the list of considerations; and (3) allowing sustainability to continue its natural expansion into accredited CLE programs and practices.

Looking ahead to the role of the new Sustainable Future Section, the Task Force also recommends an initial scope of work for the section. Beyond its overarching role to monitor sustainability developments as they affect the Oregon legal profession, the SFS would publicize sustainability tools for the law office; bring developments to the attention of the OSB and the other sections; implement a program of recognition for sustainability efforts of law offices and individual lawyers; and assist in fostering sustainability, when consistent with efficient practices, in judicial and administrative proceedings.

The implementation of recommendations in this report would mark a visible commitment by the OSB to participate in the societal movement to create a truly sustainable future and to provide leadership on sustainability for the legal profession. This step would be in line with efforts of the State of Oregon and Oregon businesses, institutions, and governmental agencies that are nationally recognized for their leadership role.

The Task Force¹ would also like to take this opportunity to thank the Board of Governors for initiating this important review of sustainability as it applies to the OSB and the legal profession in Oregon. It has been our honor and privilege to serve in this capacity. The full report, with recommendations and appendices, follows.

II. SUSTAINABILITY DEFINED

For many, the publication of *Silent Spring* by Rachel Carson in 1962 heralded the beginning of the modern American environmental movement. The first Earth Day in 1970 popularized the movement and provided impetus for federal and state environmental laws and regulations that burgeoned during the 1970s. This sharp focus on environmental protection was not directly connected to the economic and social goals associated with sustainability, but it did prompt the rapid development of the field of environmental law in the 1970s.

By the twentieth anniversary of Earth Day in 1990 there was a heightened societal awareness of the connection between (1) personal and business practices and (2) ecological degradation. In the Pacific Northwest, that awareness emerged as the sustainability movement gained momentum during the 1990s and now pervades the societal conscience in many forms including green buildings, consumer products, and alternative energy systems. That movement has focused primarily on voluntary efforts, as opposed to statutory mandates, to reduce impact on the earth.

The internationally accepted definition of sustainability is derived from a report commissioned by the UN World Commission on Environment and Development in 1987, popularly known as the Brundtland Report:

*Sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs.*²

In Oregon, the Brundtland definition influenced the drafting of ORS 184.421:

"[S]ustainability" means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

¹ Task Force members, including their representative capacity where applicable are: Chair William K. Kabeiseman – Government Law Section; Jacqueline Bishop – Real Estate and Land Use Section; David C. Forman – Portland lawyer; Ellen H. Grover – Bend lawyer; Diane Henkels – Environment & Natural Resources Section; James M. Kennedy – Business Law Section; Megan I. Livermore – Eugene lawyer; Max M. Miller Jr. – Portland lawyer; Jonathan M. Norling – Energy Telecom & Utility Law Section; Susan E. O'Toole – Environment & Natural Resources Section; Richard E. Roy – Oregon Lawyers for a Sustainable Future; Liam Sherlock – Environmental & Natural Resources Section, Eugene lawyer; Deborah G. Trant – Quality of Life Committee; and Shauna M. Whidden – Eugene lawyer. Ward S. Greene served as liaison for the Board of Bar Governors, and Sylvia E. Stevens, OSB General Counsel, served as staff liaison and secretary.

² From "*Our Common Future*" (aka *The Brundtland Report*), UN Commission of Environment and Development (1987).

Thus, the Oregon statutory definition, adopted in 2001, explicitly recognizes sustainability in the context of both development and the protection of resources. Further, the ORS definition places sustainability squarely within the framework of the triple bottom line of environment, economy and community (also sometimes referred to as planet, profit, people). Additional information regarding the definition of sustainability can be found in Appendix 2 to this report.

III. SUSTAINABILITY AND THE OREGON LEGAL PROFESSION

As societal interest in sustainability burgeoned in the 1990s and into the 21st century, the legal profession, for many reasons, was not at the vanguard of the movement. In contrast, other professions, such as architecture and product design, were transformed as they began to experiment with and adopt new sustainability principles into their practices.

Legal profession interest unfolds. In Oregon, it was really not until 2006, with the high level of attention created by Al Gore's seminal work related to climate change, that the goal of sustainability began rapidly working its way into the mainstream of society, including the field of law. It was at this time that the first legal organization devoted to sustainability in Oregon was formed. In May 2006, Oregon lawyer Dick Roy founded Oregon Lawyers for a Sustainable Future (OLSF) after consulting with dozens of attorneys around the state on the relationship between the practice of law and sustainability. The formation of OLSF thrust Oregon to the forefront of the emergent interest in sustainability within the American legal profession. The organization focuses on five primary initiatives: (1) educating Oregon lawyers through CLE programs and seminars; (2) developing tools for creating more sustainable law offices; (3) drafting legislation to promote sustainability; (4) conducting intensive studies related to the interface between law and sustainability; and (5) encouraging Oregon lawyers and law offices to assume leadership in advancing sustainability.

Nationally, an early pronouncement of post-2006 interest can be found in a January 2007 DLA Piper press release, which stated: *DLA Piper today announced the launch of its global Sustainability Initiative, a business-wide plan designed to actively reduce the impact of its operations on the environment.* This was followed rapidly by press releases by Arnold & Porter in Washington DC (March 2007) and, closer to home, by several Portland firms announcing the adoption of sustainability policies or initiatives (April to July 2007).

In 2007, the American Bar Association (ABA), through its Section on Environment, Energy and Resources, announced the ABA-EPA Law Office Climate Challenge. This program, endorsed by the ABA House of Delegates and co-sponsored by the U.S. Environmental Protection Agency, aims to encourage law offices to adopt four prescribed programs to reduce use of energy and resources. They promote paper reduction, renewable energy partnerships, and the Energy Star program for office equipment. If a law office meets certain objective criteria, the ABA will recognize it as either a Climate Challenge Partner or Leader. Of the 200 firms who have accepted the Challenge at some level, ten have offices in Oregon.

In Oregon, the legal profession has responded to the growing relevancy of sustainability in several ways including: (1) addressing sustainability issues within the practice of law; (2) developing a range of sustainable law office practices; (3) using sustainability as a law firm

marketing and recruiting tool; (4) advancing sustainability within legal education programs; and (5) identifying meaningful roles for the profession in the sustainability movement. In other words, sustainability is now being woven into the fabric of the profession in significant ways.

Oregon State Bar. The OSB has also been actively engaged in its own sustainability initiatives, most of which are designed to reduce the environmental impact of its business operations. For example, the new OSB building was developed to incorporate many green elements. In addition, the OSB has supported technological changes within the profession directly related to sustainability, such as encouraging electronic court filings and electronic record retention, decreasing paper storage, and facilitating the use of videoconferencing and teleconferencing to reduce environmental impacts. Further, the OSB has sponsored programs for CLE credit dealing with sustainability, and the Quality of Life Committee and Environmental and Natural Resources Section (ENR) have each incorporated sustainability concepts into their core missions. The *Oregon State Bar Bulletin* has featured sustainability in two major cover articles, (1) "The Case for Sustainability – Embracing Green Products and Practices" (March/April 2007) and (2) "Advancing the New Economy – Oregon Lawyers Embrace Sustainability" (October 2009). Sustainability also has been selected as a separate topic for the OSB Leadership College in both 2008 and 2009.

There have been other sustainability efforts within the OSB that have emerged directly from its membership. For example, in 2006, members of the ENR section successfully encouraged the OSB House of Delegates to adopt two resolutions promoting the use of 100 percent post-consumer recycled paper in OSB publications and increasing access to CLEs via web-conferencing and other technology in order to reduce long distance travel. That year members of the ENR also produced the first OSB Desk Book chapter on sustainability. Members of the ENR have also sponsored a number of brownbag lunch programs to educate Oregon lawyers on sustainability topics such as climate change and renewable energy.

In 2008, members of the ENR recommended that the OSB undertake a professional carbon footprint assessment of its operations and services. The recommendation was approved, and members of the Task Force (including ENR members) have been working with the OSB staff to gather baseline information on electricity and water usage and to consider additional practices that might be instituted by the OSB staff as it relates to the assessment. Appendix 3 includes a brief report on the findings and recommendations, energy and water use data, and an Energy Trust of Oregon survey report.

Oregon Law Firms. Oregon law firms now pursue sustainability primarily at four levels: (1) internal operations; (2) emergent client needs associated with sustainability; (3) marketing to capture the increasing interest in sustainability within the business community; and (4) attracting and retaining talented lawyers and staff who are drawn to a sustainable workplace environment. Larger firms, particularly those with national offices, often use sustainability in their marketing materials or to guide the internal policies of the firm.

For many Oregon firms, the first step is to focus on internal office practices that reduce use of paper; establish criteria for the purchase of supplies, equipment, and services; conserve energy; recycle and compost waste; minimize business travel; educate personnel; and provide

incentives for travel by bus or bike. These firms recognize tangible benefits of sustainability in their marketing and recruiting efforts.

Within the law office today, sustainability is generally not viewed as an area of substantive law or a specialty practice. It entails a set of principles that permeate all activities. Firms with clients in energy, renewable energy, natural resources, government law, and real estate are developing expertise in sustainability issues to address client needs. Existing client revenues, coupled with the prospect of developing additional business, is causing some law firms to invest heavily in sustainability expertise.

Legal Education. All three Oregon law schools have robust sustainability and environmental law programs. Because sustainability is multidisciplinary, the law schools prefer to add sustainability as a component to other law school courses. However, each law school also has special programs and certifications relating to sustainability (*e.g.*, Willamette University's Certificate in Sustainable Environmental, Energy and Resources (SEER), Lewis & Clark's Sustainability Law and Business Seminar, and University of Oregon's Statement of Completion in Sustainable Business Law).

Other Contexts. The growing societal and business interest in sustainability has also influenced governmental policies and practices. Lawyers working for these governmental entities must regularly address sustainability issues. Increasingly, in-house corporate counsel must address sustainability, particularly when their companies seek to embrace sustainability publicly, sell "sustainable" products, or deal with other sustainable businesses or industries. Public interest lawyers often deal with issues related to sustainability. One illustration is the work of the Oregon Water Trust, where lawyers and staff work to acquire existing water rights and convert them to legally protected in-stream flows for fish and water quality protection. Tribal lawyers are also called upon to work with sustainability policies.

The protection of the rights and opportunities of future generations is a topic of growing interest within the legal profession. This topic is explored in depth in a major research report published in 2009 by the Vermont Law School and the Center for Human Rights housed at the University of Iowa, "Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice." An Executive Summary of the report is attached to this report as Appendix 4.

In summary, sustainability has become not only interwoven into the societal fabric but also into the practice of law in Oregon and is an emerging force within the American legal system. The issues presented by sustainability pertain to many practice areas and many types of lawyers. A more expansive discussion of the growth of sustainability within the Oregon legal profession can be found in Appendix 5 to this report.

IV. IMPACT OF *KELLER v. STATE BAR OF CALIFORNIA*

In *Keller v. State Bar of California*, 110 S. Ct. 2228 (1990), the U.S. Supreme Court considered whether the imposition of mandatory bar dues violates the First Amendment. The Supreme Court held as follows:

Here the compelled association and integrated bar are justified by the State's interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. The difficult question, of course, is to define the latter class of activities. 110 S. Ct. 2236

The Supreme Court reasoned that the guiding standard must be "*whether challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or 'improving the quality of the legal service available to the people of the State.'*" The *Keller* decision does not prohibit other activities, but instead provides that dissenting members may demand a refund of the portion of their dues expended on such activities.

The charge of the Task Force includes advice to the OSB Board of Governors on the extent to which programs or policies relating to sustainability satisfy the *Keller* requirements. The Task Force has concluded that policies and programs recommended in this report fall within the *Keller* criteria of "regulating the legal profession or improving the quality of legal service available to the people of the State," as well as the statutory charge in ORS 9.080(1) to the OSB Board of Governors to advance "the science of jurisprudence and the improvement of the administration of justice."

Appendix 6 includes a more detailed analysis of *Keller* considerations.

V. SUMMARY OF RECOMMENDATIONS

This report makes ten recommendations set forth below. Recommendations 1 through 5 are directed to the OSB Board of Governors, and Recommendations 6 through 10 are directed to the proposed Sustainable Future Section as it formulates an initial scope of work. The Task Force further recommends, as an interim measure only, that the Task Force remain active to monitor the recommendations and provide assistance to the OSB until an executive committee for the new Sustainable Future Section has been appointed.

Recommendation 1: Form a new Sustainable Future Section.

Recommendation 2: Adopt a new Sustainability Bylaw.

Recommendation 3: Direct the OSB staff to: (1) adopt a sustainability policy for OSB operations; and (2) incorporate sustainability considerations into the existing Finance and Operations Department Program Measure.

Recommendation 4: Revise Rule 2.1 of the Oregon Rules of Professional Conduct to allow the lawyer, as counselor, to consider sustainability in rendering advice to clients.

Recommendation 5: Continue current accreditation practices for CLE programs on sustainability, and continue to identify ways to implement sustainability considerations with respect to the delivery of CLE programs.

Recommendation 6: Adopt the initial proposed scope of work recommended by the Task Force.

Recommendation 7: Develop and promote a model law office sustainability policy worksheet.

Recommendation 8: Develop an OSB Partners in Sustainability Program to recognize law offices that adopt sustainable practices.

Recommendation 9: Develop a program for annual sustainability leadership awards to law offices and individual lawyers.

Recommendation 10: Foster sustainability in judicial and administrative proceedings in Oregon.

VI. RECOMMENDATIONS FOR ADOPTION BY THE BOARD OF GOVERNORS

This section of the report includes five recommendations to the Board of Governors (BOG), four of which require action by the BOG. Of greatest importance are Recommendations 1 and 2 that incorporate sustainability into the structure of the OSB by creating a new Sustainable Future Section and by adopting a new Sustainability Bylaw to recognize the OSB's ongoing commitment to sustainability.

Recommendation 1 – *Form New Sustainable Future Section.* The OSB should form a Sustainable Future Section (SFS) – a permanent section organized around the overarching societal goal of sustainability, which has been embraced by the State of Oregon, the Oregon Business Summit, other professions, and institutions around the state. Because sustainability pertains to the delivery of legal services, interfaces with many areas of substantive law, and impacts judicial and administrative proceedings, a new section is required to keep abreast of developments. In reaching this conclusion, the Task Force carefully considered the alternative of making sustainability a specific responsibility of an existing section or simply allowing sections to address the issue at their discretion. However, no current section, or even a small subset of sections, can represent the broad sweep of lawyers and law offices now interested in sustainability.

Because the proposed SFS will be responsible for implementing other recommendations in this report, the Task Force has prepared a proposed scope of initial activities for SFS. See Recommendation 6 below and Appendix 7 for details. After an Executive Committee for SFS is appointed, it should review the Task Force proposal and decide how to proceed. The existing Task Force will remain in place on an interim basis, until such time as the new SFS is established and the Executive Committee appointed.

Recommendation 2 – Adopt New Bylaw on Sustainability. The OSB bylaws document permanent policies of the BOG. The Task Force recommends adoption of a new bylaw, *Article 26-Sustainability*, to recognize the OSB’s long-term commitment to the societal goal of sustainability. Appendix 8 contains the language of the proposed bylaw.

Recommendation 3 – Direct OSB Staff to Adopt a Sustainability Policy and Amend a Related Program Measure. In recent years, sustainability has become a strategic consideration for public agencies, private businesses, and professional organizations including law firms. As a means to communicate its commitment to sustainability to various constituencies, the top management of an organization will adopt and implement a written sustainability policy. At the operating level, the policy provides direction for the staff who must make daily decisions that directly and indirectly involve the use of resources and the application of sustainability principles.

The Task Force recommends that the BOG direct the OSB staff to: (1) adopt a stand-alone sustainability policy; and (2) modify the existing Program Measure for the Finance and Operations Department by incorporating sustainability considerations. Appendix 9 is a proposed sustainability policy to formalize the OSB's commitment to continue existing sustainability initiatives and to report on their status to the BOG once per year. Appendix 10 includes proposed revisions to the Program Measure.

Recommendation 4 – Amend Oregon Rules of Professional Conduct. RPC 2.1 defines broadly the permissible considerations for a lawyer in giving advice to a client. In light of the growing connection of sustainability with personal, business, legal, and economic matters, and in light of Oregon's commitment to sustainability embedded in ORS 60.047(2)(e) and ORS 184.423, the Task Force recommends that RPC 2.1 be amended to read as follows:

Rule 2.1 Advisor

*In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, **environmental** and political factors, **and considerations pertinent to the broad concept of sustainability**, that may be relevant to the client's situation. (Bold language is new.)*

Recommendation 5 – Continue Current Accreditation Practices for CLE Programs on Sustainability, and Continue to Identify Ways to Implement Sustainability Considerations with Respect to the Delivery of CLE Programs. The Task Force explored the emerging developments, nationally and in Oregon, of CLE programs organized around the theme of sustainability. This trend indicates the growing, evolving professional interest of lawyers in learning about sustainability. The Task Force also explored paper use, travel considerations, and the growing opportunities for distance learning. The Task Force concluded that the OSB staff is fully cognizant of sustainability considerations in deciding how best to serve the needs of Oregon lawyers. No action by the BOG is recommended at this time. Appendix 11 is a report on Task Force findings on sustainability considerations with respect to CLE programs.

VII. RECOMMENDATIONS FOR CONSIDERATION AND IMPLEMENTATION BY THE SUSTAINABLE FUTURE SECTION

A central recommendation of this report is formation of a new OSB Sustainable Future Section (SFS) (See Recommendation 1). Because SFS would be organized around the societal goal of sustainability, its evolving scope of work would be quite broad. To help provide an initial focus for the SFS upon establishment, the Task Force has proposed a scope of work and several discrete projects and tools for implementing recommended initiatives.

Recommendation 6 – *Initial Scope of SFS work.* As an initial scope of work for the SFS, the Task Force recommends the following: monitor pertinent developments in sustainability; share information with sections where sustainability is pertinent to substantive law; publicize sustainability tools available for use by the law office; provide recognition for sustainability efforts by law offices and lawyers; monitor operations and programming of the OSB; and keep abreast of developments in law to protect the rights of future generations. Appendix 7 is a proposed scope of work for the SFS. Recommendations 7 through 10 below describe four key projects in the proposed scope of work.

Recommendation 7 – *Develop and Promote Model Law Office Sustainability Policy Worksheet.* The law office sustainability policy is a tool of growing importance in Oregon. Because each law office is unique, the Task Force recommends that the SFS develop, update, and promote a worksheet to guide interested law offices.

While a sustainability policy is voluntary, it does identify critical elements necessary to demonstrate an organizational commitment to sustainability. The Task Force suggests that the minimum elements include a statement of commitment to adopt office practices, such as those developed by OLSF, and ongoing educational and implementation efforts. These minimum elements will promote and maintain the use of sustainable office practices and a firm culture committed to sustainability efforts. The Task Force recommends that the SFS adopt the worksheet attached as Appendix 12. Further, the worksheet is a critical element in the OSB Partners in Sustainability Program, which is intended to recognize and promote sustainable office practices consistent with those outlined in the worksheet. Please see Recommendation 8 below.

Recommendation 8 - *Develop OSB Partners in Sustainability Program Including Website Recognition for Partners.* The Task Force recommends implementation of a program to encourage and recognize sustainable law office practices. In its research, the Task Force found four pre-existing frameworks developed for that purpose by: (1) Oregon Lawyers for a Sustainable Future (OLSF); (2) the Massachusetts Bar Association; (3) the State Bar of California; and (4) the American Bar Association (ABA), Section on Environment, Energy, and Resources (SEER).

In reviewing these frameworks, the Task Force specifically considered the following interconnected points in formulating an award program proposal:

(1) *Tools.* Sustainability criteria and tools are useful aids for law offices. In Oregon, a set of criteria and tools has been prepared by OLSF. They provide a model for the SFS to consider.

(2) *Maintenance.* To remain current with advancing practices in a rapidly changing field, the criteria and tools need to be updated on an ongoing basis. In Oregon, OLSF has a standing task force of ten lawyers, administrators, and technical experts who update its criteria and tools.

This is a ready source of information and expertise for the SFS and other Oregon lawyers.

(3) *Promotion.* To encourage widespread use of sustainable law office practices, promotion and information sharing is a key element. In Oregon, promotion of the existing OLSF tools occurs through an informal network of 40 Portland area-law firms, occasional discussions with other firms throughout the state, and through the OLSF Web site. These existing avenues of promotion may be of assistance to the SFS and members of the OSB.

(4) *Recognition.* In addition to promotion, recognition is also an effective and essential tool to assist in the adoption and maintenance of sustainable law office practices. In Oregon, there is no formal recognition for law offices or lawyers making this role more critical for the SFS.

(5) *Culture.* With law offices and businesses generally, transforming culture is the key to real progress in adopting sustainable office practices. The culture is measured by the depth and breadth of authentic interest and concern among all personnel; the extent to which the management team is committed to the goal of sustainability; and the extent to which responsibility for sustainability resides in a core group of interested personnel.

With these five points in mind, the Task Force recommends an OSB Partners in Sustainability Program. To qualify as a Partner in Sustainability, and thereby gain Website recognition (to be designed by the SFS), a law office will need to meet the criteria specified in Appendix 13. The program will require yearly self-certification by a law office to qualify for OSB web-based and other public recognition. The program will be designed to accommodate participation by small and large law offices. It will also identify minimum criteria for certification, including adoption of a law office sustainability policy and specific sustainable law office practices. The emphasis on meeting objective standards will provide assurance to firm personnel and the public that recognition as an OSB Partner in Sustainability is meaningful.

The Task Force also recommends providing resources to OSB members that are periodically updated to assist in implementing sustainable law office practices. One potential resource is the existing Law Office Sustainability Tools developed by OLSF. The OLSF tools and other helpful office tools could be included in a resource list on the OSB website and in other appropriate media. A commitment from the SFS to assist the OLSF in updating and maintaining these tools is also recommended.

Recommendation 9 – *Sustainability Leadership Awards.* The Task Force recommends implementation of a Sustainability Leadership Awards program to promote and recognize law

offices and lawyers who demonstrate an exemplary commitment to sustainability efforts. The program will also be designed to inspire other lawyers and law offices by recognizing meaningful engagement in sustainability efforts. The awards program would operate through an open nomination process and be administered by the SFS. Appendix 14 contains a detailed proposal for this program.

Recommendation 10 – Foster Sustainability in Judicial and Administrative Proceedings in Oregon. The Task Force explored the status of sustainability initiatives in the context of judicial and administrative proceedings in Oregon. Because of the complexity of this area of concern, the Task Force recommends that SFS monitor progress in this area and make recommendations where appropriate. Appendix 15 is a short paper with Task Force findings and suggestions for the new Sustainable Future Section.

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APPENDIX 1

Charge to OSB Task Force on Sustainability

*Charge adopted by Board of Governors in November 2008
Task Force appointed in February 2009*

1. A task force on sustainability will be established to review and make recommendations relating to sustainability:
 - a. With respect to the internal operations of the bar, review current policies, recommend a sustainability policy to be adopted by the Board of Governors, consider whether the bar should assign responsibility to coordinate sustainability

- to staff, and review and make recommendations regarding a carbon footprint analysis for the bar;
- b. With respect to Oregon lawyers, consider how sustainability considerations should be encouraged, CLE credit for training and education on sustainability and ecological principles, and consider whether the Board of Governors should create an annual award to recognize sustainability efforts within the bar;
 - c. With respect to the bar's organization, consider what ways sustainability should be integrated in the bar's section/committee structure, consider whether a permanent Sustainability Committee should be appointed, and if so, its ongoing charge, and consider whether the bar should be concerned about rights and opportunities for future generations, and if so, the appropriate institutional means for incorporating that concern;
 - d. Review the use of energy and resources with respect to judicial and administrative proceedings and make recommendations for reducing energy and resources and implementing sustainability standards; and
 - e. Develop a proposal for ways to promote sustainable practices within the law office.
2. The Appointments Committee will appoint members of the task force who are knowledgeable and/or interested in sustainability and will seek nominations from the Environmental and Natural Resources Section; Energy, Telecommunication and Utilities Section; Government Law Section; Business Law Section; Quality of Life Committee; Oregon Lawyers for a Sustainable Future; and other interested persons, striving for a geographic balance.
 3. The task force will provide periodic updates to the Board of Governors no later than October 31, 2009; however, because of the scope of the work is intentionally broad, specific topics may require work beyond the deadline date for the report, in which case the reports should include a plan and timeline for completion of these topics.

APPENDIX 2

Additional Information Regarding Definition of Sustainability

To better understand sustainability, review of two classic frameworks may be helpful. The IPAT Formula attempts to measure human impact on the earth. The Natural Step articulates principles that must be respected to achieve sustainability.

IPAT FORMULA

Assessing human impact. In the late 1960s Paul Ehrlich, a Stanford University scientist, developed a formula to quantify human impact on the natural environment, commonly called the IPAT formula:

$$\text{Impact} = \text{Population} \times \text{Affluence} \times \text{Technology}$$

The formula simplifies a complex process using only three determinants. **Population** is a numbers game. During the 20th Century, human population almost quadrupled, increasing from about 1.6 billion in 1900 to over 6.1 billion in 2000. Today worldwide population is about 6.8 billion. Human population continues to grow by about 75 million per year, of which all but 3 million occurs in “underdeveloped” countries.

The other two determinants are closely connected manifestations of economic activity. **Affluence** is defined, for the purpose of this formula, as per capita use (direct and indirect) of resources and energy. As one's standard of living increases beyond the poverty level, per capita use of energy and resources tend to increase. **Technology** refers to impact on the natural environment in producing resources and energy per capita. Technology generally raises the impact, but it also has the potential to lower the impact. For example, when synthetic detergents replaced soap, phosphorus became a water pollutant. On the other hand, compact fluorescent light bulbs are designed to reduce overall energy use.

THE NATURAL STEP

Principles to guide sustainable human conduct. Since the 1970s, scientists have attempted to articulate ecological principles to govern human development. In Oregon, since 1997 the Natural Step framework has been the most cited articulation.

In the late 1980s Karl-Henrik Robert, a Swedish doctor specializing in cellular biology, was inspired by young leukemia patients to look for root causes of the disease. That pursuit led him to look at the biosphere itself (the portion of earth that supports life) and, with other Swedish scientists, to develop a consensus view of four conditions necessary to maintain the health of the biosphere:

Substances mined from the earth's crust must not increase in nature. The accumulation in the biosphere of heavy metals, minerals, and byproducts of burning fossil fuels is harming life. Under this condition it is necessary to systematically decrease dependence on these non-renewable materials, replacing them with sustainable and renewable materials.

Synthetic products must not increase in nature. Under this condition it is necessary to phase-out persistent, toxic substances, such as dioxin and organochlorines in pesticides and plastics, and use precaution in the use of and introduction of other human-made compounds.

The physical basis for the productivity and diversity of nature must not continue to deteriorate. Under this condition it is necessary to decrease our reliance on monocultures, practices that deplete topsoil or groundwater, and practices that threaten the viability of nonhuman species, such as over-fishing and appropriating wildlife habitat.

The use of resources must be efficient and just. Basic human needs must be met with the most resource-efficient methods possible—with maximum reuse, recycling, and water and

energy conservation. Fair resource distribution is necessary to ensure the social stability and cooperation necessary to make changes in society over time. If we don't meet this condition, we won't be able to meet the other three.

The pursuit of sustainability. In recent years, the concept of corporate social responsibility (CSR) has evolved to encompass sustainability. Major corporations publicly embrace the triple bottom line (profit, people, and planet). For example, Dow Chemical's website features its "Commitment to the Planet."

Oregon and some of its cities have moved to the forefront of the national sustainability movement. In 2008, SustainLane ranked Portland as the Greenest City in the United States (among the largest 50). In 2007, the Oregon Business Summit reaffirmed the state's commitment to sustainability as Oregon's overarching theme for business development. Many Oregon businesses have received national recognition as leaders in adopting more sustainable practices, including The Collins Companies and Nike.

APPENDIX 3

Report on Carbon Footprint Analysis of OSB Operations

At the OSB's request, the Environmental and Natural Resources Section and the OSB Sustainability Task Force facilitated measuring the OSB's "carbon footprint" and identified how the OSB can reduce its footprint.

1. Carbon Footprint Analysis

Background—Old and New OSB Buildings:

In January 2008, the OSB moved from occupying a full building in Lake Oswego to a new building it had constructed which includes the OSB, Professional Liability Fund, and additional space for tenants. Information regarding the carbon footprint of these bar buildings comes from the OSB, the managing agent, and the Energy Trust of Oregon.

Carbon Footprint Assessment to Date:

The OSB now owns a building of 68,525 rentable square feet. The OSB and the Professional Liability Fund (PLF) occupy 55,904 square feet, and other lessees occupy 12,621 of which approximately 4,500 is vacant. The OSB had contracted with Opus Property Services, L.L.C. to manage the building until 2013. The OSB and PLF space operates for 60 hours a week with 135 workers on the main shift and 135 personal computers. This staff, office space and equipment enable the OSB to serve its 17,500 members spread across Oregon, other states, Washington, D.C., provinces, and other countries. We used the US EPA and the Energy Trust of Oregon to measure the carbon footprint.

The OSB is registered with the U.S. Environmental Protection Agency's Portfolio Manager program which utilizes Energy Star standards. The Portfolio Manager program requires twelve months of energy and water use data to derive a "rating" for the building. The

rating is used to determine whether buildings in certain categories merit recognition by the EPA for their energy performance. Information on the OSB rating is accessible through the following website:

<https://www.energystar.gov/istar/pmpam/index.cfm?fuseaction=portfolio.portfolioView>

Username: osbarosbar ; password: osbarosbar. The OSB building received a rating of 85 which means that the building meets the minimum Energy Star rating. To promote this accomplishment, the OSB has applied for and received an Energy Star plaque which is now mounted on the building exterior near the west entrance.

The OSB also applied for an Energy Trust of Oregon (ETO) assessment which was performed on August 11, 2009. The audit covered only the space occupied by OSB and the Professional Liability Fund. A brief report of the results is attached at the end of this appendix. Utility figures provide baseline data to compare future energy and water consumption and cost.

During this process, the team also examined daily operations and compared existing OSB practices with the OLSF checklists for best sustainable practices in the following areas: (1) Sustainable Office Practices; (2) Planning Green Events; (3) Guidelines for Food & Beverage Vendors; and (4) Tenant Improvements Guidelines. The OLSF checklists that were used are available at http://www.earthleaders.org/olsf/office_practices.

The assessment process revealed that the OSB does implement many sustainable practices. Sustainable systems and products were incorporated into the renovation of the new OSB building. Additional practices include using 50% post-consumer recycled content unbleached towels to reduce waste and use of new resources; reducing indoor toxicity with the use of low-emitting adhesives and sealants that meet the VOC limits of the South Coast Air Quality Management, Rule #1168. Additionally, the OSB is changing over to the use of non-toxic Green Seal certified cleaning supplies. The janitorial service is trained in the use of nontoxic cleaners and provides cleaning service to the entire building. The OSB and PLF work together on recycling and timers have been installed on all light fixtures. Further, to encourage sustainability in transportation, the OSB provides free showers and secure bike storage, and is increasing its use of teleconferencing for distance meetings.

2. Recommendations

Having reviewed the Portfolio Manager data, the Energy Trust of Oregon assessment results, and having compared the OLSF's checklists with current OSB practices, the Task Force offers the following recommendations, including both noncapital and capital improvements, to make the OSB operate more sustainably.

Noncapital Improvements:

The Task Force recommends a series of relatively easy steps to increase the sustainability of their office operations, event management and building management:

- use white boards rather than paper flip charts;

- revise tenant leases regarding water and power use;
- inform tenants regarding Energy Trust incentives and how to use them;
- ask suppliers if they have a sustainability policy and use those which do;
- use soy-based inks in in-house printing services, specify soy ink for out of house print jobs;
- begin a composting program;
- discuss purchasing energy and carbon offsets;
- develop a policy regarding purchasing locally produced foods and organic foods;
- require Green Seal certified products, or more stringent, for events,
- provide training for staff regarding toxics;
- review power purchases and buy energy produced from renewable resources such as wind or solar power;
- consider installing seroscaping or drip irrigation for the landscape;
- eliminate or reduce pesticide use;
- review how to best use the building roof—perhaps to absorb the storm water;
- examine non-capital ways to use grey water;
- examine possibilities for using durable goods such as plates and silverware for events;
- increase the use of 100% recycled content paper for letterhead;
- offer non-capital incentives for staff to bike or bus to work;
- verify whether the Oregon resorts/hotels used for OSB events have acceptable sustainability policies and practices;
- hire event planners with expertise in sustainable events;
- train willing staff through the Oregon Natural Step;
- encourage formation of a sustainability team.

Capital Investments:

The Task Force supports the Energy Trust of Oregon recommendations. These include:

- replacing the standard efficient water heater with 90% efficient water heater or tankless style unit;
- installing timer for existing re-circulating hot water pump for water heater return; installing dimmers on conference room flood-lamps;
- where possible, replacing elevator lamps with LED lamps;
- when possible, installing daylight harvesting sensor for lobby lamps;
- fine-tuning time and temperature settings on HVAC controls for maximum energy savings;
- implementing tenant requests for energy conservation measures.

In addition, the Task Force recommends installing meters to track tenants' water and power usage and inform tenants of their use, and incorporating into tenant leases model lease provisions found at the Oregon Lawyers for a Sustainable Future website.

August 12th, 2009

Rodney Wegener
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Portland, OR 97281

Dear Rodney,

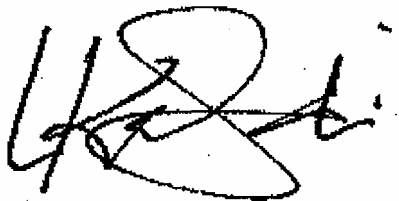
Thank you for your interest in conserving energy. You have taken an important first step towards making your facility more energy efficient by taking advantage of the Energy Trust of Oregon Existing Buildings Program's free Walk-Through Survey.

Enclosed, you will find a copy of your Walk-Through Survey and also a list of Energy Trust of Oregon Existing Buildings Program's incentives for which you are eligible. If you are interested in starting an efficiency project or have any questions, please feel free to call me directly at 503.243.1712 or at liesl.a.karasaki@lmco.com

For information about the Energy Trust of Oregon, please visit www.energytrust.org Or for information regarding the Oregon Department of Energy Business Tax Credits, please visit www.oregon.gov/energy.

I look forward to working with you as you continue to take steps towards investing in a more efficient, future for your building and in return, reducing your carbon footprint.

Best,



Liesl Karasaki

Surveys for “Oregon State Bar”

I met with Rod Wegener and Darrell Stoffer at 16037 Upper Boones Ferry Rd, August 11, 2009.

The building is a concrete and steel frame, three stories with a flat roof, and built in 2008.

The heating and cooling is done with two large, Trane, roof top gas package units, with VFDs on supply and return fans and economizers. Controls are Trane DDC, controlled with computer access in the first floor electrical room.

Lighting throughout the building are T8, CFLs and LED exit lights. There are occupancy sensors in all offices and conference rooms. As well as an anatomical time clock for outside Lights and daylight harvesting sensors by outside windows. The elevator lamp could be changed to LED.

The water is heated by a standard efficient gas fired, 50 gal water heater with a re-circulating pump on the third floor. The pump and water heater run 24/7, due to the lack of a timer on the pump and the four showers that get used a great deal of the time.

Building insulation surpasses code standards because of age and Energy Star certification.

Recommendations:

- Priority 1. Replace Standard efficient water heater with 90%+ efficient heater or tankless style unit.
See attached I 93G incentive sheet.

Misc: Install timer for existing re-circulating hot water pump for water heater return.

Install dimmers on conference room flood-lamps, where possible.

Replace elevator lamps with LED lamps, when possible.

Install daylight harvesting sensor for lobby lamps.

Fine-tune time and temperature settings on HVAC controls for maximum energy savings.

APPENDIX 4

Executive Summary of the Climate Legacy Initiative's Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice

By Burns H. Weston, Director and Senior Researcher, Climate Legacy Initiative
Visiting Distinguished Professor of International Law and Policy, Vermont Law School
Bessie Dutton Murray, Distinguished Professor of Law Emeritus and Senior Scholar,
Center for Human Rights, the University of Iowa
and
Tracy Bach, Associate Director and Senior Research Fellow, Climate Legacy Initiative
Professor of Law, Vermont Law School

The Climate Legacy Initiative (CLI) is a joint project of Vermont Law School's Environmental Law Center and The University of Iowa's Center for Human Rights (UICHR). Launched in Spring 2007 to research and analyze how current law (national and international, indigenous and foreign) conceptualizes and codifies the ethical rights and duties that exist between present and future generations ecologically, it was triggered by climate change—which the UN's Intergovernmental Panel on Climate Change (IPCC) and other leading environmental scientists have persuasively demonstrated to be, in modern times, the consequence largely of human activity, generating carbon buildups in the atmosphere that now threaten life on Earth as we know it. In this setting, building on work done previously by Georgetown University Professor Edith Brown Weiss [In *Fairness to Future Generations* (1989)], it has sought to answer intriguing and, indeed, generally unexplored legal questions: Is it possible for US law, the law of other countries, indigenous peoples' law, and/or international law to define the rights of future generations to a clean, healthy, and sustainable environment? Likewise, can law impose a duty on current generations to pass on a climate legacy of this sort?

In Spring 2009, the CLI gave birth to a 108-page Policy Paper, complete with 624 pages of Background Papers (Appendix A) and Recommendations (Appendix B), documenting this research and more. Titled *Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice*, it makes the scholarly case that ecological protections for future generations and concomitant present-day obligations relative to them are supported by plausible and persuasive theories of social justice (particularly when the theories are grounded on the value of respect, the core value of human rights). It finds, too, a broad consensus that this obligation must take the form of (a) preserving diversity of natural and cultural resource options comparable to those enjoyed by previous generations; (b) maintaining the quality of the planet so that it is passed on in no worse condition than when received, and repairing it where necessary to meet this duty; and (c) providing members of current generations equitable access to the legacy of past generations and conserving this access for future generations. Additionally, it identifies and evaluates existing laws that support and codify the obligation to leave an ecologically livable world to future generations.

On final analysis, however, the Policy Paper finds these expressions of intergenerational concern to be, overall, much too limited in scope and practice to meet the challenge of presently ominous and potentially catastrophic climate change. At the same time, it notes that, in the US,

the Preamble of the US Constitution expresses concern for posterity and provides, therefore, a strong impetus to develop legal structures and practices to protect future generations.

In this spirit, the Policy Paper calls for a paradigm shift in legal thought and action relative to the environment (globally, regionally, and locally). It argues for new legal norms, institutions, and procedures that give to the ecological rights and interests of present and future generations at least equal standing with the essentially market-driven norms and practices that rule worldwide today but which were crafted during and for a bygone 19th century Industrial Revolution and its priorities and interests. "Present and impending climate change," it observes, "brings us face to face with stark, discomfiting images of a non-future. . . . Business-as-usual now appears as an irreversible experiment with the only atmosphere humans have."

The CLI Policy Paper therefore concludes that, to meet the climate change challenge, our country and world needs a heavy dose of intellectual and moral daring committed to ensuring "an ecological legacy . . . that will benefit our children, grandchildren, great-grandchildren, and other future generations . . ." To this end, it calls for the litigation of select cases and the reinterpretation of existing laws sensitive to the preciousness of all life on Earth. Also, in a manner intended to stimulate—not foreclose—dialogue and innovation, the Policy Paper urges progress on sixteen legal initiatives "that leave a legacy of ecological justice for future generations" defined by the ideal of a clean, healthy, and sustainable global environment for all. Among them are the following:

- the adoption of state and national constitutional amendments and statutes establishing the rights of present and future generations to clean, healthy, and sustainable environments;
- the enactment of state environmental protection acts (SEPA) to complement and strengthen, and a national environmental legacy act (NELA) to supplement, already existing but weak national environmental protection laws, the US National Environmental Protection Act (NEPA) in particular;
- the adoption of cap-and-trade regulations for allocations to energy efficiency;
- the creation of sky trusts and other environmental stakeholder trusts to sustain and safeguard common ecological assets;
- the expansion of the public trust doctrine beyond its current limited application to safeguard the entire environment for present and future generations;
- the establishment of legal guardians for future generations, with provision for their training and certification;
- the adoption of UN resolutions aimed at protecting the ecological rights and interests of present and future generations, including a call for the establishment of the atmosphere as a global commons protected by precautionary principles and strong enforcement powers; and

- the fine tuning of international trade rules to the ecological needs and interests of future generations.

It is impossible to think, the CLI Policy Paper asserts, that creative responses to the climate change challenge can be successful without innovative as well as effective legal and policy action.

For the complete CLI Policy Paper and other details, visit www.vermontlaw.edu/cli. Professor Weston can be reached at <burns-weston@uiowa.edu>. Professor Bach can be reached at <tbach@vermontlaw.edu>.

APPENDIX 5

Sustainability and the Oregon Legal Profession

Societal interest in sustainability burgeoned in the 1990s, but only incidentally within the legal profession. In 2006, with Al Gore publicizing the concept of climate change, the goal of sustainability began working its way rather rapidly into the mainstream of society including the field of law.

An early pronouncement of post-2006 interest can be found in a January 2007 DLA Piper press release, which stated: *DLA Piper today announced the launch of its global Sustainability Initiative, a business-wide plan designed to actively reduce the impact of its operations on the environment.* This was followed rapidly by similar press releases by Arnold Porter in Washington DC (March 2007) and, closer to home, by several Portland firms announcing firm sustainability policies or initiatives.

Since 2006, the Oregon legal profession has felt the impact of sustainability in several dimensions including: (1) sustainability issues within the practice of law; (2) sustainable law office practices; (3) sustainability as a law firm marketing tool; (4) sustainability in legal education; and (5) the search for a meaningful role of the profession in the sustainability movement. This summary discusses the influence of sustainability on the Oregon legal profession.

A. Oregon Lawyers for a Sustainable Future

Oregon Lawyers for a Sustainable Future (OLSF) is an organization formed by Dick Roy in May 2006. The impetus to form this new organization arose out of a series of three focus-group lunch meetings with 43 Oregon lawyers to explore the relationship between the practice of law and sustainability. A consensus emerged from the meetings that the legal profession has largely been on the sidelines of the sustainability movement, the profession could legitimately and logically play a significant role in working toward a sustainable future, and a new organization should be formed to encourage greater involvement and leadership by the profession.

During the lunch discussions, there was virtual unanimity that lawyers could do more to educate themselves about sustainability and sustainable law office practices. When the

discussion moved to whether there was a compelling and legitimate reason for the profession to champion sustainability, the reason most often cited was “justice.” The legal profession is the central guardian of justice in our society, and “intergenerational justice” is the central concept of sustainability. Just as lawyers advocate for just treatment of all individuals and groups in contemporary society, lawyers have a legitimate role in advocating for future generations.

OLSF formed five task force groups: Office Practices, Education, Laws, Handbook, and Statewide Study. The Office Practices Task Force promotes sustainable practices in the law office, through the use of such tools as the model law office policy, and checklists for various types of office practices. The Education Task Force developed an educational CLE program, which has been presented on 20 occasions at different venues across Oregon and Washington, and a more intense two month seminar offered to groups of 12 lawyers. The Laws Task Force is assessing laws and regulations through the lens of sustainability and drafted legislation now embodied in ORS 60.047(2)(e), which allows articles of incorporation to contain a provision authorizing or directing a corporation to conduct its business in a manner that is environmentally and socially responsible. The Handbook Task Force outlined the contents of a handbook for lawyers concerned about sustainability. The Statewide Study Task Force is studying the interface between the legal profession and the sustainability movement.³

B. Oregon State Bar

The Oregon State Bar (OSB) has not yet formally recognized a connection between sustainability and the OSB's core regulatory and membership functions, the administration of justice or the practice of law. However, in February 2009, the OSB formed a Sustainability Task Force of 14 lawyers to explore sustainability as it relates to the legal profession.

The OSB has worked to reduce the environmental impact of its internal operations. The new OSB building occupied in early 2008 incorporated many green elements. The OSB also has supported technological changes which relate to sustainability. Some of these changes include support for electronic court filings, electronic record retention, decreasing paper storage, and the use of videoconferencing and teleconferencing to reduce environmental impacts and enhance sustainability. Further, the OSB has sponsored programs for CLE credit which dealt with sustainability, and the Quality of Life Committee and Environmental and Natural Resources Section have both incorporated sustainability concepts into their core missions.

C. American Bar Association

The American Bar Association (ABA) made a written commitment to sustainability in 1992, which was reaffirmed in a formal resolution in 2003. Since 2006, the ABA Section of Environment, Energy and Resources has developed two initiatives related to sustainable office practices: (i) the ABA-EPA Law Office Climate Challenge; and (ii) the ABA Model

³ This summary borrows heavily from the OLSF Statewide Study Task Force review of the interface between sustainability and the legal profession. The OLSF Statewide Study Task Force members are: Adell Amos, Steve Bender, Amy Bushaw, Robin Morris Collin, David Ellis, Christopher Heaps, Jim Kennedy, Glenn Klein, Terry Mahr, Jon Norling, Dan Rolff, and Dick Roy.

Sustainability Policy for Law Organizations. The Climate Challenge, endorsed by the ABA House of Delegates, is a program co-sponsored by the U.S. Environmental Protection Agency that aims to get law offices to adopt prescribed programs to reduce energy use. The Climate Challenge includes four programs that address office paper management, renewable energy partnerships and the Energy Star program for office equipment. If a law office achieves certain identified goals, the ABA will recognize it as a Law Office Climate Challenge Leader. The ABA Model Sustainability Policy has been prepared for law organizations with three general goals of economic success, social responsibility, and environmental responsibility. This triple bottom line approach is inconsistent with statewide sustainability initiatives in California, Massachusetts, and Oregon, and it has not been endorsed by the House of Delegates.

D. Other State Bar Associations

The California and Massachusetts Bar Associations have undertaken efforts to encourage lawyers and law firms to voluntarily adopt sustainable practices to mitigate the environmental impacts of law office activities, and the Washington State Bar Association has begun exploring sustainability concepts. Other bar associations had only nascent policies and programs at the end of 2008.

California Bar Association

The President of the State Bar of California (SBC) first brought the attention of bar members to OLSF's sustainable law office work in a 2007 opinion piece for the California Bar Journal. In 2008, at the request of the President, the SBC Board of Governors appointed a group of eight lawyers to the State Bar Task Force on Sustainable Practices. In 2008, the Task Force recommended the adoption of four policies: (i) insuring that the State Bar operates in an environmentally responsible manner; (ii) encouraging members of the Bar to adopt the California Law Practice Sustainability Policy and conferring Bar recognition for members who take the SBC Eco-Pledge; (iii) working with the California judiciary to adopt rules to reduce environmental impacts; and (iv) establishing and allowing up to three hours of CLE credit in a sustainability category.

Massachusetts Bar Association

The Massachusetts Bar Association has developed an Eco-Challenge, which includes four elements: (i) an MBA Lawyers Environmental Pledge, which is a first step for law firms which agree to use best efforts to adhere to the MBA Green Guidelines; (ii) MBA Green Guidelines, which are for operation of a law office and include paper reduction, energy conservation, and other measures; (iii) Eco-Challenge Pledge Partners, which are law firms and lawyers recognized by the MBA on its website for adherence to Green Guidelines; and (iv) Eco-Honors, which is an award program for firms that agree to meet the highest standard, Guidelines for Eco-Honors.

Washington State Bar Initiative

Inspired by OLSF, a group of Washington lawyers has formed Washington Lawyers for Sustainability (WLS) as an initiative outside the Washington State Bar Association. WLS is

focusing on four broad areas for future initiatives: (i) becoming a trusted resource and conduit for information relevant to sustainability; (ii) leading by example by developing and implementing sustainable practices for law firm operations; (iii) incorporating sustainability into counseling of business clients; and (iv) identifying changes to existing laws and regulations that would promote sustainable practices in such areas as land and resource use and building codes.

E. Private Law Firms

In recognition of the public's growing interest in sustainability, Oregon law firms have a current interest in sustainability primarily at four levels: (i) internal operations; (ii) emergent client needs associated with sustainability; (iii) marketing to capture the increasing interest in sustainability within the business community; and (iv) attracting and retaining talented lawyers and staff that are drawn to a sustainable workplace environment. In general, there appears to be an increasing tendency for law firms that are large or have a national and/or international presence to use sustainability in the firm's marketing materials or to guide the internal policies of the firm.

Many firms tend to focus on internal office practices that include reduction and recycling of waste, reduction of paper usage, sustainability criteria for purchase of supplies, equipment, and services, reduction of energy consumption, reduction of business travel, and educational and incentive programs to enhance the success of their sustainability policies. Firms also recognize that there is a tangible benefit for marketing purposes in having a sustainability policy, including the recruitment of new attorneys interested in sustainability.

Law firm interest in sustainability has been kindled not only because of the interest of lawyers and staff, but also because of client interest in sustainability. In general, sustainability entails a set of principles rather than an emerging body of substantive law. Therefore, sustainability is generally not yet seen as an area of law or a specialty practice. Although there may be some unique legal issues pertaining to sustainability, most legal work falls into more traditional categories. Expertise in sustainability issues appears to be driven by existing client needs. Those law firms with clients in energy, renewable energy, natural resources, government law, and real estate appear to be developing expertise in sustainability issues to address client needs. Existing client revenues, coupled with the prospect of developing additional business, is causing some law firms to invest heavily in sustainability expertise.

There are constraints on lawyer involvement in sustainability. The economic structure of private law firms may impede involvement in sustainability as a result of a focus on revenue growth, cost considerations in implementing sustainability policies, time pressures and economic demands on lawyers to increase billable hours and a fear of alienating some clients (although this fear has subsided rather dramatically). In some cases, there is difficulty in getting firm support for sustainability policies because the law firm hierarchy is slow to embrace new ideas.

F. Government Counsel

The State of Oregon, led by Governor Kulongoski, has established sustainability as one of its highest priorities. Local governments in Oregon also have recognized sustainability as a major concern, and many have created offices of sustainability or sustainability commissions.

Because sustainability is permeating governmental policies, many attorneys who work either with or for governmental entities are involved in sustainability in some respect. Sustainability law is not a substantive area of expertise for government counsel. Instead, lawyers working with or for governmental entities who are involved with sustainability issues are largely performing traditional legal services. State and local governmental entities that promote sustainability as a policy objective usually employ individuals with expertise related to sustainable practices. Consequently, governmental clients are generally not looking to their attorneys for particular expertise in sustainable practices. Governmental entities normally look to their counsel to help them figure out how to lawfully accomplish a policy objective, but not to participate in policy discussions or to decide whether a particular policy objective is worthwhile.

G. Tribal Governmental Policies

The Confederated Tribes of the Warm Springs Reservation of Oregon's June 25, 1992 "Declaration of Sovereignty" requires the exercise of the Tribe's national sovereignty to, among other things "provide for the well-being of our people for the many centuries that lie ahead. We shall, as we always have, live in balance with the land and never use more of our precious natural resources than can be sustained forever." Many tribal nations have adopted mission statements similar to the following from the Klamath Tribes: "to protect, preserve, and enhance the spiritual, cultural, and physical values and resources of the Klamath, Modoc, and Yahooskin Peoples, by maintaining the customs and heritage of our ancestors." Tribal lawyers are thus called upon to work with sustainability policies.

H. Corporate Counsel

Corporations are increasingly conscious of the importance of being viewed as sustainable. Sustainability appears to have greater influence on the business side of a company's operations than with respect to its legal issues. The importance of sustainability to a company often determines where sustainability expertise resides within the company. For example, if the company has embraced sustainability with respect to its public image or branding, sustainability expertise may predominate in the marketing and product development departments. As a result, the sustainability expertise of the corporate legal department may lag behind the expertise of other business departments of the company unless the company's involvement in sustainability is dictated by legal or regulatory requirements. The involvement of corporate lawyers in sustainability can be more significant where sustainability defines the company's business model. For example, at Nau, a sports apparel company organized around a sustainable business model, the general counsel regularly assessed traditional business and legal risks through a sustainability screen. Nevertheless, lawyers working for companies that have sustainability as a distinguishing characteristic of their businesses still perform largely traditional legal services. In general, sustainability policies are initiated by senior management. It is common for corporate counsel not to be involved in the initiation of sustainability policies, but instead to implement the sustainability policies that have been adopted by senior management.

For legal services provided by outside counsel, corporate counsel tend to engage the best lawyer or law firm for the work. However, some companies with sustainability projects or interests express a desire to know that they are dealing with a law firm that shares a common interest in sustainability. A shared interest in sustainability may influence the selection of

counsel only if all other factors relating to the qualifications of the lawyers are equal. It appears that companies that embrace sustainability may prefer their outside law firms to have good sustainability practices.

I. Public Interest Law

Lawyers engaged in public interest law are increasingly working to create viable frameworks for the application of sustainability principles to the interests of ecosystems and livable communities. The current goal to protect ecosystem services is one of many examples of how the legal interface with natural resources has shifted from extraction to regulation to a sustainability framework. A good illustration of public interest law involvement in sustainability is the work of Oregon Water Trust, which facilitates the conversion of existing water rights to legally protected in-stream flows for fish and water quality protection.

J. Legal Education

Growing recognition of the need to introduce concepts of social and ecological sustainability has inspired significant curricular developments at the three Oregon law schools. All three Oregon law schools have robust sustainability and environmental law programs, a feat unmatched in any other state.

The Oregon law schools believe that understanding the relationship of sustainability to law is valuable to students in subsequent legal careers or public service. They also articulate the importance of teaching sustainability as a value system that is deeply ingrained in all decision-making. Climate change has introduced a sense of immediacy with respect to teaching sustainability.

Because sustainability is multidisciplinary, the law schools prefer to add sustainability as a component to other law school courses. Each professor has considerable discretion with respect to the inclusion of sustainability components in a law school course.

Law students increasingly believe that there are career opportunities involving sustainability. Many students enter law school with a background in sustainability but lack an understanding of its relation to law. Each law school has special programs and certifications relating to sustainability (*e.g.*, Willamette Sustainable Environmental, Energy and Resources and University of Oregon Sustainable Business Statement of Completion). The recent interest by students in both business and environmental law may be attributable to the emergence of sustainable business practices and entrepreneurship in the general economy and increasing career opportunities.

APPENDIX 6

Impact of *Keller v. State Bar of California* on Task Force Recommendations

A. Keller Decision

In *Keller v. State Bar of California*, 110 S. Ct. 2228 (1990), the United States Supreme Court addressed the issue of whether compelled financial support by members of an integrated bar association violates free speech rights guaranteed by the First Amendment. The Supreme Court held as follows:

“Here the compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. The difficult question, of course, is to define the latter class of activities.” *Id.* at 2236.

In recognizing that a precise boundary between bar association activities and political or ideological activities is not always easy to discern, the Supreme Court held that the “guiding standard must be whether challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or ‘improving the quality of the legal service available to the people of the State’ [citations omitted]” *Id.* The *Keller* decision does not prohibit advocacy of a political or ideological nature that is not reasonably related to the integrated bar’s activities, but instead provides that dissenting bar members may demand a refund of a portion of their dues expended on such activities.

ORS 9.080(1) charges the OSB Board of Governors to “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.” In *The Florida Bar v. Frankel*, 581 So2d 1294 (Fla. 1991), the Florida Supreme Court evaluated the Florida Bar Association’s adoption of lobbying positions on various legislative measures in light of the Bar’s purpose of improving the administration of justice and advancing the science of jurisprudence, which are the same standards set forth in ORS 9.080(1). The Florida Supreme Court concluded that there is no measurable difference between allowing lobbying for the purpose of regulating the legal profession or improving the quality of legal service (*i.e.*, the guiding standard employed in *Keller*) and allowing lobbying for the purpose of advancing the science of jurisprudence or improving the administration of justice. Therefore, the OSB may use mandatory dues, without a risk of refund, to fund activities that are germane to: (i) the State's interest in regulating the legal profession; (ii) improving the quality of legal services; (iii) advancing the science of jurisprudence; and (iv) improvement of the administration of justice.

B. Relationship of Sustainability to Law

The OSB Board of Governors charged the Task Force with advising on the extent to which existing and proposed OSB programs or policies relating to sustainability satisfy the requirements set forth in the *Keller* decision and other case law applying *Keller* standards. The

Task Force has concluded that existing and recommended OSB policies and programs relating to sustainability fall within the *Keller* criteria of “regulating the legal profession” or “improving the quality of legal service available to the people of the State,” as well as the Oregon statutory charge of the “advancement of the science of jurisprudence and the improvement of the administration of justice.”

1. Connection of Sustainability to Regulating the Legal Profession or Improving the Quality of Legal Service

Sustainability concepts are increasingly present in many areas of law practice. Examples of the impact of sustainability on practice areas include energy tax credits (tax, business and energy), renewable energy requirements (energy), regulation of green advertising claims (intellectual property), life cycle engineering (patent and intellectual property), LEED green building certification (real property), state and municipal sustainability initiatives and policies (government law), the impact of externalities on cost/benefit analysis of government regulation (administrative law) and carbon regulation (energy, natural resources and business). The three Oregon law schools include sustainability components in many law school courses, and consequently many recent law school graduates understand how sustainability principles relate to various areas of law.

Lawyer expertise with respect to sustainability issues appears to be driven by existing client needs. There is an emerging set of clients who have sustainability as a distinguishing characteristic of their businesses. Those law firms with clients in energy, renewable energy, natural resources, government law and real estate appear to be developing expertise in sustainability issues to address client needs.

Existing client revenues, coupled with the prospect of developing additional business, is causing some law firms to invest heavily in sustainability expertise. Furthermore, because of sustainability’s increasing importance, law firms are using sustainability in their marketing initiatives. Legal services and law firm marketing related to sustainability are subject to the OSB’s regulatory functions.

The OSB Quality of Life Committee has articulated another dimension of sustainability’s relevance to the practice of law. The OSB Quality of Life Committee is charged with educating and motivating Oregon lawyers to make choices that enhance the quality of life for the benefit of the legal profession as a whole. The Committee has recognized that a lawyer’s commitment to sustainable practices may enhance his or her quality of life through increased personal satisfaction, stress reduction and fitness.

2. Connection of Sustainability to the Advancement of the Science of Jurisprudence

“Jurisprudence” is the science of law which ascertains the principles on which legal rules are based. It is not concerned with questions of moral responsibility or political policy.

The Task Force concludes that there is a significant connection between sustainability and advancement of the science of jurisprudence. From a legal perspective, the application of sustainability concepts involves the use of legal principles and mechanisms to understand the

complex relationships among economic, social and environmental priorities and to resolve these competing priorities.

Lawyers are involved in interpreting, clarifying, developing and applying sustainability principles that are encompassed in federal statutes and rules, state constitutions, statutes and rules, foreign constitutions and statutes, and international treaties. Examples of sustainability provisions include the following:⁴

Federal Statutes: In the purpose section of the National Environmental Policy Act (NEPA), Congress declared that its national environmental policy was to “create and maintain conditions under which man and nature can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations of Americans.” It also recognized the federal government’s continuing responsibility to use all practicable means to “fulfill the responsibilities of each generation as trustee of the environment for succeeding generations.”

State Constitutions: The Montana Constitution mandates that “the state and each person shall maintain and improve a clean and healthful environment in Montana for present and future generations”; the Hawaii Constitution provides that “each person has the right to a clean and healthful environment.”

Oregon Statutes and Administrative Rules: ORS 184.423 declares goals for the State of Oregon regarding sustainability, and ORS 184.421 provides for a definition of “sustainability” that includes enabling future generations to meet future needs.

Foreign Constitutions and Statutes: The South Africa Constitution provides the right “to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures”; the German Constitution provides that “the state takes responsibility for protecting the natural foundations of life and animals in the interest of future generations”; the New Zealand Resource Management Amendment Act of 1996 provides for sustaining “the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations”; the French legal code requires sustainable development to “protect the health of current generations without compromising the ability of future generations to meet their own needs.”

International Treaties: The Convention on Biological Diversity seeks to conserve biodiversity to preserve unknown and potential uses of all current species of plants and animals; the International Treaty on Plant and Genetic Resources for Food and Agriculture seeks to conserve the genetic diversity of plants to ensure that future generations preserve their food source options; the Kyoto Protocol further defines responsibilities under the United Nations framework regarding climate change.

⁴ Many of these provisions are discussed in the Climate Legacy Initiative's *Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice*.

The science of jurisprudence also encompasses remedies for actions that impair the rights of future generations that may emerge under case law or statutory provisions. Legal protection of future interests currently exists in specific contexts (*e.g.*, leases and trusts), and a fundamental question is the extent which the legal system will expand its protections to encompass the interests of future generations. Cases that have imposed remedies for impairing the rights of future generations include *Oposa v. Factoran* (Philippines, 1993), which held that future generations could enforce their rights in the courts with respect to protection of virgin tropical rainforest; and *Gray v. The Minister for Planning* (New Zealand, 2006), which held that intergenerational equity should be considered with respect to the environmental assessment of a coal mine expansion project. If and to the extent American courts establish theories of intergenerational liability or statutory frameworks are enacted to be more responsive to climate change, lawyers will be required to evaluate commercial and governmental activities in light of adverse impacts on the rights of future generations and analyze potential remedies for the violation of such rights. To the extent that the rights of future generations are recognized in the law, lawyers also may be called upon to articulate a theoretical framework (*e.g.*, social contract theory, international declarations on human rights or human dignity or common law public trust doctrine) for protecting future generations. The Climate Legacy Initiative's "Recalibrating the Law of Human Rights with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice" (see Appendix 4) articulates that because the historical foundation for the American legal system is ". . . to advance the operational needs of industrial society . . ." it will be essential to create a new legal framework to address the dire impacts of climate change and adverse impacts on future generations. Lawyers necessarily will be involved in the creation of any new legal framework.

3. Connection of Sustainability to the Improvement of the Administration of Justice

Consistent with the statutory charge under ORS 9.080(1), the OSB is committed to improving the administration of justice. In focusing more on the administration of justice rather than on what constitutes "justice," the OSB has not articulated whether, and to what extent, "justice" includes concepts of intergenerational equity or fairness. The OSB is not subject to the statewide sustainability goals set forth in ORS 184.423, and therefore the statewide goals have no bearing on the meaning of "justice" in ORS 9.080(1).

There is ample evidence that the waste and exploitation of the earth's limited resources and the changes wrought by the activities of current and past generations will have a profound, adverse effect on future generations. There is a demonstrated need through our system of governance and the rule of law for responsibility and remedial action to be equitably shared not only by future generations that will suffer, but also by the current generation that has benefited. The Task Force believes that concepts of intergenerational fairness fall within a commonly accepted meaning of "justice."

Intergenerational justice also invokes the aspirations of the legal profession. These aspirations of the legal profession are found in various sources, including the preamble to the ABA Model Rules of Professional Conduct and the OSB Statement of Professionalism. Historically, lawyers have been at the forefront of movements for civil justice. Lawyers have insisted on equal access to our system of justice, have represented persons and segments of society that have been unable to afford or obtain adequate legal assistance, and have worked for the recognition and protection of human dignity and human rights. The Task Force believes that

intergenerational equity presents the same issues and the same values. The deprivation of clean water or clean air for future generations as a consequence of waste or heedless exploitation by current and past generations is an affront to human dignity and basic human rights that precludes access to and participation in a just society.

C. Recommendations of Task Force

The Task Force has concluded that its recommendations satisfy the requirements set forth in the *Keller* decision and other case law applying *Keller* standards.

1. Formation of Sustainable Future Section

The creation of a Sustainable Future Section is intended to provide members with opportunities to develop and improve skills relating to sustainability and to serve as a forum to enable members to communicate and participate in activities with other members who have a common interest in sustainability. The Section also will serve as a resource to, and interface with, the Board of Governors and other OSB sections and committees with respect to matters relating to sustainability. These functions generally have the effect of improving the quality of legal services in the State of Oregon and accordingly fall within the *Keller* guidelines. In addition, the Sustainable Future Section will implement recommendations of the Task Force that are adopted by the Board of Governors, which, as discussed below, satisfy the *Keller* guidelines.

2. Amendment of Bylaws and Program Measure for Internal OSB Operations

The *Keller* decision addressed the issue of whether compelled financial support by members of an integrated bar association violates free speech rights guaranteed by the First Amendment. The OSB's adoption of sustainable offices practices as recommended by the Task Force do not abridge free speech rights guaranteed by the First Amendment. See *Popejoy v. New Mexico Bd. of Bar Comm'rs*, 887 F. Supp 1422 (D. N.M. 1995), in which the court held that construction of the State Bar Center did not infringe the First Amendment rights of objecting bar members beyond issues of compelled association in an integrated bar association that the courts recognize as permissible based on the state interest in regulating the legal profession. To regulate the legal profession and improve the quality of legal services, a state bar association necessarily must utilize staff and office space. Adoption of sustainable office practices is merely a means to fulfill these fundamental purposes of a state bar association. Many of the Task Force's recommendations also can be justified on the basis of long-term cost savings, greater efficiency and enhanced service capabilities. The proposed amendment to the Bylaws recognizes that sustainability is important not only with respect to the internal operations of the OSB, but also as a jurisprudential mechanism for lawyers to address competing economic, social and environmental priorities that impact future generations. The OSB's recognition of the importance of sustainability, coupled with encouragement of education and dialogue on how law impacts the needs and interests of future generations, satisfy the *Keller* guidelines of improving the quality of legal services and advancing the science of jurisprudence.

3. Amendment of RPC 2.1

As reflected in both this Appendix and Appendix 5, sustainability concepts are increasingly present in legal practice. The proposed amendment to RPC 2.1 reflects that a

significant and growing segment of the legal profession considers relevant sustainability concepts and environmental impacts in rendering advice to clients. The inclusion of sustainability concepts and environmental factors is permissive and does not burden the free speech rights of OSB members.

4. Continuing Legal Education

As recognized in ORS 9.112, continuing legal education is a fundamental function of the OSB to assure that each bar member has and maintains the requisite level of professional competence as a lawyer. The Task Force recommendations regarding the continuation of the environmentally sensitive manner in which the OSB provides continuing legal education programs and the flexible administration of MCLE accreditation rules for CLE programs with sustainability content consistent with MCLE Rule 5.1 clearly fall within the *Keller* guidelines of improving the quality of legal services.

5. Law Office Practices and Awards

The Task Force recommendations regarding law office sustainability policies are permitted by *Keller* as a member service. The law office sustainability policies are non-mandatory and are offered as a practice aid to lawyers and law firms having an interest in sustainability. Direct and indirect promotion by the OSB of these voluntary policies are germane to the delivery of legal services within the OSB's regulatory purview, operate on a voluntary basis and do not burden the First Amendment rights of OSB members. Recognition of, and award programs for, sustainable office practices and leadership in sustainability merely reflect the fulfillment of this member service and are not imbued with "political and ideological coloration" prohibited by the *Keller* decision. 110 S. Ct. at 2237.

6. Sustainability in Judicial and Administrative Proceedings

The adoption of sustainability initiatives for judicial and administrative hearings will tend to improve the administration of justice, consistent with the *Keller* decision, by increasing access to information by lawyers and the public, utilizing technology for appearances at hearings and reducing the cost of information, access and appearances.

APPENDIX 7

Proposed Scope of Activities for New Sustainable Future Section

The Task Force recommends the following initial scope of activities for the new Sustainable Future Section (the SFS), as it may be revised and expanded by the SFS Executive Committee from time to time.

1. Developments. The SFS shall monitor developments in sustainability as they might affect the legal profession and the practice of law. The SFS shall serve as the institutional expertise of the OSB in this arena.

2. OSB Internal Operations. The OSB's operations are the responsibility of the Board of Governors and the OSB staff. To keep generally abreast of developments within the

OSB and to share information, the SFS shall maintain intermittent contact with the OSB and meet with staff at least once a year to discuss policies and practices.

3. OSB Sections and Committees. The SFS shall coordinate with other sections and committees of the OSB that are working on matters related to sustainability to share information and keep abreast of developments. Where appropriate, the SFS shall make suggestions as to how sustainability might be incorporated into the work of sections and committees.

4. Annual Sustainability Awards. The SFS shall develop a procedure for organizing and publicizing annual sustainability awards of the type recommended by the Task Force.

5. CLE Programs. The SFS shall monitor CLE programs to determine how sustainability is being addressed.

6. Law Office Practices. The SFS shall monitor the development of sustainable law office practices and encourage best practices for law offices in the State of Oregon through the following:

- The SFS shall implement the Partners in Sustainability Program recommended by the Task Force.
- The SFS shall publicize resources for the sustainable law office including tools prepared by Oregon Lawyers for a Sustainable Future, the ABA-EPA Climate Challenge, and other similar resources found elsewhere.

7. Judicial and Administrative Proceedings. The SFS shall stay abreast of sustainable practices considered or implemented for administrative or judicial proceedings in Oregon. To the extent practicable, the SFS shall encourage best practices.

8. Future Generations. In 2009, Vermont Law School published a major report, *Recalibrating the Law of Humans with the Laws of Nature: Climate Change, Human Rights, and Intergenerational Justice*. It sets forth a framework for the current state of legal protection for future generations. Over time, the SFS shall foster education and dialogue regarding the appropriate role, if any, of the Oregon legal profession in protecting the rights and opportunities of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

APPENDIX 8

Proposed Sustainability Bylaw for OSB

Article 26 Sustainability

The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant

of sustainability in its internal operating practices as well as in its service to members. Internally, the Executive Director will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

APPENDIX 9

Proposed Sustainability Policy for Bar Operations

Oregon State Bar Sustainability Policy

Adopted on _____, 2009

“[S]ustainability” means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.”⁵

The Oregon State Bar (OSB) is committed to sustainable office practices consistent with our overall commitment to providing excellent services to our members. This policy shall apply to internal operations of the OSB that are managed by the Executive Director.

We recognize that all human activity, including the operations of the OSB, impacts the environment and society generally. Our daily choices in performing work t can either reduce or increase that impact. As an organization we seek to reduce this impact.

Because the daily practices of the OSB staff will determine the success of this policy, it includes a provision for education of staff on sustainability matters.

Sustainability Coordinator. The Executive Director shall appoint an OSB Sustainability Coordinator. The Coordinator shall lead the Sustainability Team that implements training for OSB employees about sustainability; make recommendations to the Executive Director to implement this policy; and keep awareness of this policy at a high level within the OSB.

Sustainability Team. The Sustainability Team shall have at least 6 members drawn from various departments within the OSB. It shall meet at least quarterly to evaluate current practices, determine priorities in carrying out this policy, and develop activities to educate and motivate staff to toward sustainable practices. The Sustainability Team shall be responsible for establishing baselines for practices that can be measured, such as paper use, recycled content of supplies, disposables purchased, percentage of office waste recycled, and the amount of utilities used. All staff members with ideas for improving the OSB's performance shall be encouraged to submit ideas to the Sustainability Team.

⁵ ORS 184.421

Energy and Water Assessment. The Sustainability Team shall consider ways to reduce energy, water, and the carbon footprint of OSB. As an initial matter, the team shall consider data regarding energy and water use provided in the OSB's Energy Star certification and the 2009 energy assessment conducted by the Energy Trust of Oregon. The Sustainability Team shall also review and implement where practicable the recommendations of the 2009 OSB Sustainability Task Force that pertain to operations of the OSB.

Purchasing. Sustainability shall be considered in the purchase of all of the OSB supplies, equipment, and vendor services. Examples of sustainability criteria to be included in this consideration are: recyclability, biodegradability, recycled content, waste minimization, hazardous-chemical free, energy conservation, resource conservation, locally manufactured, and organic content.

Waste Reduction and Recycling. Subject to security and other requirements, the OSB will endeavor to minimize the use of paper in data storage, printing and copying, internal and external communications, and mailing. The OSB shall also develop protocols related to minimizing the use of non-recyclable or compostable disposables and packaging; reusing equipment and supplies where feasible; and maximizing recycling of all items that can be recycled in this region.

Tenants. As building manager, the OSB shall recommend sustainable practices to all building tenants. When tenant improvements are made, the OSB shall require, to the extent practicable, that all materials be selected with the goal of being the least hazardous and most natural and give preference to those that are high in recycled content, recyclable or biodegradable, certified sustainable, and durable.

Travel. The Sustainability Team shall consider and recommend opportunities for reducing the OSB's business related travel, including the use of teleconferencing options; and shall explore strategies for reducing the environmental impact of travel, including but not limited to the use of fuel efficient vehicles, Zipcars, and carbon offsets.

Commuting. The Sustainability Team shall recommend ways for OSB to encourage use of mass transit, carpooling, and bikes by OSB personnel.

Reporting. The Executive Director will issue a report on the OSB sustainability initiatives to the Board of Governors annually. The report shall include a fiscal impact statement, including the costs incurred or saved by the OSB in implementing this policy. The OSB Sustainability Coordinator shall meet at least once a year with the Sustainable Future Section for a mutual exchange of information and ideas.

APPENDIX 10

Proposed Revisions to Program Measure to Incorporate Sustainability Considerations

Program Measures 2008 Finance and Operations Department

I. Program Goal Statement

The goal of Finance and Operations is to assist the customer in performing his/her job more efficiently and effectively, and to seek continuous sustainability improvement in operations.

II. Program Description

Finance and Operations provides day-to-day administrative, financial, and support services to all staff and departments of the bar and to the membership and the public. These services are critical for the successful operational and financial performance of the organization.

III. Volunteers/Partnerships

There are no volunteers used for Finance and Operations uses no volunteers in carrying out its function, but seeks input from sections and other organizations with expertise in sustainable office and business practices.

IV. Outcomes/Evaluation

1. Outcome: Sustainable Office and Business Practices - Reduce the impact of Bar operations on the environment in accordance with the OSB Sustainability Policy, guided by the Sustainability Team and the Sustainability Coordinator.
2. Measures: Annual assessment of measurable practices including reducing the use of paper, water and other resources; increased use of sustainable or recycled products and supplies; increased use of teleconferencing and videoconferencing; reducing the impact of commuting; and facilitating sustainable practices by tenants.

APPENDIX 11

Status of Sustainability in Accreditation and Delivery of CLE Programs

A. Accreditation

The Task Force reviewed the 30 CLE programs with sustainability-related content approved for MCLE credit by the MCLE Administrator as of April 21, 2009. A majority of the programs related to green building subjects. Other programs addressed legal issues involving sustainable business practices, renewable energy, carbon regulation and green marketing claims.

One accredited program entitled “Dimensions of Sustainability,” which was created by Oregon Lawyers for a Sustainable Future and presented to 20 different groups, provided general background on sustainability concepts. At the request of the Task Force, the MCLE Administrator also reviewed several sustainability courses offered in the University of Oregon Sustainability Leadership Program and concluded that the courses would qualify for MCLE credit. The criteria for obtaining MCLE credit for these sustainability programs is set forth in MCLE Rule 5.1, which requires the MCLE Administrator to find that the programs have “significant intellectual or practical content with the primary objective of increasing the participant’s professional competence as a lawyer” and “deal primarily with substantive legal issues, legal skills, [and] practice issues”

The Task Force concluded that the MCLE Administrator has flexibly administered the MCLE accreditation rules as they pertain to CLE programs with sustainability content. Accordingly the Task Force makes no recommendations for changes in accreditation of CLE programs that involve sustainability content. The Task Force recommends that the MCLE accreditation practices for CLE programs with sustainability content be continued.

The Task Force also concluded that a broader array of CLE programs on sustainability topics would be desirable as Oregon lawyers develop a greater interest in sustainability.

B. CLE Materials Offered in an Electronic Format

Pursuant to MCLE Rule 5.1, a CLE program will be accredited only if written materials are provided to the attendees. MCLE Regulation 5.050(a) provides that “written material may be provided in an electronic or computer-based format, provided the material is available for the member to retain for future reference.”

Attendees at select seminars sponsored or cosponsored by the OSB are offered a flash drive containing program materials. Because the cost of each flash drive is approximately \$10 and printed materials can be provided at a lower cost, flash drives are offered only for those CLE programs with substantial written material. The Manager of the OSB CLE Seminars estimates that approximately 99 percent of program attendees opt for printed program materials because it is more practical to take notes at the seminar next to the printed material. Moreover, most attendees who receive a flash drive will choose to print all or a substantial portion of the program materials. She also advised the Task Force that widespread utilization of flash drives during CLE programs is not currently feasible because there are a limited number of electrical outlets for laptops at most seminar locations. Furthermore, there have been complaints regarding distracting noise from laptops at seminars. At present, printed materials predominate at CLE seminars sponsored or co-sponsored by the OSB because they are preferred by OSB members.

Many national CLE sponsors provide program materials in a .pdf format. A primary reason appears to be the lower cost for delivery of program materials to seminar attendees. The Manager of the OSB CLE Seminars believes that most attendees print program materials provided in a .pdf format.

The OSB is cognizant of the environmental impacts of printing CLE program materials. The apparent reduction of paper usage from the utilization of flash drives is somewhat illusory based on the common practice of many lawyers to print all or a substantial portion of program

materials that are provided on a flash drive. For printed materials, the OSB previously used a “perfect bind” process that utilized oversized paper for the binding process and wasted a substantial amount of paper. As a result of advances in the quality of binding and tape, program materials can now be printed on 8 ½” x 11” paper to eliminate waste and achieve the same high quality as the “perfect bind” process. It appears that other bar associations are not more advanced than the OSB with respect to mitigating the environmental impacts of printed CLE program materials.

The Task Force recommends that the OSB continue to promote wider acceptance of electronic program materials for CLE seminars and continue to evaluate ways to reduce paper usage and waste for printed program materials.

C. Distance Learning

The Task Force reviewed the availability of “distance learning” options for CLE programs. The forms of distance learning offered by the OSB include video rentals, video replays at sixteen Oregon sites, teleseminars (which are national programs provided by telephone), audio and video streaming (which are archived programs viewed through the attendee’s computer), and webcast seminars (which are live, real time seminars viewed through the attendee’s computer). There has been a steady increase in registrations for teleseminars, audio and video streaming, and webcasts. These distance learning options provide significant opportunities for lawyers practicing outside metropolitan areas, increase lawyer efficiency by enabling programs to be viewed in the office, and reduce the environmental impacts of continuing legal education.

Although the costs associated with webcasts are decreasing, this distance learning format is available only for larger CLE programs. Webcasts require the program attendee to have a secure, stable Internet connection (*e.g.*, they do not work for dialup connections). Distance learning opportunities are available for approximately 95 percent of the CLE programs sponsored or cosponsored by the OSB.

The distance learning opportunities for Oregon lawyers compare favorably with distance learning opportunities in other states. The only significant exception is the use of a studio by the Minnesota Bar Association, which enables a greater array of short CLE programs to be provided. It should be noted that a studio may limit the availability of speakers from outside of the metropolitan area in which the studio is located.

The Task Force has concluded that the distance learning opportunities available to Oregon lawyers are impressive. The Task Force recommends continuing and enhancing the opportunities for distance learning for members of the OSB. The Task Force further encourages continued exploration of additional distance learning opportunities as technology changes.

APPENDIX 12

Worksheet for Development of Law Office Sustainability Policy

The Sustainable Future Section (SFS) of the Oregon State Bar (OSB) encourages law offices throughout the State of Oregon to adopt more sustainable office practices. This

worksheet is designed to aid the law office in developing a written law office sustainability policy and to consider related matters.

A written policy should, at a minimum, emphasize a commitment to sustainability efforts through concrete and meaningful actions. This requires oversight, education and accountability for consistent implementation of practices to reduce a law office's impacts. The policy may also include elements that demonstrate a law office's leadership in the community to advance sustainability goals.

The worksheet is not prescriptive with respect to the particular elements of a law office sustainability policy. Law offices have different needs, practices, sizes, cultures and goals; however, as noted above, certain minimum elements have been identified as necessary for an effective policy and are also necessary for recognition under the OSB Partners in Sustainability program. While the worksheet is meant to be a flexible tool to help develop a written policy, the ultimate goal and effect of the policy should be to empower action within your law office and practice for a sustainable future.

1. Introductory statement. The policy should include an introductory statement.

Example:

We recognize that all human activity, including the operation of a law office, has an impact on the environment and the natural world. As a result, we desire to develop a law office sustainability policy for our law office and practice to empower us to reduce these impacts and to act as leaders for a sustainable future.

The best known definition of sustainability is taken from a report commissioned by the UN World Commission on Environment and Development (1987):

*Sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs. –
From our Common Future*

2. Leadership, implementation and accountability – a critical element. The law office should consider how the policy will be implemented and maintained. For example, depending on the size and resources of the law office, a standing committee or other ongoing leadership and implementation mechanism could be created. Examples:

***Sustainability Coordinator – Alt #1.** One person shall be designated as the Sustainability Coordinator for the firm. The time allocated for work as Coordinator shall be determined by the [Firm Administrator] [Managing Partner]. The Coordinator shall organize and lead the Sustainability Team, be responsible for training all employees in an understanding of sustainability, make recommendations to firm management to implement the policy, and keep awareness of this policy at a high level in the firm.*

Sustainability Coordinator – Alt #2. One person shall be designated as the Sustainability Coordinator for the firm. The Coordinator shall develop a plan to encourage sustainable practices within the law office.

Sustainability Team. The Coordinator shall create a Sustainability Team of __ to __ members to meet [on a regular basis] [periodically] to evaluate current practices, determine priorities in carrying out this policy, and educate and motivate lawyers and staff to move toward sustainable practices. Anyone with ideas for improving the firm's performance is encouraged to contact a member of the Sustainability Team. The Sustainability Team will make periodic reports to the firm management regarding the progress the firm is making toward sustainability.

Annual Reports. Where practicable, baselines shall be established for practices that can be measured--such as paper used, recycled content of supplies, disposables purchased, percentage of office waste that is recycled, and electricity used--and progress shall be reported to the firm at least annually.

- 3. Educational Efforts – a Critical Element.** The law office should consider a commitment to ongoing educational opportunities for lawyers and staff to enhance their understanding and efficacy with sustainability issues. Depending on size, culture and resources, education can include a large range of activities, including internally provided education or encouraging attendance at external educational events. Example:

Education. Because the daily actions of each person in the firm will contribute to the success of this policy, this policy includes a provision for education of all new lawyers and staff on sustainability matters. In the long run, the initiative of each individual will be the key to the success of the policy.

- 4. Statement of commitment – a critical element.** The law office should consider how it would like to express its commitment to a sustainable future. This can be contained in an overarching commitment or through a series of specific commitments to provide guidance for the Coordinator and Team, if one is organized, including those noted below or other categories of importance to the law office. Examples:

Overarching. The firm seeks to play a leadership role in adopting sustainable law office practices, recognizing that best practices will evolve over time. The Coordinator should keep abreast of best practices among firms, solicit ideas from firm personnel, and develop proposals over time to alter firm practices.

Purchasing. Sustainability shall be considered in the purchase of supplies, equipment, and services. Examples of sustainability criteria are recyclability, biodegradability, recycled content, waste minimization, hazardous-chemical free, energy conservation, resource conservation, locally manufactured, and organic.

Waste Reduction and Recycling. Subject to security and other requirements, policies shall be established that minimize the use of paper in data storage, printing and copying, internal and external communications, and mailing. Systems will be established to

minimize disposables and packaging, reuse equipment and supplies where feasible, and maximize recycling of all items that can be recycled in this region.

Energy. *Policies shall be established that encourage energy conservation and efficiency in heating/cooling, lighting, and equipment. This may involve negotiations with the building manager to seek best practices.*

Travel. *The Sustainability Team shall consider means for reducing business travel, including teleconferencing options, and strategies for reducing the impact of travel, including fuel efficiency, Zip Car, and carbon offsets.*

Commuting. *The firm management shall establish commuter incentives to encourage use of mass transit, carpooling, and bikes.*

Carbon Credits/Green Power. *The firm will consider the purchase of carbon credits to offset all or a portion of the greenhouse gas emissions associated with our operations and the purchase of green power to encourage alternatives to fossil fuels.*

Tenant Improvements. *When tenant improvements are made, the firm shall specify materials that are the least hazardous and most natural and give preference to those that are high in recycled content, recyclable or biodegradable, certified sustainable, and durable.*

In addition to a written law office sustainability policy, the law office should consider other elements in an overall firm sustainability initiative.

5. Implementing specific practices. After the policy is adopted, the law office will need to take specific steps to reduce its impact. As an excellent resource for this purpose, Oregon Lawyers for Sustainable Future has developed useful Law Office Sustainability Tools (<http://www.earthleaders.org/olsf>).

6. Recognition. Recognition can help sustain enthusiasm and inform others on sustainability efforts. The law office should consider how to recognize sustainable future efforts within the law office or the Oregon State Bar, and/or in the community at large. For recognition within the Oregon State Bar, the Sustainable Future Section has developed (1) a Partners in Sustainability recognition program for law offices that adopt prescribed practices and (2) an OSB Sustainable Leadership Award Program, which presents awards annually to lawyers and law offices selected through a nomination process. For recognition in the broader community, a local governmental agency may recognize excellent efforts in specific initiatives (e.g., Commute Options).

7. Community efforts and involvement. The law office may consider committing resources to community efforts that will advance sustainability. For example this might include participation in community organizations, organizing volunteers for community events, advocacy for sustainability efforts in legislation or in policies for external organizations, purchasing green power, developing sustainable vendor clauses, among many others.

8. Client commitment. The law office may consider whether it is appropriate to make a commitment to its clients to pass through the benefits of the law office's sustainable practices to the client. For example, this could include lowering costs or fees based on a lower cost of doing business or when partnering with a client to master a new mutually beneficial sustainability issue to develop expertise in the legal or business aspects of sustainable development, among others.

9. Leadership and innovation. The law office may consider whether and how it wants to be a community leader to a sustainable future and how to maintain and advance that leadership. It should consider encouraging innovation in all aspects of its sustainable future policy commitments and in all aspects of the law office and practice that could result in a more sustainable future. For example, the office could encourage members and employees to generate new ideas for office practices, client services, or community involvement that further sustainability goals.

APPENDIX 13

Criteria to Qualify as an OSB Partner in Sustainability

Through the Sustainable Future Section, the Oregon State Bar seeks to encourage law offices to adopt sustainable practices – in general those that conserve energy and resources. This is in line with the goal of the State of Oregon to encourage sustainable practices.

The Partners in Sustainability Program will recognize the efforts of law offices that have implemented sustainable practices in office operations. Law offices that certify that they have implemented the practices listed below will be recognized as Oregon State Bar Partners in Sustainability and will be listed on the Oregon State Bar website. Firms must re-certify their practices each calendar year. This list is subject to change.

Note: May need refinement for firms in different circumstances

General – all firms must practice the following.

A sustainability policy has been adopted by the firm substantially in the form of the Oregon State Bar Model Sustainability Policy. All employees have been educated about portions of this policy that relate to their work, and this education is part of new employee training.

Paper Management – firms with 30 lawyers or fewer must practice at least six of the following. Firms with greater than 30 lawyers must practice all of the following.

- Office policy states that all copy and print jobs should be double sided unless otherwise specified.
- Copiers and printers are set to duplex automatically.
- Office policy on data and document storage is intended to minimize the use of paper.

- Documents are processed electronically, using scan option on copier when appropriate, rather than printing hard copies.
- Copy/printer paper and other writing paper products have at least 50% post-consumer recycled content.
- Paper towels, and toilet paper if supplied by the law office, have at least 50% post-consumer recycled content.
- Durable plates, cups, glasses, utensils, and coasters, are provided in kitchen and conference rooms.
- Office policy on court and agency filing procedures favors using the least paper that courts allow.
- Procedures are in place for keeping mailing lists up-to-date to avoid wasting paper.

Building Energy Reduction – all firms must practice the following.

- Office policy calls for individual computers and printers to be turned off at the end of each day.
- Procedures are in place for shared copy machines and printers to be turned off, or put in standby mode, at the end of each day.
- Timers have been installed, or procedures are in place, for turning off lights.
- Monitors are set to go to sleep after 10 minutes, or personnel have been instructed to turn off monitors when leaving the office for 10 minutes or more.
- Discussions have been held with a representative of the building owner and at least one of these methods has been requested: more switches installed, ambient light levels in office spaces adjusted to no more than 1.4 watts per square foot, tenant spaces sub-metered.

Transportation Energy Reduction – firms with 30 lawyers or fewer must practice at least three of the following. Firms with greater than 30 lawyers must practice all of the following.

- A subsidy of at least 50% is provided for bus or light rail passes (if public transportation serves the community).
- Incentives are provided for bike commuters: monetary, showers, and/or secure bike storage.
- Firm does not provide free parking for any personnel.

- Firm has purchased one or more car-sharing memberships.
- Office policy encourages reducing (a) the need for business travel, through teleconferencing and other strategies, and (b) carbon emissions of required business travel.

Waste and Toxics Reduction – all firms must practice the following.

- Desk-side recycling boxes are at each workstation, and trash cans are only at central locations.
- Containers are available for bottles, cans, newspapers, magazines, and cardboard, and a procedure has been established for their recycling.
- If the law office controls cleaning practices, cleaning supplies are certified by Green Seal or meet US EPA’s Design for the Environment standard, and the janitorial staff has been trained in the benefits of non-toxic cleaners.
- Old office equipment, furniture, and supplies are sold or donated for reuse.

_____ (name of law firm) hereby certifies that it practices the items listed above necessary to qualify as an Oregon State Bar Partner in Sustainability.

Number of lawyers in the local office _____

Name of person submitting this form _____

Date _____

APPENDIX 14

Annual Sustainability Awards

1. Background. It is recommended that the Oregon State Bar confer four awards annually to recognize leadership among law offices and lawyers in sustainability. Selection of awardees will be made by the OSB Sustainable Future Section or, if it does not exist, by another section designated to assume that role.

To provide context, the best known definition of sustainability is taken from a report commissioned by the UN World Commission on Environment and Development (1987):

Sustainable development is meeting the needs of the present without compromising the ability of future generations to meet their own needs.

– From *Our Common Future*

The award recognizes the efforts of law offices and individual lawyers who make exceptional voluntary efforts in advancing the societal goal of sustainability. Although advancements in providing paid legal services are important, the awards are not intended to recognize them.

2. Awards. The four awards (OSB Sustainability Awards) are as follows:

- **OSB Sustainable Law Office Leadership Awards.** Up to two awards will be given annually: (1) for a law office with more than 15 lawyers at any time during the calendar year of application within a single office location (Large Office); and (2) for a law office with no more than 15 lawyers at any time during the year of application working within a suite of offices (Small Office).

Criteria: *The law office that has demonstrated leadership in sustainability manifested through some combination of the following modes: (1) firm policy or policies, (2) office operations, (3) training/education of office personnel, (4) transportation practices, (5) firm support of organizations or initiatives through donated time, resources, or other means, or (6) other comparable modes.*

- **OSB Sustainable Leadership Award.** Up to two awards will be given annually to lawyers who demonstrate leadership in moving the legal profession to embrace sustainability as a goal of the profession.

Criteria: *A lawyer (active or inactive) who has demonstrated leadership by volunteering time to move any of the following along the path of sustainability: (1) the legal profession, (2) law offices, (3) law schools, (4) state or federal laws and regulations, or judicial or administrative proceedings (but not in an official capacity), or (5) other forums where law or the practice of law provides the primary context.*

3. Nomination and Selection Process. The OSB Sustainable Future Section shall determine the annual process for the nomination and selection of law offices and lawyers to receive awards. Any lawyer may nominate another lawyer for an OSB Sustainability Award. Self-nominations by a law office shall be accepted and will be given the same weight as a nomination by others. In addition to nominees in the current year, the panel may consider nominees from a prior year and request updated information, if pertinent, from the nominee or the person who completed the original nomination.

APPENDIX 15

Sustainability in Judicial and Administrative Proceedings in Oregon

Introduction. The Task Force was charged to review and make recommendations for the implementation of sustainable practices for judicial and administrative proceedings. Because the

state courts and state office of administrative hearing have very different roles and administrative practices, the Task Force concluded that it would focus on the state court system.⁶

Although the Task Force members met with judges and others involved in the judicial process, the following information was obtained without direct input from the state court administrator's office because it was dealing with a budget crisis and was unable to participate in a discussion of the issues.

Crossroads between courts, lawyers and the public. Courts are gatekeepers for the way pleadings and other filings are submitted and how they can be accessed by lawyers and the public. Several suggestions in this Appendix are tied to access-to-justice concepts for attorneys (on behalf of clients) and pro-se litigants, especially those in distant and rural counties, and for clients from poor, rural areas. Access to justice includes not only availability of information for those situated far from a courthouse, but also the cost of obtaining that information.

Current state of affairs. Sustainability efforts are already underway in several counties. For example, the Multnomah County Circuit Court has formed a "Green Team" to consider many issues related to sustainability. Other courts have informally begun to address sustainability issues. As an example, the Jackson County Circuit Court, on the initiative of one of its court clerks, offers attorneys the option to receive case notifications via email. The Jackson County program currently in place is an opt-in program, but could be expanded by turning it into an opt-out program.

The Federal courts already offer, and in most cases require, e-filing of all documents. Many hearings are also held telephonically for all participants; not just those located a certain distance from the courthouse.

Barriers to introduction of sustainable practices. Budget constraints are the most important factors in limiting the initiation of sustainability efforts in Oregon state courts today. In addition to state budget issues, circuit courts face constraints due to the physical court facilities being funded by the counties in which they are seated.

Although a move toward sustainability may reduce costs in the long run, the initial investment (*e.g.*, new computerized recordkeeping) can be daunting and constitute a barrier to adopting sustainability initiatives. In view of budget constraints, the state court system can initially focus its efforts on places where the cost of implementation is low, keeping in mind the impact on staff time of implementing even "no-cost" initiatives. A second barrier is acceptance by all participants. Any changes that affect court staff and/or operations may face some resistance from those interested in the status quo. Therefore, making sustainability initiatives

⁶ Administrative proceedings are handled by the Office of Administrative Hearings, which is under the Employment Department in the executive branch. The state sustainability objectives set forth in ORS 184.421 and ORS 184.423 should apply to administrative proceedings. The Task Force understands that administrative hearings judge are already flexible in allowing electronic communications. Because the courts are a separate branch of government, they are not subject to the state sustainability guidelines related to the executive branch. Thus, the Task Force has focused its recommendations entirely on judicial proceedings.

work will require input and buy-in from the stakeholders, such as the State Court Administrator's office, judges, local courts and staff.

Monitoring progress. The Task Force recommends that the new Sustainable Future Section monitor and encourage introduction of sustainable practices in judicial and administrative proceedings. This activity might include the following:

1. Support and encourage the use of e-filing. Ultimately, when the courts have an adequate information technology infrastructure, e-filing should be a requirement in all courts.

2. Encourage courts to use technology that is currently available. OJIN has some capability to be used more effectively and other actions, such as case notices via email, are possible with the current infrastructure that the courts have. The OSB could recommend to the court system a program for all counties whereby electronic notices are the standard and paper copies are only available for those attorneys or parties who opt out.

3. Conduct a thorough review of court rules and recommend changes. The court system operates under a number of court rules, including the ORCP, UTCR, SLR and ORAP. These rules should be reviewed for sustainability issues in order to encourage use of technology, find ways to reduce paper use and promote other sustainable practices. Some examples include: (1) allowing service by email without requiring written consent from the opposing attorney (ORCP 9G); (2) encouraging telephonic appearances by attorneys and witnesses; and (3) requiring pleadings to be submitted double sided with a "legal turn." Although double sided copies are already allowed under UTCR 2.010 (4), it appears that the use of double sided copies is often not encouraged and, in some instances, is not allowed by certain judges.

4. Work with stakeholders. Ongoing efforts by the OSB to encourage and support sustainable practices in Oregon court and administrative proceedings should include collaboration with the stakeholders, including trial court administrators, the judicial conference, and the Office of Administrative Hearings.