

**Oregon State Bar
Special Meeting of the Board of Governors**

January 11, 2019

11:00 a.m.

Oregon State Bar Center

Tigard, Oregon

Open Session Agenda

*The mission of the OSB is to serve justice by
promoting respect for the rule of law,
improving the quality of legal services, and
increasing access to justice.*

*The Special Open Session Meeting of the Oregon State Bar Board of Governors will begin at 11:00 am on January 11, 2019.
Items on the agenda will not necessarily be discussed in the order as shown.*

- | | | | |
|----|--|--------|---------|
| 1. | Call to Order | | |
| 2. | Swearing-in of New BOG Members [Ms. Costantino] | Action | |
| 3. | Adopt BOG Areas of Focus for 2019 | Action | Exhibit |
| 4. | Approve Minutes of Prior BOG Meetings | | |
| | A. Open Session November 17, 2018 | Action | Exhibit |
| | B. Closed Session November 17, 2018 | Action | Exhibit |
| 5. | Diversity, Equity & Inclusion Book Club | Inform | |
| 6. | Client Security Fund Claim Review | | |
| | A. Deveny (Hamell) Case # 2018-54 | Action | Exhibit |
| 7. | Adopt 2019 Legislative Priorities and Guidelines | Action | Exhibit |

OSB Board of Governors

STATUTORY CHARGE

The OSB Board of Governors (BOG) is charged by the legislature (ORS 9.080) to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹ The Oregon State Bar (OSB) is also responsible, as an instrumentality of the Judicial Department of the State of Oregon, for the regulation of the practice of law.² As a unified bar, the OSB may use mandatory member fees only for activities that are germane to the purposes for which the bar was established.³

MISSION

The mission of the OSB is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.

STRATEGIC FUNCTIONS

The BOG has translated the statutory charge and mission into five core functions that provide overall direction for OSB programs and activities:

FUNCTION #1 – REGULATORY BODY

GOAL: Protect the public by ensuring the competence and integrity of lawyers.

FUNCTION #2 – PARTNER WITH THE JUDICIAL SYSTEM

GOAL: Support and protect the quality and integrity of the judicial system.

FUNCTION #3 – PROFESSIONAL ORGANIZATION

GOAL: Promote professional excellence of bar members.

FUNCTION #4 – ADVOCATES FOR DIVERSITY, EQUITY AND INCLUSION

GOAL: Advance diversity, equity and inclusion within the legal community and the provision of legal services

FUNCTION #5 – CHAMPIONS FOR ACCESS TO JUSTICE

GOAL: Foster public understanding of and access to legal information, legal services, and the justice system.

¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

² The OSB's responsibilities in this area are clearly laid out in the Bar Act, ORS Chapter 9.

³ In *Keller v. State Bar of California*, 499 US 1,111 SCt 2228 (1990), the US Supreme Court held that an integrated bar's use of compulsory dues to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

FIDUCIARY ROLE

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

AREAS OF FOCUS FOR 2019

1. Follow-up on Futures Task Force items
 - a. Determine whether to create an admissions path for individuals who do not attend law school but who pass the bar exam.
 - b. Determine whether to create a limited license to practice law for paraprofessionals.
 - c. Consider recommendations from the Referral Fees Committee.
2. Conduct Program Review of Referral and Information Services
3. Review the OSB governance model, strategic functions, programs, activities and communications to ensure they are aligned with the bar's public service mission.
4. Evaluate potential forms of revenue and cost-savings for 2020 budget and beyond.
5. Continue investment to upgrade our I/T footprint (hardware and software) to attain modern compatibility, low-cost efficiency and ease of use, and improved data security.
6. Consider changes to member fee structure to provide greater equity.
7. Engage and expand the Citizens Campaign for Judicial Funding to bolster support for adequate funding for Oregon's court system.
8. Implement Diversity Action Plan items identified for 2019.

Oregon State Bar
Meeting of the Board of Governors
November 17, 2018
Open Session Minutes

President Vanessa Nordyke called the meeting to order at 10:58 a.m. on November 17, 2018. The meeting adjourned at 4:00 p.m. Members present from the Board of Governors were Colin Andries, John Bachofner, Whitney Boise, Eric Foster, John Grant, Rob Gratchner, Eddie Medina, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Michael Rondeau, Traci Rossi, Kerry Sharp, and David Wade. Not present were Guy Greco, Michael Levelle, and Tom Peachey. Staff present were Helen Hirschbiel, Amber Hollister, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, Judith Baker, Kay Pulju, Keith Palevsky, Carol Bernick, Jeff Crawford, Kateri Walsh, Cathy Petrecca, Sarra Yamin, and Cassandra Dyke. Also present were Jennifer Nicholls, ONLD Chair, Joel Sturm, Incoming ONLD Chair, Dennis Black, PLF Board Chair, and Judy Parker, Alternative Pathways Taskforce Chair.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, but agreed to address the issue of Alternative Pathways to Becoming a Lawyer (Agenda item 4A, Item 3A below) out of order.

2. 2018 President and President-elect Elections

Ms. Costantino confirmed Liani Reeves as 2019 President–elect.

Ms. Nordyke confirmed Chris Costantino for 2019 President.

3. BOG Special Committees, Study Groups and Task Forces

A. Alternative Pathways to Becoming a Lawyer

Ms. Parker presented the Alternative Pathways Taskforce Committee Report & Recommendations. **[Exhibit A]** She provided background and history related to the proposal. The Alternative Pathways Taskforce consists of a cross-section of people from varied geographic and practice areas. They solicited input and information from additional sources. The purpose of creating an alternative pathway to practice is to improve access to justice, especially to serve smaller communities and individuals from non-traditional and non-dominant backgrounds. The vote within the taskforce on whether to advance the program was close. Law school representatives expressed that the educational component of the JD was very important. Some taskforce members noted that the program may raise concerns for ensuring public protection and maintaining confidence in lawyers and legal process.

The taskforce modeled its recommendations after the Washington State Court Admission to Practice Rule (APR) 6 model. That model requires participants to work for a legal mentor for four years, who teaches substantive law, tests the participant, and reports annually to the bar. After four years the participant is eligible to sit for the bar. The taskforce considered program models from California, New York, and Maine, which require partial completion of an accredited JD program and then practical training. The majority of the taskforce concluded that such models did not adequately meet the needs of the participants and could possibly place the accreditation of Oregon law schools at risk.

Washington APR6 participants tend to pass the bar at higher rates than JD grads and 90% of APR6 clerks in Washington eventually become lawyers. On average, 20-25 people per year start the program in WA, and bar staff estimates about 2000 people have completed it. The biggest challenge for clerks is finding a mentor.

Board members questioned the role of the mentor, the methods by which the participants would be learning, and other issues related to the quality of legal education that would be received through the program. Several members asserted that the requirement that participants have a bachelor's degree was important.

Board members asked what demographic information was available from Washington. Ms. Parker noted that Washington did not track such data when the program started, though they do now. About 70% of participants are female. They do not currently track other demographics, nor have they tracked the prevalence of disciplinary or malpractice issues post admission.

The board discussed what specific goals the program would strive to attain or issues it would be trying to address, and the importance of completing the Program Scoresheet adopted by the BOG as part of its Program Review Policy. Members also questioned the operating costs associated with the program and at what point the program would be revenue neutral or generating.

Motion: Mr. Grant moved to commend the Task Force for a report well written and ask that they return to the Board's April 2019 meeting with additional information including the OSB Program/Service/Activity Scoresheet. The motion failed for lack of a second.

Motion: Mr. Wade moved to accept the Task Force Report. Ms. Rice seconded. Mr. Sharp called for the question. Mr. Andries, Mr. Bachofner, Mr. Boise, Mr. Gratchner, Mr. Medina, Mr. Ramfjord, Ms. Reeves, Ms. Rice, Ms. Rossi, Mr. Sharp, and Mr. Wade were in favor. Mr. Grant, Ms. Rastetter, Mr. Ramfjord, and Mr. Foster were opposed. The motion passed.

Motion: Mr. Gratchner moved and Mr. Foster seconded to refer the taskforce report to the Policy and Governance Committee to obtain additional information and complete the Program Scoresheet. The board voted unanimously to approve the motion. The motion passed.

4. President's Report

A. Health insurance for Bar Members

Ms. Nordyke posed the issue of whether the bar can or should offer affordable health insurance for its members. She identified it as a topic that came up repeatedly in her interactions with members, particularly solo practitioners.

Ms. Hirschbiel provided additional background and historical framework for the issue as set forth in her memo to the Board. **[Exhibit B]** She noted that she had discussed the issue with Guy Walden from the Multnomah Bar Association and Jeff Crawford from the PLF who serves on the MBA's Health Care Committee. The MBA offers a health insurance plan. Individuals must be members of the MBA to participate, but MBA membership is open to all Oregon lawyers. The MBA model does not work for true solo practitioners due to regulations of the Multiple Employer Welfare Arrangement (MEWA) model, requiring participants to have at least one employee to qualify. A number of mandatory bars have offered health insurance using a private exchange as an alternative to the MEWA model, although the same issue apparently exists regarding true solo practitioners. MBA is considering implementation of a portal model to solve the solo practitioner issue.

Mr. Bachofner reported that the Clark County Bar Association tried offering a health insurance plan approximately 10 years ago and ended up with significant exposure.

The board discussed the cost/benefit analysis given that health insurance coverage is available on the national and Oregon exchanges, the impact in smaller Oregon communities, and the lack of connection to the bar's public protection functions.

No further action was taken or recommended.

5. BOG Special Committees, Study Groups and Task Forces

A. Referral Fees Committee

Ms. Hirschbiel provided an update on the progress of the Referral Fees Committee. A subcommittee has been working on alternative language to that presented at the 2017 HOD meeting. The Committee hopes to provide a recommendation to the board at its February 2019 meeting.

6. BOG Committees

A. Policy and Governance Committee

1. Section Review Summary

a. Amendments to OSB Bylaw 15.6

Ms. Costantino asked the board to approve proposed changes to the OSB bylaws regarding section CLE activities. **[Exhibit C]**. Ms. Edwards provided additional background information.

Motion: The board voted unanimously to accept the Policy and Governance Committee’s recommendation to waive the one-meeting notice requirement and adopt amendments to OSB Bylaws Section 15.6 relating to section CLE activities. The Policy and Governance committee motion passed.

2. **ONLD Review Summary**

a. **Amendments to ONLD Bylaws**

Ms. Costantino asked the board to approve proposed changes to the ONLD program as recommended by the Policy and Governance Committee and to amend the Oregon New Lawyer Division (ONLD) Bylaws to reflect those changes. **[Exhibit D]** The proposed changes were as outlined, with a modification of the ONLD goals as follows:

Goals

- **That** ONLD members understand the mission, functions and values of the Oregon State Bar and participate in its leadership, programs, services, and activities;
- **To** assist new lawyers with the transition to practicing law in Oregon;
- **That** ONLD members have opportunities to use their unique talents and perspectives to explore development of services and activities that advance the mission, functions and values of the Oregon State Bar;
- **To share** ~~The sharing of~~ information and ideas about the challenges and opportunities for ONLD members in the legal profession.

Motion: The board voted unanimously to accept the program changes as presented and to amend the ONLD Bylaws as modified accordingly. The Policy and Governance Committee motion passed.

Ms. Costantino presented the committee motion to approve creation of the ONLD CLE, Membership, Access to Justice, and Student Outreach standing committees.

Motion: The board voted unanimously in favor of creation of the ONLD standing committees. The Policy and Governance Committee motion passed.

Ms. Costantino presented the committee motion to approve additional housekeeping amendments to the ONLD Bylaws.

Motion: The board voted unanimously to approve. The Policy and Governance Committee motion passed.

3. **Editorial Advisory Committee**

Ms. Costantino invited Ms. Pulju to explain the proposed charge, structure and composition for the new standing committee created by the Board, the Editorial Advisory Committee. Ms. Pulju explained the proposals as set forth in the memo. **[Exhibit E]**

Ms. Costantino asked the board to approve the proposed committee charge, with amendment to the second to last bullet point to read: “Advise on publication of sensitive material as requested by the editor, ~~or~~ contributors, or committee members.”

Motion: The board voted unanimously to approve the charge as presented and amended by the Policy and Governance Committee. The motion passed.

Ms. Costantino presented the committee motion regarding the size and composition of the Editorial Advisory Committee, including the two options considered by the Policy and Governance committee for the BOG member role in the Bulletin Editorial Advisory Committee. After robust discussion, the committee felt that it would be advantageous for BOG member buy-in and attendance if the BOG representative served as an ex officio voting member, rather than as a liaison.

Motion: The board voted unanimously to adopt the structure and composition recommended by the committee of a committee consisting of seven to nine members, including one public member, to be appointed through the Board Development Committee appointment process, with a BOG member as an ex officio voting member to be appointed by the BOG President. The motion passed.

4. **Leadership Academy Program Request**

Mr. Puente provided historical and current background relevant to development and implementation of a bar leadership academy. **[Exhibit F]** The bar’s diversity, equity, and inclusion efforts have been primarily focused on law students and limited with respect to attorneys. Several other bars currently run similar programs aimed at preparing attorneys for leadership positions. The OSB had a less-tailored leadership college which was sunset.

Ms. Costantino presented the committee motion to create an ad hoc committee to assist staff with development and implementation of a leadership academy.

Motion: The board voted unanimously to create the ad hoc committee as recommended. The committee motion passed.

B. Board Development Committee

1. **Appointments of Various OSB Committees and Councils**

Mr. Bachofner asked the board to approve the Board Development Committee’s various recommended appointments (1 of 2). **[Exhibit G]**

Motion: The board voted unanimously to approve the slate (1 of 2) as recommended. The committee motion passed.

Mr. Bachofner asked the board to approve the Board Development Committee’s various recommended appointments (2 of 2). **[Exhibit H]**

Motion: The board voted unanimously to approve the slate (2 of 2) as recommended. The committee motion passed.

C. Budget and Finance Committee

1. Approve 2019 OSB budget

Mr. Wade gave a financial update and discussed the 2019 budget. **[Exhibit I]** The 2019 OSB budget includes a 3.5% salary pool increase. The already approved 2019 PLF budget includes a 4% salary pool increase, and the board discussed the difference. The board discussed the bar’s staffing needs, other savings already captured, the bar’s five-year commitment not to raise dues, and the impact a 4% salary pool increase would have on the ability to create a balanced budget. The board commended bar staff for its high level of service to the public and the membership, and expressed regret at the inability to offer a salary pool equivalent to that provided by the PLF at this time.

Mr. Wade asked the board to approve the 2019 budget as recommended by the Budget and Finance Committee.

Motion: The board voted unanimously to approve the 2019 budget. The committee motion passed.

2. Loan Refinance:

Mr. Wade informed the board of updates regarding proposed refinancing of the loan on the Oregon State Bar Center. The board previously approved the CFO’s proposal to refinance the loan with a 30/15 balloon mortgage. The lender is now offering a 30/10 balloon mortgage, which, at the currently available interest rate, still creates a net savings including costs and penalties associated with the refinance.

Mr. Wade presented the Budget and Finance Committee’s motion to authorize the bar CFO to refinance the Bar Center loan, even if it requires a 30/10 term.

The board discussed the extent to which refinancing now would limit the bar’s options regarding the building in the future.

Motion: Ms. Rice called the question. Ms. Reeves seconded. The board voted unanimously bring the motion to a vote.

Motion: The board voted unanimously to authorize the CFO to refinance the loan per the terms discussed. The Budget and Finance Committee motion passed.

3. Line of Credit

Mr. Wade raised the possibility that with the transition to Aptify, there may be a delay in collection of 2019 member fees, in which case a line of credit would be required to maintain operations during that time.

Motion: The board voted unanimously to approve the Budget and Finance Committee motion to authorize the bar to enter into a line of credit, if needed, with Columbia Bank in the amount of 1 million, with an interest rate of about 5.2%. The motion passed.

4. **Client Security Fund**

Mr. Wade updated the board on potential Client Security Fund claims which may draw significantly upon the CSF reserves.

5. **Review of Bar License Fees**

Mr. Wade discussed a 2018 HOD resolution which requires the board to deliberate on the question of adjustment of licensing dues for third and fourth year licensees and report back to the HOD in November 2019. The Budget and Finance Committee will undertake in 2019 not just review of license fees, but all costs associated with admission to the bar (review course, application fee, admission fee, PLF coverage, etc.) for first-year through to 50-year members. The committee's goal is to offer a holistic proposal by the board's September 2019 meeting.

6. **Approve 2019 Section Dues**

Mr. Wade presented the Budget and Finance Committee's motion to approve the proposed increases in annual dues for four sections. **[Exhibit J]**

Motion: The board voted unanimously to approve the increases. The committee motion passed.

7. **Acknowledge Receipt of Independent Auditors Letter**

Mr. Wade reported to the board on the bar's recent clean audit and presented the Budget and Finance Committee's motion to acknowledge receipt of the Report of Independent Auditors letter dated October 1st, 2018. **[Exhibit K]**

Motion: The board voted unanimously to acknowledge the Report of Independent Auditors letter. The committee motion passed.

D. Public Affairs Committee

1. **Election Results**

Ms. Rastetter provided an update on state election results.

2. **Law Improvement Package Approval Memo**

Ms. Rastetter asked the board to approve the 2019 Oregon State Bar Law Improvement Package as recommended by the Public Affairs Committee. **[Exhibit L]**

Motion: The board voted unanimously to approve the 2019 Oregon State Bar Law Improvement Package. The committee motion passed.

3. Citizens' Campaign for Court Funding

Ms. Grabe provided talking points to the board on funding of the judiciary and encouraged board members to review them.

7. Professional Liability Fund

A. September 30, 2018 PLF Financials

Ms. Bernick reported to the board on PLF financial matters. PLF lowered its member assessment this year because of strong financial performance in 2017. Claim counts have been up but costs per claim down.

B. 2019 Coverage Plans (Primary, Excess, and Pro Bono)

Ms. Bernick submitted to the board for approval amendments to the 2019 Primary Plan, as well as the 2019 Excess Plan and the 2019 Pro Bono Plan. **[Exhibit M]**

Motion: Mr. Wade moved and Mr. Foster seconded to approve the PLF 2019 Primary Plan as amended, the 2019 Excess Plan, and the 2019 Pro Bono Plan. The board voted in favor of approving the plans. Mr. Bachofner abstained. The motion passed.

C. PLF Policy 2.300

Ms. Bernick informed the board of the PLF desire to create a committee devoted to loss prevention and asked the board to amend PLF Policy 2.300 to include: "(8) Loss Prevention: Makes recommendations regarding loss prevention programming and practices." **[Exhibit N]**

Motion: Mr. Wade moved, Mr. Grant seconded and the board voted in favor of amendment of PLF Policy 2.300 as outlined. Mr. Bachofner abstained. The motion passed.

8. OSB Committees, Sections, Councils and Divisions

A. Legal Ethics Committee

1. Withdraw OSB Formal Op No 2005-127 and 2005-100; Proposed Amendments to OSB Formal Ethics Opinions

Ms. Hirschbiel presented the Legal Ethics Committee request that the board withdraw two formal ethics opinions and amend a number of other opinions to conform the opinions to recent amendments to the rules of professional conduct. **[Exhibit O]**

Motion: Mr. Grant moved and Ms. Costantino seconded to withdraw OSB Formal Op No 2005-127 and 2005-100. The board voted unanimously in favor. The motion passed.

Motion: Ms. Rastetter moved and Mr. Gratchner seconded to amend additional formal ethics opinions as recommended by the OSB Legal Ethics Committee. The board voted unanimously in favor. The motion passed.

B. Oregon New Lawyers Division Report

Ms. Nicholls gave an update on the ONLD's recent events and areas of focus.

C. ABA HOD Delegate Report

In the absence of the ABA HOD Delegate, Ms. Nordyke reported on her experience attending the ABA HOD meeting and the Oregon-sponsored resolution against non-unanimous jury trials which was adopted by the ABA.

D. Oregon Law Foundation

Mr. Penn presented a summary of results received to date of the Legal Needs Study undertaken by the Oregon Law Foundation and several community partners, including the Oregon State Bar. About 1000 surveys have been returned and an 8-12 report is in process. The OLF anticipates a 10% drop in federal funding for civil legal aid. OLF and its partners are encouraging an increase in state funding for legal aid services to continue to meet the public need.

E. Public Service Advisory Committee

1. Create Refugee Civil Assistance Panel

Ms. Pulju presented the Public Service Advisory Committee request to create a new pro bono panel to assist immigrants, refugees, and asylees. **[Exhibit P]** Immigration is high on the list of civil legal needs in Oregon. The program would be run similarly to the existing Military Assistance Panel. Referral and Information Services staff would assign individuals both an immigration attorney and other practice area attorney. The attorneys would be covered by PLF and it would be a certified pro bono program. The bar has the existing infrastructure and can connect with partners for recruitment, training, and expertise. No cost is anticipated.

Motion: Ms. Costantino moved and Ms. Rice seconded to approve the creation of the pro bono panel as requested by the Public Service Advisory Committee. The board voted unanimously in favor. The motion passed. There was consensus that a Program Scoresheet should be completed for this new pro bono panel.

9. Closed Sessions – see CLOSED Minutes

A. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report

The board went into closed session. The board reconvened in open session.

10. Client Security Fund Claims to Approve or Review

Ms. Hollister presented four requests for board review of the Client Security Fund Committee claim denials. **[Exhibit Q]** She recommended that the board deny CSF Claim No. 2017-05 and CSF Claim No. 2017-10, as recommended by the Client Security Fund Committee. She recommended granting CSF Claim No. 2017-48, because the hardship imposed upon the claimant to attempt to recover a civil judgment merits waiving the requirement under CSF Rule 2.1.6. She recommended staying CSF Claim No. 2017-29 until conclusion of a pending disciplinary matter.

Motion: Mr. Bachofner moved to deny CSF Claim No. 2017-05, deny CSF Claim No. 2017-10, grant CSF Claim No. 2017-48, and stay CSF Claim No. 2017-29 pending outcome of the pending disciplinary matter. Ms. Rastetter seconded, and the board voted unanimously in favor. The motion passed.

11. Consent Agenda

The review of Client Security Fund Claims was removed from the consent agenda for discussion and a separate vote. No member requested that any other item be removed.

A. Report of Officers & Executive Staff

1. Report of the Executive Director

As written.

B. Client Security Fund Committee (removed from consent agenda).

1. CSF Financial Reports and Claims Paid

As written.

C. Approve Minutes of Prior BOG

1. Open and Closed Sessions September 21, 2018

2. Open Session for November 2, 2018

Motion: Mr. Foster moved, Mr. Andries seconded, and the board to approve the consent agenda and past meeting minutes. Mr. Grant, Ms. Reeves, Ms. Rice, Ms. Costantino, and Mr. Gratchner abstained.

OREGON STATE BAR
ALTERNATIVE PATHWAYS TASKFORCE COMMITTEE
REPORT & RECOMMENDATIONS

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Introduction

At the November 2016 House of Delegates meeting, in response to a resolution presented by HOD delegate Danny Lang, the HOD recommended the Board of Governors

appoint a Volunteer Committee to study the advantages of implementing a “Writing for the Bar Mentorship Program,” by which a Diversity of well-qualified persons would have the opportunity to take the Bar Exam and become valued Member of the Oregon State Bar.

This “Writing for the Bar Mentorship Program” is a concept that would allow a person to sit for the Oregon Bar Exam and become licensed as a lawyer without attending law school. It would require a change to the admissions rules and provide one option to reduce law school debt. Another option would be to change the admissions rules to require only two years of law school in order to become a lawyer in Oregon, rather than the current requirement of three years.

The Bar appointed individuals, including lawyers, representatives of the Board of Bar Examiners, the Professional Liability Fund, and representatives from law schools, to The Alternative Pathways Committee. The Bar tasked the Committee to study these two options and report back to the Board of Governors with a recommendation about whether to pursue implementation of either or both options.¹ As the reader will see below, the Committee met monthly between April 2018 through November 2018 and discussed in depth those two potential changes in the Bar’s admission requirements. On August 14, 2018, the Committee voted and declined to make a recommendation on the second Charge—modifying the admission rules to require only two years of law school. However, the Committee voted to make a recommendation that the BOG move forward with the goal of implementing the “Writing for the Bar Mentorship Program.” The vote on Charge One was eight (8) to six (6) in favor of the majority report. The vote on Charge Two was 13 (thirteen) to one (1) in favor of not making any recommendations related to the charge. In the spirit of authenticity and integrity, we present both a majority recommendation and a minority recommendation to the implementation of the program for Charge One. There is no minority report for those who voted against Charge One or in support of Charge Two.

During the Committee’s monthly meetings, Committee Members reviewed materials and discussed developments in other jurisdictions, particularly Washington, New York, and California. There were robust conversations on the mission and values of the OSB as they relate to the two charges,² including, for example, the OSB strategic goal to “work to eliminate barriers in the legal profession for members from non-dominant cultures.”³ We also discussed a wide

¹ A list of the members of the Committee and their positions is attached as Appendix A.

² Oregon State Bar, *Mission and Values of the Oregon State Bar*, available at: <http://www.osbar.org/docs/resources/OSBMissionStatement.pdf>.

³ See Oregon State Bar, 2018-2020 Diversity Action Plan, available at: <https://www.osbar.org/docs/diversity/2018-20DAP.pdf>.

variety of issues including diversity within the Oregon Bar; the American Bar Association admission rules and the regulation of law school curriculum; other alternative legal pathways programs; issues relating to access to justice; and the challenges facing self-represented litigants.

This report provides the details of the essential elements of the program, the anticipated costs of implementation and operation, and how success would be measured. It also measures the Charge against the prism of the Mission of the Oregon State Bar. On the program requirement that the Committee majority was divided on—an education minimum for applicants to the program—the Committee respectfully submits a minority report on that requirement in addition to the majority report. It also attaches Appendices with information about how other states implement similar programs.

Respectfully,

Danny Lang and Judy Parker, Chairs, Alternative Pathways Taskforce Committee

State Survey

Our Committee first reviewed how other states have implemented the equivalent of a “Writing for the Bar Mentorship Program” (a.k.a. a “law clerk” program). All fifty states and the District of Columbia permit graduates of ABA-accredited law schools to sit for a respective state’s bar exam. A majority of state bars allow lawyers admitted in different states to apply for reciprocity; some states require those applicants to have a JD while a few others do not. Our research reveals that six states currently allow an applicant to sit for its bar exam if the applicant goes through a “Writing for the Bar Mentorship Program” process. These states have varying requirements and as a result, varying degrees of success.⁴

The least successful of the law clerk programs is in Virginia, which is also the least regulated program. A Virginia applicant must merely show proof of working in a law office for four years and then can sit for the Virginia bar exam. The passage rate is incredibly low – only 21% pass. Equally unsuccessful is the New York law clerk model. The agent in the New York Bar Association told the chair of this Committee that when would-be applicants call to discuss this with her, she actively encourages them to pursue other paths, whether law school or an entirely different field altogether. And the New York agent also offered a chilling anecdote: she could not remember a single successful applicant in the New York program in the years she had worked in that office. Two other states have such a program on its books without having had an applicant in years (Vermont and Maine). And finally, Wyoming had a program on the books until 2015.

On the other end of the spectrum of success is Washington’s Law Clerk Program. This program requires an applicant to have several things at the outset: a bachelor’s degree, good moral character,⁵ and a job in a law office with a mentor who has been an active WSBA-licensed lawyer or judge for at least ten years, without disciplinary sanction. The tutor must agree to employ the clerk for at least four years for at least 32 hours per week (but most work full-time at 40 hours per week) and must equally agree to teach the clerk on a variety of subjects which have been set out in Admissions and Practice Rules (“APR”) 6. The clerk must complete six subjects per year, and the tutor must administer an exam at the end of each month. The exams—in any format the tutor chooses (*e.g.*, multiple choice, essay, practicum) —are sent to the Bar for annual review by a volunteer committee. That committee also interviews the tutor and clerk separately on an annual basis to ensure that the clerk’s education meets the standards for entering the Washington legal community. The clerk must also read three prescribed books per year and submit a report to the Bar board on each. At the end of the four years, the clerk may sit for the Washington State Bar. As the reader will see, a slim majority of the Committee thought highly of

⁴ For convenience, a side-by-side comparison of the general features is attached as Appendix B.

⁵ The applicant must submit two letters of support from non-relatives attesting to moral character.

the Washington State Law Clerk Program and has voted to urge the BOG to recommend that the BBX and Supreme Court adopt a similar regulation.

Essential Elements of the ‘Writing for the Bar Mentorship Program’

The Committee recommends that the BOG recommend that the BBX and the Supreme Court adopt new regulations that would allow an applicant to take the bar exam without having first completed a juris doctorate degree at an ABA accredited law school, as long as the applicant has completed and fulfilled the following requirements. The applicant must have a minimum of a bachelor’s degree, good moral character, and have completed the following four-year mentorship/tutelage program. During the four-year tutelage, the applicant must work at a law office, legal department, or court for 32 hours per week under a tutor who has been a member of the OSB for at least ten years. The tutor must instruct the applicant on a variety of required subjects on a monthly basis, progress of which is regulated and overseen by a committee of volunteer OSB lawyers. Specifically, the “Writing for the Bar Mentorship Program” would have the following elements:

1. The clerk must have a bachelor’s degree prior to application to the program. This single requirement was the most discussed issue in our Committee. Equally passionate advocates on both sides of the issue feel strongly about this requirement. A slight majority of members (nine) voted in favor of a bachelor’s degree requirement while a minority of members (eight) voted against the bachelor’s degree requirement.⁶ Furthermore, even among members who voted for the minority view, there was a split of opinion: some advocated that an applicant need only a high school diploma (or GED equivalent) with preference given to those with military service;⁷ others advocated for an Associate Degree plus any combination of military service, other qualifying public service, or work experience. Please see the Minority Report included later in this document for opposition to this requirement.
2. The law clerk must apply to the Oregon State Bar with a rigorous application process including an essay expressing the applicant’s intent, two letters of recommendation, a criminal law background check release, and a copy of the applicant’s undergraduate transcript. This application should include a \$250 non-refundable fee. A copy of the WSBA APR 6 Clerk Application is attached as Appendix C.
3. The application must also include a statement prepared by members of this Committee, which the clerk must sign as part of the application process to enter the tutelage program. The statement details the various reasons why a law school education is often preferable and would provide more opportunities. While there is no minority report for those who voted against Charge One, some of those members of the Committee prepared Appendix D to present some of their strongest concerns with

⁶ See Alternative Pathways Committee, *Meeting Notes*, Aug. 14, 2018, available at: <https://taskforces.osbar.org/files/2018/09/Alt-Path-August-minutes.pdf>.

⁷ Committee Member John Gear wrote a memo titled, “*Reducing the Odds That Alternative Pathways Lead to Dead Ends*”, the memo is available at: <https://taskforces.osbar.org/files/2018/07/2018-06-05-OSB-Alt-Pathways-Memo-John-Gear.pdf>. (the memo advocates for using the U.S. Navy’s Nuclear Power Training Program (NPTP) as a model for “self-study” rigorous training programs available to applicants with a high school diploma).

- the program being proposed by the Committee. Appendix D is intended to be provided to candidates considering the proposed program.
4. The BBX would appoint a committee of volunteer lawyers to oversee the implementation and operation of the program, and to interview each clerk and tutor as part of the application process and annually thereafter during the mentorship.⁸ The volunteer committee would have the discretion to do any of the following:
 - a. Determine whether the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program.
 - b. Determine whether the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules.
 - c. Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates.
 - d. Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, or take remedial legal or non-legal instruction.
 - e. Require the law clerk to change tutors.
 - f. Advise the law clerk that the law clerk's enrollment in the program is terminated.
 5. Although the WSBA has adopted a rolling application timeline, the Committee recommends that, at least at first, the BOG only have this application period once a year.
 6. The law clerk must find her/his/their own tutor. The OSB will not be responsible for any manner of "matching program" between prospective clerks or tutors. This must be an organic relationship.
 7. The tutor must apply to the Oregon State Bar and include a statement showing an understanding of the roles and restrictions of the program and the reasons why the tutor wishes to serve in this capacity. The tutor must be a member of the Oregon State Bar for at least ten years and must have a history that the volunteer committee would deem acceptable to tutor a student. In other words, while the Committee does not recommend that a tutor with a single complaint about the tutor would disqualify him or her, the volunteer committee would have the discretion to decide on both applicants and tutors. A copy of the WSBA APR 6 Tutor Application is attached as Appendix E.
 8. The tutor must employ the clerk for at least 32 hours per week, with pay. That is, the Committee does not seek to impose a four-year apprenticeship program in which the clerk is used as free labor. We would urge the BOG to recommend that the BBX and Supreme Court mirror the language of the WSBA APR 6 program that "Employment

⁸ The creation of this new committee would be a benefit to the BBX because it would be able to select new BBX members and co-graders from the committee, thereby generating new members with Character & Fitness experience.

offered contingent upon enrollment is not acceptable.” The employment must be in the same office as the tutor.

9. The clerk must undergo a regular series of “classes” with the tutor under a strict schedule of at least three hours per week per subject. The WSBA’s schedule seems acceptable to this Committee. The Committee urges the BOG to recommend the BBX and Supreme Court take note of the detailed metrics for each subject matter outlined in the APR 6 Rules and Regulations starting on page 11 with Section 7-2 entitled “First Year Clerkship” through the end of Section 7-5 entitled “Fourth Year Clerkship; Electives.” A copy of the metrics is attached as Appendix F.
 - a. The first year the clerk must first take two months of basic legal skills and then must take the following classes, in any order: two months of civil procedure, two months of torts, two months of contracts, two months of agency and partnership, and two months of property law.
 - b. The second year the clerk must take, in any order, one month of family law, two months of criminal law, two months of Constitutional Law I, two months of corporations law, two months of evidence, and three months of Uniform Commercial Code.
 - c. The third year the clerk must take, in any order, two months of Constitutional Law II, three months of professional responsibility and ethics, three months of wills, estates, trusts, and probate, two months of conflict of laws, and two months of criminal procedure.
 - d. The fourth year the clerk, in consultation with the tutor, will develop a curriculum of at least six electives to total a twelve month course of study. The law clerk will then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study. These electives can include administrative law, tax law, land use law, labor and employment law, remedies, international law, consumer protection, environmental law, real property law, trial practicum, elder and disability law.
10. The clerk must read 12 books about jurisprudence and write and submit to the Bar a report on each, every four months. Those books are selected in advance and published in the regulations. These books are designed to familiarize the clerk with legal history, philosophy, theory, and biography. A list of those books is attached as Appendix G.
11. The tutor must provide a monthly examination to cover all subjects studied by the clerk. The exam should quantifiably test the clerk’s comprehension of the subject matter and the understanding of the ethical, professional, and practical aspects of practicing law. The exam shall be graded by the tutor as pass/fail only. “Pass” means that the clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board; a “fail” grade requires the clerk to continue to study the subject for an additional month. The tutor must submit the exam and the results and grade to the Bar Admission staff responsible for compiling the reports on a regular basis so that the volunteer committee can review

the work as well as the tutor's tests. If the Bar Admission staff has concerns about the quality of the exam or the responses, the Bar Admission staff shall have the discretion to forward the concern to the chair of the volunteer committee; the chair shall have the opportunity to have a frank conversation with the tutor to ensure the highest of standards are employed. The volunteer committee can take any of the actions listed above.

12. If the clerk is unable to complete each month's course or year schedule, the volunteer committee and/or the Bar can choose to either end the process for each or to require retaking of that year's classes. The \$3,000 annual fee in that situation would not be refunded or credited towards the following year.

Anticipated Costs of Implementation and Operation

Because of the costs already set by our sister state, we can quantify the approximate costs to our Bar. The WSBA APR 6 Program has \$5,000 per year in direct costs for the program itself (not per clerk). Those costs include travel expenses for the law clerk board members and supplies, such as certificates, to those who complete the program. The WSBA APR 6 Program also has \$112,000 in annual indirect costs. These indirect costs are items such as staff salaries, benefits and overhead including rent and utilities. But the Committee anticipates that the OSB costs to implement this program will be less than the WSBA costs because we would not need to write new regulations whole cloth but rather the rule-making body can review and edit the WSBA APR 6 rules to make them appropriate to Oregon laws and thus reduce the cost. We anticipate that the majority of the policy work could be undertaken by volunteers. The rules would likely need to be subject to public notice and review; those costs, as well as the location for the public hearing, would likely be borne by the Bar at first and then reimbursed by fees paid by incoming students.

While the Committee recommends that the BOG recommend that the BBX and Supreme Court adopt the majority of the APR 6 rules, it does not recommend that it likewise simply mirror the WSBA APR 6 fee structure. The WSBA staff was frank with us that it suggested doubling the fees (\$100 for the initial application and \$1,500 per year of program activities) at the outset. The Committee recommends that that initial fee for application into the process be set at \$250, which is more than double the WSBA application. The Committee does not recommend that this be refunded to non-successful applicants. This will cover:

- 1) A revision of the application to comport with Oregon rules and addresses;
- 2) The printing and mailing costs for the application, if any;
- 3) The cost for the Bar Admission staff to conduct an initial background search;
- 4) The cost to recruit and maintain membership on the volunteer committee; and
- 5) The incidental cost of refreshments for the prospective law clerk, tutor, Bar Admission staff, and volunteer committee members during the interviews for application and the annual reviews.

In addition to the initial application, the Committee recommends that the Bar Admission's office impose an annual fee of \$3,000; this would be at least four years' worth of fees with as much as an additional two years. This \$12,000-\$18,000 is still far below the average law school tuition but would nonetheless cover several important costs, including:

- 1) The use of Bar Admission staff to receive and maintain the monthly tests from the tutor and clerk;
- 2) The use of Bar Admission staff to compile those tests for the volunteer committee to comport its annual review process; and
- 3) The incidental costs of refreshments for the clerk, tutor, Bar Admission staff, and committee members during the annual review process.

The Committee feels that these fees would offset the costs associated with implementing and operating the program and would in fact return money to the Bar.

Note: the Committee does not recommend that participants in this program receive any manner of scholarship or fee waiver for the bar Exam itself. Clerks who participate in this program must still apply for the bar Exam in the same manner as other applicants.

Measuring Success

Success of any new program can be measured in various ways, both with metrics and community building. The first way that the BOG can identify success is with successful bar exam passage rates. The Committee was particularly impressed with the sustained and consistent passage rate of clerks in the WSBA APR 6 program. This Committee hopes that the bar passage rates will mirror Washington's and will have rates within a three percent margin of passage rates of JD graduates. If after five years of test-taking the bar passage rates do not consistently meet the passage rates of the JD graduates taking the test, the Committee would urge the BOG to rescind the regulations.

Since 1984, approximately 60-65% of the APR 6 clerks pass the Washington bar exam on the first attempt. Approximately 90% eventually pass the bar exam. And approximately 2-3% of those who complete the program never take the bar exam. These metrics instill optimism in the program.

But a second set of success can be measured in a more nuanced and less-objective manner – whether this program supports the mission of the Oregon State Bar. This Committee feels it does. This Mission of the Oregon State Bar is “to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.”

Respecting the rule of law is furthered by admitting people to the Bar without the same path that we have used for the past fifty years and to have the public see lawyers who reflect themselves. Access to justice is strengthened by having people in the community stay a part of their community.

Minority Recommendation to the Educational Requirement of the Committee's Recommendation

The biggest issue of disagreement in the Committee was on the educational requirement of applicants to this program: “The clerk must have a bachelor’s degree prior to application to the program.” As noted, the vote was nine to eight in favor of an educational minimum requirement. This minority report follows.

Committee Members that advocated the minority view argued that making the bachelor’s degree a prerequisite level of formal education for program applicants will create yet another financial obstacle in the path of poor and low income individuals from underrepresented communities who aspire to become lawyers. OSB ideals such as fairness, diversity, excellence, and justice, are given added social impact when pursued with a recognition that financial obstacles to higher education continues to prevent otherwise qualified individuals from pursuing a career in the legal profession. Recommending an adoption of a variation of the recommendations proposed by this report can result in the applicant pool being open to a more diverse body of students with education, training, and experience from non-traditional institutions. Therefore, this Minority Report recommends that the BOG move forward with the goal of implementing the ‘Writing for the Bar Mentorship Program’ without the bachelor’s degree prerequisite.

In 2016, the Oregon State Bar, through a council of advisory members, completed its third and final year of the Bar’s first Diversity Action Plan. In the council’s 2016 Implementation Report, eight goals were articulated for the future of the Oregon State Bar.⁹ Of those eight goals, three are pertinent to the issues raised in this report: (1) increase the diversity of the Oregon bench and bar; (2) increase representation of low income Oregonians and enhance accountability for services to diverse clients; and (3) foster knowledge, education, and advancement of legislation that increases access to justice.¹⁰ These goals evidence the broad support that exists within the larger legal community for programs that can increase diversity within the Bar and close the access to justice gap that exists for those in need of legal services. However, to date, achieving (optimal) equilibrium on these issues in light of the challenges facing the legal profession remains elusive.¹¹

⁹ See Oregon State Bar, *Diversity and Inclusion: Making Us Stronger*, April 2017, available at: <https://www.osbar.org/docs/diversity/DAC2016Implementation.pdf>.

¹⁰ *Id.*

¹¹ The Oregon Judicial Department’s 2016 data on self-represented litigants in the Oregon Circuit Courts reinforces the fact that the number of self-represented litigants have only increased. See Oregon Circuit Court Data on Pro Se and Self-Represented Litigants (2016), available at: <https://taskforces.osbar.org/files/2018/05/OSB-sample-report.pdf> (The data can be seen in a spreadsheet attached as Appendix B to the OSB Futures Task Force Regulatory Committee Report & Recommendations).

According to the U.S. Bureau of Labor Statistics (BLS), the aggregate minority representation among all U.S. lawyers stood at 14.5% in 2015.¹² A 2017 report by the Institute for Inclusion in the Legal Profession (IILP) noted that the number of minority representation among U.S. lawyers is significantly lower than minority representation in most other management and professional jobs.¹³ In Oregon, the racial diversity of the bar pales in comparison to the diversity of the general population of the state, which was nearly a quarter nonwhite according to the 2013 U.S. Census Bureau.¹⁴

In 2014, among racial minorities of Oregon lawyers, about 3.8 percent identified as Asian, 2.2 percent Hispanic, 1 percent Black, and less than 1 percent American Indian; about 4.4 percent identified as Multiracial or other.¹⁵ In 2015, about 7 percent of Oregon bar members identified as a racial or ethnic minority.¹⁶ As an acknowledgement, this report recognizes that not all bar members report such demographic information to the bar. This report also recognizes that a focus on diversity within the Bar includes more than just racial and ethnic diversity, but also encompasses gender, disability, and sexual orientation, among others.

Among the myriad of issues discussed, Committee Members recognized the overarching reality that financial barriers to traditional legal education disproportionately impact individuals from non-dominant cultures—including poor and low-income Oregonians, many of whom are people of color, women, and individuals who are first-generation college students. Eliminating the bachelor's degree requirement is likely to increase the prospective applicant pool for the Writing for the Bar Mentorship Program, with the hope that the increase results in a diverse pipeline of students ultimately sitting for the bar exam and becoming legal practitioners unburdened with crushing debt. A related goal is that the pipeline of newly minted lawyers contributes to an increase in the Bar's diversity make-up, increases the availability of legal representation for low income Oregonians, and thereby advances access to justice.

I. Requiring a bachelor's degree will create yet another financial obstacle in the path of poor and low-income individuals from underrepresented communities who aspire to become lawyers.

Committee Members that advocated for applicants without a bachelor's degree reiterate their belief that requiring a bachelor's degree for admission into Writing for the Bar Mentorship

¹² See, Elizabeth Chambliss, *IILP Review 2017: The State of Diversity and Inclusion in the Legal Profession*, Institute for Inclusion in the Legal Profession available at:

http://www.theiilp.com/resources/Pictures/IILP_2016_Final_LowRes.pdf.

¹³ *Id.* at 16 (the IILP is a nonprofit organization created in 2009 whose aim is to promote demographic and cultural diversity and inclusion in the U.S. legal profession).

¹⁴ Casey Parks, *Oregon courts are more diverse, but 'there's still work to be done,' bar leaders say*, *The Oregonian*, Jan. 14, 2015, available at:

<https://www.oregonlive.com/portland/index.ssf/2015/01/oregon-state-bar-leaders-debut.html>.

¹⁵ Patrick Dehahn, *Oregon State Bar Maps The Road To Greater Diversity*, *Associations Now*, Jan. 19, 2015, available at: <https://associationsnow.com/2015/01/oregon-state-bar-greater-diversity/>.

¹⁶ See Parks, *supra* note 12.

Program will create yet another financial obstacle in the path of individuals from underrepresented communities who aspire to become lawyers. This is especially true given that the cost of a college education prevents a growing number of postsecondary students from earning a bachelor's degree. A snapshot of students completing college degrees in Oregon shows a divergent outcome among racial groups. Despite rising completion rates for college students statewide, a report by the Oregon Higher Education Coordinating Commission identified significant gaps along lines of race and ethnicity.¹⁷ The report notes that some groups—particularly Black and Native American students—enrolled in Oregon's public colleges and universities were as much as 40 percent less likely to graduate with a degree.¹⁸ Although a lack of affordability was found among all racial groups, Black and Asian American students were a combined 30 percent more likely than white students to report financial hardship as the leading contributor.¹⁹

One Committee member recalls his career prior to becoming a lawyer to illuminate this situation: “Prior to becoming a lawyer, I worked with Oregon’s at-risk youth, many of whom lived in small towns and faced homelessness as a result of not completing high school. I assisted them to obtain high school completion, either by re-enrolling in school or a GED program. Upon achieving those benchmarks, I helped them obtain career related jobs and/or pursue post-secondary education. Every year, I worked with a select number of individuals whom upon completing an AA program were deterred and ultimately pulled away from going higher due to the cost and financial impact of attaining a BA. Rather than pursuing a BA, many of these individuals enrolled in trade schools or hard-hat apprenticeship training program, joined the Military, or registered for national and community service in AmeriCorps.^[20] Although this report recognizes that the factors that contribute to the disparity in graduation rates are multifaceted, eliminating the BA requirement for this program is likely to increase the prospective applicant pool to individuals from diverse and underrepresented communities.”

II. The rigorous requirements of the Writing for the Bar Mentorship Program in addition to other measures of performance and accountability will ensure competency of program graduates.

¹⁷ Tom James, *Report: Minority groups still face college barriers in Oregon*, The Associated Press, Apr. 16, 2018, available at:

https://www.oregonlive.com/education/index.ssf/2018/04/state_report_minority_groups_s.html.

¹⁸ *Id.* (“66 percent of Asian American college students and 51 percent of white students graduated within six years compared with 45 percent of black students and 37 percent of Native American students”).

¹⁹ *Id.* (Between black and white students the margin was 10%; between Asian and white students, the margin was 20%).

²⁰ See National and Community Service, *Join AmeriCorps Vista*, available at:

<https://www.nationalservice.gov/programs/amicorps/amicorps-programs/amicorps-vista/join-amicorps-vista> (AmeriCorps VISTA (Volunteers in Service to America) members serve full-time for a year at nonprofit organizations or local government agencies to build the capacity of these organizations to carry out programs that alleviate poverty; the program does not require a BA and is available to US citizens, Permanent Residents, and DACA recipients).

Proponents of the bachelor's degree argued that the requirement is needed to ensure that applicants of the program have the reading and writing skills necessary to graduate; it was argued that the degree adds to the capacity of these newly minted lawyers to competently represent clients. Although the validity of those arguments cannot be understated, members that advocated the minority view argue that the overall rigorous requirements of the program in addition to other measures of performance and accountability will ensure successful completion and graduates who can sit for the bar and become competent attorneys.

Assuming that the Writing for the Bar Mentorship Program is modeled upon the rules of the Washington State Law Clerk model,²¹ the program should select applicants who must possess the character and intellectual ability to graduate the program. Recommending an adoption of a variation of the recommendations proposed in this report can result in the applicant pool being open to a more diverse pool of students with education, training, and experience from non-traditional institutions. Moreover, individuals who serve the public whether in the Military, Peace Corps,²² or AmeriCorps, among others, develop the ability to critically think, analyze, and problem solve, often times in places and circumstances far removed from the comforts available on a college campus.

Furthermore, other measures of performance and accountability such as: the substantive grading and evaluation benchmarks for Writing for the Bar Mentorship Program; the added supervision of a qualified attorney mentor under an apprenticeship model; passage of the bar exam; and upon licensure, the OSB's New Lawyer Mentoring Program; and the requirements of continuing legal education, will combine to ensure that program graduates have the tools to become competent attorneys.

III. Completing a bachelor's degree is not a marker of academic discipline.

Proponents of the bachelor's degree requirement also argued that completing a bachelor's degree shows that a person "can commit to a course of study."²³ Although this argument has some validity, it overlooks a growing trend: among the number of students completing a BA, a large percentage are taking longer than four years to complete the degree—for reasons unrelated to commitment and discipline. For example, in the aforementioned report by the Oregon Higher Education Coordinating Commission, 66 percent of Asian American students and 51 percent of white students graduated within six years.²⁴ For Black and Native American students, the six-

²¹ See Washington State Bar Association, *Law Clerk Program*, available at:

<https://www.wsba.org/for-legal-professionals/join-the-legal-profession-in-wa/law-clerk>.

²² See Peace Corps: *Frequently Asked Questions*, available at: <https://www.peacecorps.gov/faqs/> (Peace Corps uses a combination of technical, language, cross-cultural, health, and safety and security training as part of its competency based training approach; opportunities are available for individuals with a combination of relative job experience and education who lack a college degree).

²³ See Alternative Pathways Committee August Meeting Notes, *supra* note 7.

²⁴ See James, *supra* note 17.

year completion rates were 45 percent and 37 percent respectively.²⁵ A 2014 New York Times article discussed this growing phenomenon.²⁶

The article cited a report called the “Four Year Myth” written by Complete College America, a nonprofit group based in Indianapolis. The CCA report found that at most public universities, only 19 percent of full-time students earn a bachelor’s degree in four years.²⁷ “Nationwide, only 50 of more than 580 public four-year institutions graduate a majority of their full-time students on time.”²⁸ The report cited an inability to register for required courses, credits lost in transfer and remediation courses that do not work, and students taking too few credits per semester to finish on time, as some of the leading causes of slow student progress.²⁹ “The reality is that our system of higher education costs too much, takes too long and graduates too few.”³⁰ The result is that tuition borrowers who do not graduate on time take on far more debt in their extra years.³¹ The article quoted the spokeswoman for the Association of American Colleges and Universities saying “...[y]es, we have a huge completion problem, but we also have a problem that a lot of students graduated without learning what they need.”³²

Given that backdrop, it is becoming more and more apparent that completing a four-year degree is not a marker of academic discipline. The essence of the argument being made here is this: the fact that a prospective applicant to the Writing for the Bar Mentorship Program has an associate’s or a bachelor’s degree does not ensure that the applicant can complete the program, pass the bar, and become a competent attorney. Rather, predicting program success and competency will come through the additional measures of performance and accountability discussed above. These performance standards should cultivate a similar level of “self-study” discipline that the U.S. Navy instills in students who enter the Nuclear Power Training Program.

Thus, the minority report makes two alternative proposals. The first is that a clerk applicant has a high school diploma, GED, or equivalent; and an associate’s Degree—with a focus on institutionally accredited pre-law studies courses;³³ and any one of: Military, Peace Corps, AmeriCorps, or other equivalent public service, or a minimum five years of relevant legal work experience. The second is that a clerk applicant must have a high school diploma, GED, or equivalent; and either an associate’s degree or equivalent with Honorable Military Service, or Peace Corp being recognized as examples of qualifying equivalents.

²⁵ *Id.*

²⁶ Tamar Lewin, *Most College Students Don’t Earn a Degree in 4 Years, Study Finds*, The New York Times, Dec. 1, 2014, available at: <https://www.nytimes.com/2014/12/02/education/most-college-students-dont-earn-degree-in-4-years-study-finds.html/>.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ A minimum GPA requirement may be included as a prerequisite.

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	Minimum Education Requirement	Application Requirements	Application Cost	Costs Bearer	Mentor Requirements	Application Reviewing Body	Length of Time of Program
California Title 4 Division 1 Chapter 3 Rule 4.29	BA	MPRE, application, first year exam	\$158	Applicant			N/A
Maine Rule 10	Two years of an ABA-accredited law school program	Submit education plan/course of study to Bar Examiners in advance	Apparently none	N/A		Maine Bar Examiners in advance	One year
New York Rules of Court of Appeals for Admission of Attorneys and Counselors at Law, 520.4 Study of Law in Law Office	BA, one year of accredited law school						Up to 3 years
Washington APR 6	BA	At least 18 years old, Application, employment	\$100	Applicant	10 year member of WSBA	WSBA	4 year minimum, no breaks
Vermont Rule 7	BA from an accredited university		\$200 application fee \$100 report every six months	\$200 by the law office	Must be a member of the Vermont bar		

Virginia Law Reader Program	BA	Application, GMC, statement, LSAT			At least a Virginia lawyer for 12 years, but retired no more than 5 years		3 year program
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WASHINGTON STATE
BAR ASSOCIATION
 Regulatory Services Department

APPLICATION FOR ENROLLMENT IN
APR 6 LAW CLERK PROGRAM

To the Board of Governors and the Law Clerk Board of the Washington State Bar Association: I hereby apply for enrollment in the Washington State Law Clerk Program under Admission to Practice Rule 6.

Last Name: _____ **First Name:** _____ **Middle:** _____

Primary Contact Email: _____ **Primary Contact Phone:** _____

Home Address _____

City _____ **State** _____ **Zip Code** _____

List all the other names you have used or been known by, when and reason for change. Attach additional sheets as needed.

Last Name, First Name	/ From Mo/Year - To Mo/Year	/ Reason for change
_____	/ _____	/ _____
_____	/ _____	/ _____

Method of Payment:

Check (\$100 payable to Washington State Bar Association)

Credit Card (please complete the section below)

I authorize the WSBA to charge the below noted credit card \$100.

Please note: Our service provider will charge you a separate transaction fee of 2.5% on all bank card transactions. There is no transaction fee if you pay by check.

Master Card _____ Visa _____ AmEx _____

Credit card no. _____ Expiration date _____

Authorized Signature _____

Name as it appears on card _____

Address (if different from above) _____

City, State, Zip Code _____ Phone no. _____

For office use only

Prod Code: CLERK_APP

Law Clerk Fees – 42286 - CLERK

Date _____ Check no. _____ Amount \$ _____



PART I

- A. Include an essay explaining why you wish to be considered for enrollment in the Law Clerk Program. (Please limit your remarks to 500 words.)**
- B. Include two reference letters. Please inform your reference that he or she should attest “to the applicant’s good moral character and appraising the applicant’s ability to undertake and successfully complete the program.”**
- C. Bachelor’s Degree awarded from:**

Institution: _____ Date Degree Awarded: _____

An official, sealed transcript showing that a bachelor’s degree has been awarded by a college or university with approved accreditation before the date of your application is required. Transcripts for all institutions attended for more than 15 credits are required. Additional educational information is requested in Part II of the application.

- D. Regular, full-time paid employment with a lawyer or judge who will act as a tutor:**

APR 6. (b) (3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor’s employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;

Regulation 1-3. J. “Regular, full-time employment” means that the law clerk is hired by the tutor or the tutor’s employer in a (i) law office, (ii) legal department, or (iii) a court of general, limited, or appellate jurisdiction located in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.

Regulation 3-1 A. (1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.

Dates of Employment: Mo/Yr _____ to PRESENT.

Supervisor Name: _____

Employer or Firm: _____

Mailing Address: _____

City: _____ State: _____ Zip: _____

Employer Telephone _____ Employer E-mail: _____

- E. Additional items, if applicable.**

- To request ADVANCED STANDING as per APR 6 (b) (6), see Regulation 3-2 and submit conforming petition.
- To request an EMPLOYMENT WAIVER as per APR 6 (b) (7) and Regulations 1-3 G. and 3-1 (2), see Waiver Guidelines document.

PART II

Note that the following questions are identical to the questions on the application for the bar examination. Some may not, or rarely, apply to APR 6 Law Clerk Program applicants. If that is the case for you, you may answer with NA or Not Applicable. Any questions that do apply must be answered completely.

Make additional copies of pages as necessary.

<p>1. List every permanent or temporary physical address where you have resided for a period of one month or longer during the last five years in reverse chronological order (continue on an attached page if necessary):</p> <p>Current Address From Mo/Yr _____</p> <p>Street Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p>		
<p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Street Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p>		
<p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Street Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p>		
<p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Street Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p>		
<p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Street Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p>		
<p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Street Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p>		

<p>2. List complete information regarding your college/university attendance, including institutions at which you studied abroad, in reverse chronological order. Report all legal education and law schools in Question 3. If the school's name has changed since your attendance, provide the current and former names. Please indicate the degree received or enter "No Degree" if you did not receive a degree. Multiple degrees received from the same school require separate entries, as do multiple periods of attendance (other than those interrupted only by school vacations).</p> <p>College _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Degree received (No Degree, B.A., M.S., etc.) _____</p> <p>Field(s) of Study _____</p>		
<p>College _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Degree received (No Degree, B.A., M.S., etc.) _____</p> <p>Field(s) of Study _____</p>		
<p>College _____</p> <p>Mailing Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Degree received (No Degree, B.A., M.S., etc.) _____</p> <p>Field(s) of Study _____</p>		

Official transcripts for all institutions attended for more than 15 credits are required.

Credentials for foreign institutions must be accompanied by an education credential evaluation report.

See <http://www.naces.org/> for a list of companies offering this service.

<p>3. A. List complete information regarding your attendance at law schools/colleges/universities where you have studied or are currently studying for your J.D. or first degree in law, including the Law Clerk Program and institutions at which you studied abroad, in reverse chronological order. If the school's name has changed since your attendance, provide the current and former names. Please indicate the degree received or enter 'No Degree' if you did not receive a degree. Multiple degrees received from the same school require separate entries, as do multiple periods of attendance (other than those interrupted only by school vacations). Advanced degrees in law should be entered in question 3B.</p> <p>Law School _____</p> <p>Mailing Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>From Mo/Yr _____ To Mo/Yr _____ Date degree received or expected (Mo/Yr) _____</p> <p>Degree received or expected to be received (No Degree, J.D., LL.B., etc.) _____</p> <p>Law School _____</p> <p>Mailing Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>From Mo/Yr _____ To Mo/Yr _____ Date degree received or expected (Mo/Yr) _____</p> <p>Degree received or expected to be received (No Degree, J.D., LL.B., etc.) _____</p>	NA	___
<p>3. B. List complete information regarding your attendance at law schools/colleges/universities where you have studied or are currently studying for your advanced degree(s), including institutions at which you studied abroad, in reverse chronological order. If the school's name has changed since your attendance, provide the current and former names. Please indicate the degree received or enter 'No Degree' if you did not receive a degree. Multiple degrees received from the same school require separate entries, as do multiple periods of attendance (other than those interrupted only by school vacations).</p> <p>Law School _____</p> <p>Mailing Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>From Mo/Yr _____ To Mo/Yr _____ Date degree received or expected (Mo/Yr) _____</p> <p>Degree received or expected to be received (No Degree, LL.M., Ph.D., etc.) _____</p>	NA	___
<p>3. C. <i>Not Applicable for Law Clerk Applicants</i></p>	NA	NA
<p>4. <i>Not Applicable for Law Clerk Applicants</i></p>	NA	NA

<p>5. Have you ever been dropped, suspended, warned, placed on academic or scholastic probation, placed on disciplinary probation, expelled, requested to withdraw, or allowed to withdraw in lieu of discipline from any college or university (including law school), or otherwise subjected to discipline or investigation by any such institution or requested or advised by any such institution to discontinue your studies there?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>If you answered yes, provide the following information:</p> <p>Name of Institution _____</p> <p>Address _____</p> <p>Type of Action _____</p> <p>Date Action Taken _____</p> <p>Explanation of Institution Action</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<p>Name of Institution _____</p> <p>Address _____</p> <p>Type of Action _____</p> <p>Date Action Taken _____</p> <p>Explanation of Institution Action</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<p>Please include documentation for each incident.</p>		

6. Have you ever applied for bar admission, applied as a foreign legal consultant or in-house counsel, or been admitted, licensed, or authorized to practice law in any U.S. jurisdiction (state, territory, or the District of Columbia), tribal court, or foreign jurisdiction, including admission to the bar by examination, motion, or diploma privilege? (DO NOT include information regarding authorizations to appear pro hac vice.)	YES <input type="checkbox"/>	NO <input type="checkbox"/>
<p>If yes, list every U.S. or foreign jurisdiction, including tribal court, to which you have:</p> <ul style="list-style-type: none"> ● submitted an application to pre-register as a law student, take a bar examination, register as a foreign legal consultant or in-house counsel, or be admitted to a bar or tribal court on motion. ● been admitted, registered, licensed, or authorized to practice law. ● submitted an application to be reinstated to a bar or tribal court. <p>Multiple applications and examinations in a U.S. jurisdiction, tribal court, or foreign jurisdiction require separate entries. Provide a brief narrative explanation of the circumstances surrounding the reason for any withdrawals of applications or failures to be admitted (other than those due to failing the examination). If admitted to the bar of New York, indicate the judicial department to which admitted, and complete FORM 10.</p> <p>Name of U.S. jurisdiction, tribal court, or foreign jurisdiction _____</p> <p>Name and address of foreign bar authority _____</p> <p>Application Type:</p> <p style="padding-left: 40px;"> <input type="checkbox"/> Bar Exam <input type="checkbox"/> Motion/Reciprocity <input type="checkbox"/> Diploma <input type="checkbox"/> Law Student Registrant <input type="checkbox"/> Foreign Legal Consultant <input type="checkbox"/> Other _____ </p> <p>Date application made (Mo/Yr) _____</p> <p>Date examination taken (Mo/Yr) _____</p> <p>Reason not admitted:</p> <p style="padding-left: 40px;"> <input type="checkbox"/> Failed exam <input type="checkbox"/> Withdrew application <input type="checkbox"/> Pending <input type="checkbox"/> Denied <input type="checkbox"/> Other reason </p> <p>Explanation _____</p> <p>Admission or Readmission date (Mo/Day/Yr) _____ Bar Number* _____</p> <p>Admitted/Registered as:</p> <p style="padding-left: 40px;"> <input type="checkbox"/> Attorney <input type="checkbox"/> In-House Counsel <input type="checkbox"/> Foreign Legal Consultant <input type="checkbox"/> Other </p>		

7. List your employment and unemployment information for the last five years in reverse chronological order.

- Employment encompasses all part-time and full-time employment, including self-employment, externships, internships (paid and unpaid), law school clinics, clerkships, military service, volunteer work, and temporary employment. If you were employed by a temporary agency, provide the name, mailing address, and telephone number of the temporary agency and also note the name of the firm/company to which you were assigned.
- Account for any unemployment period of more than three months (i.e., attending law school, studying for the bar examination, seeking employment, etc.). For these periods of time, **check the box for Unemployment Period and describe your activities while you were unemployed in the field labeled Employment Position/Description of Unemployment.**
- Do not furnish your own name or the name of someone to whom you are related by blood or marriage as a confirming reference.

CURRENT EMPLOYMENT

From Mo/Yr _____ To PRESENT

Employment Position/Description of Unemployment _____

Employer or Firm _____

Supervisor/Associate Name _____

Employer or Firm Mailing Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Employer Telephone () _____ Employer E-mail _____

If you are self-employed or employed by a relative, provide a reference (preferably someone associated with the business) to whom you are not related by blood or marriage who can verify the nature and length of your employment or practice. If you provide a business address, please include the names of both the reference and the business.

Name(s) _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Telephone () _____ E-mail _____

<p>7. CONT. PAST EMPLOYMENT (or unemployment) From _____ Mo/Yr To _____ Mo/Yr</p> <p>Employment Position/Description of Unemployment _____</p> <p>Employer or Firm _____</p> <p>Supervisor/Associate Name _____</p> <p>Employer or Firm Mailing Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Employer Telephone (_____) _____ Employer E-mail _____</p> <p>If you are self-employed or employed by a relative, provide a reference (preferably someone associated with the business) to whom you are not related by blood or marriage who can verify the nature and length of your employment or practice. If you provide a business address, please include the names of both the reference and the business.</p> <p>Name(s) _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Telephone (_____) _____ E-mail _____</p>		
<p>7. CONT. PAST EMPLOYMENT (or unemployment) From _____ Mo/Yr To _____ Mo/Yr</p> <p>Employment Position/Description of Unemployment _____</p> <p>Employer or Firm _____</p> <p>Supervisor/Associate Name _____</p> <p>Employer or Firm Mailing Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Employer Telephone (_____) _____ Employer E-mail _____</p> <p>If you are self-employed or employed by a relative, provide a reference (preferably someone associated with the business) to whom you are not related by blood or marriage who can verify the nature and length of your employment or practice. If you provide a business address, please include the names of both the reference and the business.</p> <p>Name(s) _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Telephone (_____) _____ E-mail _____</p>		

<p>8. Have you ever been investigated, warned, terminated, suspended, disciplined, laid-off for misconduct or dishonesty, or permitted to resign in lieu of termination from any job? (If the employment was not previously listed, please go back and add it to Question 7.)</p> <p>If yes, provide the following information about each occurrence:</p> <p>■ Employer or Firm _____</p> <p>Dates of Employment: From Mo/Yr _____ To Mo/Yr _____</p> <p>Disposition: <input type="checkbox"/> Terminated <input type="checkbox"/> Suspended <input type="checkbox"/> Disciplined <input type="checkbox"/> Laid-Off <input type="checkbox"/> Permitted to resign</p> <p>Date of disposition (Mo/Yr) _____</p> <p>Explanation of circumstances _____</p> <p>_____</p> <p>■ Employer or Firm _____</p> <p>Dates of Employment: From Mo/Yr _____ To Mo/Yr _____</p> <p>Disposition: <input type="checkbox"/> Terminated <input type="checkbox"/> Suspended <input type="checkbox"/> Disciplined <input type="checkbox"/> Laid-Off <input type="checkbox"/> Permitted to resign</p> <p>Date of disposition (Mo/Yr) _____</p> <p>Explanation of circumstances _____</p> <p>_____</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>9. List the full name and address of each <u>mandatory</u> bar association of which you have been or are currently a member. If you have never been a member of any bar association, check NA.</p> <p>Name of Bar Association _____</p> <p>Dates of Membership: From Mo/Yr _____ To Mo/Yr _____</p>	<p>NA</p>	<p>_____</p>
<p>10. A. Have you ever been disbarred, suspended, censured, or otherwise disciplined or sanctioned or disqualified as an attorney by any regulatory or licensing agency or court?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>10. B. Have you ever been the subject of any charges, complaints, investigations, or grievances (formal or informal) concerning your conduct as an attorney, including any now pending?</p> <p><input type="checkbox"/> YES <input type="checkbox"/> NO</p> <p>If you have never been admitted to practice law, check NA.</p> <p>If you answered yes to 10A and/or 10B, please provide the following information for each matter:</p> <p>Name of Regulatory/Licensing Agency or Court _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>Case Number (if applicable) _____</p> <p>Action Taken _____ Date _____</p> <p>Explanation _____</p>	<p>YES <input type="checkbox"/></p> <p>YES <input type="checkbox"/></p> <p>NA</p>	<p>NO <input type="checkbox"/></p> <p>NO <input type="checkbox"/></p> <p>_____</p>

<p>11. Have you ever been the subject of any charges, complaints, investigations, or grievances (formal or informal) alleging that you engaged in the unauthorized practice of law, including any now pending?</p> <p>If the answer is yes, please provide the following information for each matter:</p> <p>Name of Regulatory Agency _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Case Number (if applicable) _____</p> <p>Action Taken _____ Date _____</p> <p>Explanation _____</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>12. Have sanctions ever been entered against you, or have you ever been disqualified from participating in any case?</p> <p>If you have never been admitted to practice law, check NA.</p> <p>If the answer is yes, please provide the following for each sanction or disqualification:</p> <p>Name of Court _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>Case Number _____</p> <p>Action Taken _____</p> <p>From Mo/Yr _____ To Mo/Yr _____</p> <p>Reason for the sanction or disqualification _____</p> <p>Attach a copy of the order of sanction or disqualification.</p>	<p>YES <input type="checkbox"/></p> <p>NA</p>	<p>NO <input type="checkbox"/></p> <p>_____</p>
<p>13. Have you ever held judicial office?</p> <p>If yes, provide the following information about each office:</p> <p>Office Held _____ From Mo/Yr _____ To Mo/Yr _____</p> <p>Name of Court _____</p> <p>Address _____</p> <p>City _____ State _____ Zip _____</p> <p>Country _____ Province _____</p> <p>Reason for leaving office (if applicable) _____</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>14. Have you ever been a member of the armed forces of the United States, its reserve components, or the National Guard?</p> <p>If yes, complete a separate FORM 1 for each period of service.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>

<p>15. Have you ever been denied a license or had a license suspended, terminated or revoked for a business, trade, or profession (e.g., CPA, real estate broker, physician, patent practitioner, etc.)?</p> <p>If yes, please provide the following information for each denial or revocation:</p> <p>Action Type: <input type="checkbox"/> Denial <input type="checkbox"/> Revocation</p> <p>License (Type, Application Date, License Number) _____</p> <p>Name of Regulatory or Licensing Agency _____</p> <p>Address _____</p> <p>Action Taken _____</p> <p>Date _____</p> <p>Explanation _____</p> <p>_____</p>	<p>YES</p> <p><input type="checkbox"/></p>	<p>NO</p> <p><input type="checkbox"/></p>
<p>16. A. Have you ever been suspended, censured, or otherwise disciplined or disqualified as a member of another profession, or as a holder of public office?</p>	<p>YES</p> <p><input type="checkbox"/></p>	<p>NO</p> <p><input type="checkbox"/></p>
<p>16. B. Have you ever been the subject of any charges, complaints, investigation, or grievances (formal or informal) concerning your conduct as a member of any other profession, or as a holder of public office, including any now pending?</p> <p>If you answered yes to 16A and/or 16B, please provide the following information for each matter:</p> <p>Name of Regulatory Agency _____</p> <p>Address _____</p> <p>Case Number (if applicable) _____</p> <p>Action Taken _____</p> <p>Date _____</p> <p>Explanation _____</p> <p>_____</p>	<p>YES</p> <p><input type="checkbox"/></p>	<p>NO</p> <p><input type="checkbox"/></p>
<p>17. Has any surety on any bond on which you were the principal been required to pay any money on your behalf?</p> <p>If yes, complete FORM 2.</p>	<p>YES</p> <p><input type="checkbox"/></p>	<p>NO</p> <p><input type="checkbox"/></p>

<p>18. Have you ever been a named party to any civil action? NOTE: Family law matters (including divorce and continuing orders for child support) should be included here.</p> <p style="text-align: center;">If yes, complete a separate FORM 3 for each action.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>19. Have you ever had a complaint or action (including, but not limited to, allegations of fraud, deceit, misrepresentation, forgery, or malpractice) initiated against you in any administrative forum?</p> <p style="text-align: center;">If yes, complete a separate FORM 3A for each complaint or action.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>20. A. Have you ever been cited for, arrested for, charged with, or convicted of any alcohol- or drug-related traffic violation including any cases resolved in juvenile court?</p> <p style="text-align: center;">If yes, complete a separate FORM 5 for each incident.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>20. B. Have you been cited for, arrested for, charged with, or convicted of any moving traffic violation during the past ten years? (Omit parking violations.)</p> <p style="text-align: center;">If yes, report each incident on FORM 5T.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>21. Have you ever been cited for, arrested for, charged with, or convicted of any violation of any law including any cases resolved in juvenile court? (Report traffic violations at Questions 20.)</p> <p style="text-align: center;">If yes, complete a separate FORM 5 for each incident.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>22. Have you ever filed a petition for bankruptcy?</p> <p style="text-align: center;">If yes, complete a separate FORM 4 for each bankruptcy petition filed. See also Question 23. C.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>23. A. Have you ever defaulted on any student loans?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>23. B. Have you ever defaulted on any other debt?</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>
<p>23. C. If your answer to Question 22 is yes, are there any additional debts not reported in Questions 23(A & B) that were not discharged in bankruptcy?</p> <p style="text-align: center;">If you answered yes to 23A, 23B, and/or 23C, complete a separate FORM 6 for each debt.</p>	<p>YES <input type="checkbox"/></p>	<p>NO <input type="checkbox"/></p>

24. Within the past five years, have you been confronted, questioned, warned, or asked or encouraged to resign or withdraw by an employer, supervisor, teacher or other educator based on:	YES <input type="checkbox"/>	NO <input type="checkbox"/>
<ul style="list-style-type: none"> a) your truthfulness, b) your excessive absences, c) the manner in which you handled or preserved the money or property of others, d) a serious or repeated failure to submit your work in a timely manner, e) your competence or diligence in the performance of job or academic duties, f) your ability to maintain the confidentiality of information, or g) your endangering the safety of others? 		
If you answered yes, complete the following section. You may include information regarding all defenses or claims that you wish to offer in mitigation or as an explanation for your conduct.		
Name of entity before which the issues was raised (i.e., employer, school, etc.):		
<hr/>		
Address: _____		
City, State, Zip: _____		
Telephone: _____		
Province, Country: _____		
Nature of the Issue: _____		
Relevant Dates: _____		
Disposition, if any: _____		
Explanation: _____		
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Use additional pages if necessary.

PART III

LAW CLERK PROGRAM RULES AND REGULATIONS

Please initial next to each statement to verify that you understand and agree:

Initials:

I have read the "Rules and Regulations Governing the Washington State Law Clerk Program" _____

I thoroughly understand and agree to abide by the "Rules and Regulations Governing the Washington State Law Clerk Program" _____

I understand that enrollment in the Law Clerk Program may be terminated for failure to complete the program within 6 years, failure to submit monthly examinations and certificates on time, failure to comply with the requirements of the program, or other grounds deemed pertinent. _____

I understand that a law clerk may be deemed involuntarily withdrawn from the program for unapproved absences, leave of absence of more than 12 months, and nonpayment of the annual fee. Failure to submit exams and/or a tutor's certificate (explaining lack of exam) shall be interpreted as an unapproved absence. _____

If approved for enrollment, I agree to immediately notify the Law Clerk Board and WSBA program staff of any change in my employment, incident that might call into question my character and fitness to participate in the program, or any other matter which might affect my eligibility or suitability for the Law Clerk Program. _____

Certificate of Applicant

I, _____, state under penalty of perjury under the law of the State of Washington that I am the applicant above named; that I make this application for the purpose of seeking enrollment in the Law Clerk Program in the State of Washington; that I have read the foregoing application, and that the statements herein contained are full, true and correct.

Signature

Date

City/State where signed

Authorization and Release

(To be completed by all applicants)

I, _____,
Name

born at _____, on _____
City, State, Country Birth date

having filed an application for enrollment in the Washington State Bar Association's APR 6 Law Clerk Program, hereby consent to have an investigation made as to my moral character, professional reputation, and fitness for the practice of law and to have such information as may be received reported to the admitting authority. I agree to give any further information which may be required in reference to my past record. I understand that I will not receive and am not entitled to a copy of the report or to know its contents, and I further understand that the contents of any such report are privileged.

I also authorize and request every person, firm, company, corporation, governmental agency, court, association, or institution having control of any documents, record, and other information pertaining to me, to furnish to the Washington State Bar Association any such information, including documents; records; bar association files regarding charges or complaints filed against me, formal or informal, pending or closed; or any other pertinent data, and to permit the Washington State Bar Association or any of its agents or representatives to inspect and make copies of such documents, records, and other information.

I hereby request and authorize the Department of the _____ to furnish to the
(Army, Navy, Air Force)
Washington State Bar Association the record of each period of my service therein, and to furnish the character of service rendered for each period. My serial number was _____.

I hereby release, discharge, exonerate the Washington State Bar Association, its agents and representatives, and any person so furnishing information from any and all liability of every nature and kind arising out of the furnishing or inspection of such documents, records, and other information, or the investigation made by the Washington State Bar Association.

I have read the foregoing document and have answered all questions fully and frankly. The answers are complete and are true of my own knowledge.

_____ Signature of Applicant	Subscribed and sworn to or affirmed before me this _____ day of _____, _____ Month Year
_____ Date	_____ Signature of Notary Public
STATE/DISTRICT OF COUNTY/PARISH OF	My commission expires _____ <i>Seal or stamp must be affixed to each original.</i>

To be used with Question 13
FORM 1 / MILITARY SERVICE

Name _____
 First Middle Last Suffix

- I am presently a member of the armed forces.
- I was a member of the armed forces.

- A. Regular armed forces: Air Force Army Coast Guard Marine Corps Navy
 Reserve components: Air Force Army Coast Guard Marine Corps Navy
 National Guard: Air Force Army State _____

My serial number was/is _____ My rank was/is _____
 Dates of service: Active Duty - From Mo/Yr _____ To Mo/Yr _____
 Reserve Duty - From Mo/Yr _____ To Mo/Yr _____
 National Guard - From Mo/Yr _____ To Mo/Yr _____

ATTACH COPIES OF ALL OF YOUR REPORTS OF SEPARATION (e.g., DD FORM 214-MEMBER COPY #4, NGB FORM 22, etc.). THE DD FORM 214 THAT YOU PROVIDE MUST INDICATE YOUR CHARACTER OF SERVICE.

- B. For PRESENTLY SERVING PERSONNEL ONLY: Check: Active Reserve National Guard

Present duty station _____
 Address _____
 City _____ State _____ Zip _____
 Country _____ Province _____
 Telephone number () _____
 Name of commanding officer _____

- C. As a member of the armed forces of the United States:
 1. Were you ever court-martialed? *Yes No
 2. Were you ever awarded non-judicial punishment? (Art.15 UCMJ) *Yes No

If you are presently a member of the armed forces, do not answer Questions 3, 4, and 5.

3. Did you receive an honorable discharge? Yes *No
 4. Were you allowed to resign in lieu of court-martial? *Yes No
 5. Were you administratively discharged? *Yes No

***If you checked a box followed by an asterisk, provide an explanation for each answer:**

■ Refers to Item C (1, 2, 3, 4, or 5) _____ Date of action _____
 Explanation of circumstances _____

Result, including any punishment _____

■ Refers to Item C (1, 2, 3, 4, or 5) _____ Date of action _____
 Explanation of circumstances _____

Result, including any punishment _____

To be used with Question 17
FORM 2 / BONDING COMPANIES

Name _____
 First Middle Last Suffix

Name and complete address of surety (bonding company):

Name of surety _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Amount of money paid by surety _____

Date money paid _____

Reason for bond _____

Brief explanation _____

To be used with Question 18
FORM 3 / RECORD OF CIVIL ACTIONS

Name _____
First
Middle
Last
Suffix

Complete title of action _____

Court file number _____

Date filed _____

Name and complete address of court involved:

Name of court _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Plaintiff's name _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Plaintiff's attorney _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Defendant's name _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Defendant's attorney _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Trial date _____

Date of final disposition _____

Disposition _____

Are you the subject of any continuing court order (e.g., for child support or payment of a money judgment)?

Yes No

If the disposition resulted in a judgment, has the judgment been satisfied?

Yes No Not Applicable (Disposition did not result in a judgment.)

If yes, give the date the judgment was satisfied _____

If no, what amount is still owing? _____

Brief explanation of suit _____

Attach a copy of the pleadings, judgments, and/or final orders.

Form 3

To be used with Question 19

FORM 3A / RECORD OF ADMINISTRATIVE ACTIONS

Name _____
First Middle Last Suffix

Date action/complaint initiated _____

Name and complete address of administrative forum or body:

Name of administrative forum or body _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Name and complete address of investigative agency (body, board, commission, committee, etc.):

Name of agency _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Date of final disposition _____

Disposition _____

Brief explanation _____

Attach a copy of the administrative record.

To be used with Question 22

FORM 4 / RECORD OF BANKRUPTCY OR INSOLVENCY

Name _____
First Middle Last Suffix

Date bankruptcy filed _____

Complete title of action _____

Court file number _____

Name and complete address of court involved:

Name of court _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Debts discharged:

Credit Grantor	Account Number	Amount Discharged
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Date of final disposition _____

Disposition _____

Were any adversary proceedings instituted? Yes
 No

Were there any allegations of fraud? Yes
 No

Were any debts not discharged? Yes No

Brief description of circumstances surrounding filing petition for bankruptcy:

Attach schedule of indebtedness, petition for bankruptcy, and discharge from bankruptcy order.

To be used with Questions 20A and 21
FORM 5 / RECORD OF CRIMINAL CASES

Name _____
 First Middle Last Suffix

Date (or time period) of incident _____

Charge(s) on date of arrest or citation _____

Incident location (city, county, state) _____

Country _____ Province _____

Title of complaint, indictment, or citation _____

Court file number _____

Name and complete address of court involved:

Name of court _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Name and address of law enforcement agency involved:

Name of law enforcement agency _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Name and address of defendant's attorney:

Name of attorney _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Date of initial court hearing _____

Charge(s) at time of initial court hearing _____

Date of final disposition _____

Charge(s) at time of final disposition _____

Final disposition _____

Brief description of incident _____

Attach a copy of the arresting agency's report, complaint, indictment, citation, information, disposition, sentence, and appeal, if any.

To be used with Question 6

FORM 10 / FOR APPLICANTS PREVIOUSLY ADMITTED IN NEW YORK

Name _____
First Middle Last Suffix

Date of admission _____

Department in which you were admitted (check one):

- First Department Second Department
- Third Department Fourth Department

Department(s) in which you have practiced law or been employed as an attorney (check **ALL** that apply and include county):

- I have not practiced law in any department in New York.
- First Department; County(ies) _____
- Second Department; County(ies) _____
- Third Department; County(ies) _____
- Fourth Department; County(ies) _____

To be used with Question 13
FORM 1 / MILITARY SERVICE

Name _____
 First Middle Last Suffix

I am presently a member of the armed forces.

I was a member of the armed forces.

A. Regular armed forces: Air Force Army Coast Guard Marine Corps Navy
 Reserve components: Air Force Army Coast Guard Marine Corps Navy
 National Guard: Air Force Army State _____

My serial number was/is _____ My rank was/is _____

Dates of service: Active Duty - From Mo/Yr _____ To Mo/Yr _____

Reserve Duty - From Mo/Yr _____ To Mo/Yr _____

National Guard - From Mo/Yr _____ To Mo/Yr _____

ATTACH COPIES OF ALL OF YOUR REPORTS OF SEPARATION (e.g., DD FORM 214-MEMBER COPY #4, NGB FORM 22, etc.). THE DD FORM 214 THAT YOU PROVIDE MUST INDICATE YOUR CHARACTER OF SERVICE.

B. For PRESENTLY SERVING PERSONNEL ONLY: Check: Active Reserve National Guard

Present duty station _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Telephone number (____) _____

Name of commanding officer _____

C. As a member of the armed forces of the United States:

1. Were you ever court-martialed? *Yes No

2. Were you ever awarded non-judicial punishment? (Art.15 UCMJ) *Yes No

If you are presently a member of the armed forces, do not answer Questions 3, 4, and 5.

3. Did you receive an honorable discharge? Yes *No

4. Were you allowed to resign in lieu of court-martial? *Yes No

5. Were you administratively discharged? *Yes No

***If you checked a box followed by an asterisk, provide an explanation for each answer:**

■ Refers to Item C (1, 2, 3, 4, or 5) _____ Date of action _____

Explanation of circumstances _____

Result, including any punishment _____

■ Refers to Item C (1, 2, 3, 4, or 5) _____ Date of action _____

Explanation of circumstances _____

Result, including any punishment _____

To be used with Question 17
FORM 2 / BONDING COMPANIES

Name _____
 First Middle Last Suffix

Name and complete address of surety (bonding company):

Name of surety _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Amount of money paid by surety _____

Date money paid _____

Reason for bond _____

Brief explanation _____

To be used with Question 18
FORM 3 / RECORD OF CIVIL ACTIONS

Name _____
First
Middle
Last
Suffix

Complete title of action _____

Court file number _____

Date filed _____

Name and complete address of court involved:

Name of court _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Plaintiff's name _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Plaintiff's attorney _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Defendant's name _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Defendant's attorney _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Trial date _____

Date of final disposition _____

Disposition _____

Are you the subject of any continuing court order (e.g., for child support or payment of a money judgment)?

Yes No

If the disposition resulted in a judgment, has the judgment been satisfied?

Yes No Not Applicable (Disposition did not result in a judgment.)

If yes, give the date the judgment was satisfied _____

If no, what amount is still owing? _____

Brief explanation of suit _____

Attach a copy of the pleadings, judgments, and/or final orders.

Form 3

To be used with Question 19

FORM 3A / RECORD OF ADMINISTRATIVE ACTIONS

Name _____
 First Middle Last Suffix

Date action/complaint initiated _____

Name and complete address of administrative forum or body:

Name of administrative forum or body _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Name and complete address of investigative agency (body, board, commission, committee, etc.):

Name of agency _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Date of final disposition _____

Disposition _____

Brief explanation _____

Attach a copy of the administrative record.

To be used with Question 22

FORM 4 / RECORD OF BANKRUPTCY OR INSOLVENCY

Name _____
First Middle Last Suffix

Date bankruptcy filed _____

Complete title of action _____

Court file number _____

Name and complete address of court involved:

Name of court _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Debts discharged:

Credit Grantor	Account Number	Amount Discharged
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Date of final disposition _____

Disposition _____

Were any adversary proceedings instituted? Yes
 No

Were there any allegations of fraud? Yes
 No

Were any debts not discharged? Yes No

Brief description of circumstances surrounding filing petition for bankruptcy:

Attach schedule of indebtedness, petition for bankruptcy, and discharge from bankruptcy order.

To be used with Questions 20A and 21
FORM 5 / RECORD OF CRIMINAL CASES

Name _____
 First Middle Last Suffix

Date (or time period) of incident _____

Charge(s) on date of arrest or citation _____

Incident location (city, county, state) _____

Country _____ Province _____

Title of complaint, indictment, or citation _____

Court file number _____

Name and complete address of court involved:

Name of court _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Name and address of law enforcement agency involved:

Name of law enforcement agency _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Name and address of defendant's attorney:

Name of attorney _____

Address _____

City _____ State _____ Zip _____

Country _____ Province _____

Date of initial court hearing _____

Charge(s) at time of initial court hearing _____

Date of final disposition _____

Charge(s) at time of final disposition _____

Final disposition _____

Brief description of incident _____

Attach a copy of the arresting agency's report, complaint, indictment, citation, information, disposition, sentence, and appeal, if any.

To be used with Question 20B

FORM 5T / RECORD OF MOVING TRAFFIC VIOLATIONS

Name _____
 First Middle Last Suffix

Currently licensed in _____ Driver's license number _____
 State

Traffic violations involving alcohol or drugs should be reported in response to Question 21A and on FORM 5.

Please complete the following information for each incident:

■ Name of law enforcement agency _____
 Incident location (city, county, state) _____
 Country _____ Province _____
 Date of incident (Mo/Yr) _____
 Charge(s) on date of incident _____
 Date of final disposition (Mo/Yr) _____
 Charge(s) at time of final disposition _____
 Final disposition _____
 Brief description of incident _____

■ Name of law enforcement agency _____
 Incident location (city, county, state) _____
 Country _____ Province _____
 Date of incident (Mo/Yr) _____
 Charge(s) on date of incident _____
 Date of final disposition (Mo/Yr) _____
 Charge(s) at time of final disposition _____
 Final disposition _____
 Brief description of incident _____

■ Name of law enforcement agency _____
 Incident location (city, county, state) _____
 Country _____ Province _____
 Date of incident (Mo/Yr) _____
 Charge(s) on date of incident _____
 Date of final disposition (Mo/Yr) _____
 Charge(s) at time of final disposition _____
 Final disposition _____
 Brief description of incident _____

To be used with Question 6

FORM 10 / FOR APPLICANTS PREVIOUSLY ADMITTED IN NEW YORK

Name _____
 First Middle Last Suffix

Date of admission _____

Department in which you were admitted (check one):

- First Department Second Department
- Third Department Fourth Department

Department(s) in which you have practiced law or been employed as an attorney (check **ALL** that apply and include county):

- I have not practiced law in any department in New York.
- First Department; County(ies) _____
- Second Department; County(ies) _____
- Third Department; County(ies) _____
- Fourth Department; County(ies) _____

Appendix D

The Oregon State Bar recognizes that some people may want to pursue a career as an attorney but do not foresee that law school is available to them for a variety of reasons. The Oregon State Bar also recognizes that law school can be an expensive undertaking that some people who want to be lawyers do not want, or are not able, to make the financial investment that law school requires. For this and other reasons, the Oregon State Bar has adopted a law office study program, thereby creating an alternative path to the practice of law in Oregon. You are strongly encouraged to consider the pros and cons of pursuing an alternative path to practice versus earning a law degree.

As you consider whether to pursue a career as a lawyer and whether to pursue a law degree, please be aware that:

- At the conclusion of the law office study program, you will be eligible to sit for the bar exam in Oregon. Oregon administers the Uniform Bar Examination (UBE). If you pass the Oregon Bar Exam and the character and fitness background investigation, you will be eligible for admission to the Oregon Bar.
- Because you will not have a law degree from an accredited law school, under current law, you will not be eligible to transfer your UBE score to another state, which graduates from accredited law schools are able to do. You will also not be eligible to apply for reciprocal admission to any other state bar, which graduates from accredited law school are also able to do, unless and until the law of reciprocal admissions is changed.
- Your employment options may be limited, particularly as you enter the legal employment market. You will be competing for jobs against other newly licensed lawyers, the vast majority of whom will have graduated from a law school that has been accredited by the American Bar Association. These lawyers will have an academic credential that legal employers currently expect lawyers to possess. In addition, many graduates develop connections in the legal community during law school, and those connections are often very important to securing post-graduate employment.
- There may be some prospective clients who will be reluctant to work with you because you do not have a law degree.

In addition to weighing the foregoing factors, you are strongly encouraged to speak with multiple people as you make a decision, including attorneys, family, and others you trust.



WSBA

TUTOR'S APPLICATION AND STATEMENT FOR THE APR 6 LAW CLERK PROGRAM

To the Board of Governors and the Law Clerk Board of the Washington State Bar Association:

I hereby apply to tutor: _____

in the Washington State Law Clerk Program under Admission to Practice Rule 6 and Program Regulations.

Last Name: _____ **First Name:** _____ **Middle:** _____

WSBA Member number: _____

Primary Contact Email: _____ Primary Contact Phone: _____

Business Address _____

City _____ State _____ Zip Code _____

A. Are you eligible to apply as a primary tutor as defined in APR 6 (c)? YES NO

B. Have you ever been disbarred, suspended, reprimanded, censured, or otherwise disciplined by *any* jurisdiction or court? *If yes, give full details on an attached sheet.* YES NO

C. Name all jurisdictions and courts in which you have been admitted to the practice of law, including to limited practice *pro hac vice*. Give the date of admission and current standing.

D. Please describe your legal education. List when you completed the Law Clerk Program or law school, degrees and dates earned.

- E. Please attach a brief statement of your employment during the previous ten years, including the name of employer, inclusive dates, and primary areas of law you practiced. You may provide a resume or CV if it covers the past ten years.
- F. Please attach a brief statement explaining why you wish to act as a tutor and why you believe the applicant is suitable to enter the Law Clerk Program.
- G. Have you read "Rules and Regulations Governing the Washington State Law Clerk Program" and agree to abide them? YES NO

TUTOR'S CERTIFICATE

I, _____,
state under penalty of perjury under the law of the State of Washington that I am an attorney at law duly admitted to practice law in the State of Washington; that I have read the foregoing application to act as a tutor and that the statements made there are full, true and correct; and that I am eligible to act as a primary tutor. I further certify that _____
is employed on a regular, full-time basis as a law clerk in my office in compliance with APR 6(3) and the Program Regulations. I further certify that I will instruct and examine him/her faithfully in the branches of the law prescribed by the course of study approved by the Board of Governors, and that I will comply with the rules and regulations relating to the Law Clerk Program.

Signature

Date and City/State where signed

RULES AND REGULATIONS
GOVERNING THE
WASHINGTON STATE
LAW CLERK PROGRAM

Effective Date: September 1, 2017



WSBA
WASHINGTON STATE BAR ASSOCIATION

APR 6 Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003;

January 13, 2009; January 1, 2014; September 1, 2017

Regulations approved by the Board of Governors September 26, 2013, effective January 1, 2014; amended effective May 19, 2017

ADMISSION AND PRACTICE RULES (APR)

RULE 6. LAW CLERK PROGRAM

Adopted by the Washington State Supreme Court July 10, 2013 and effective January 1, 2014

- (a) **Purpose.** The Law Clerk Program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, experiential, and clinical components. Successful completion of the Law Clerk Program provides a way to meet the education requirement to apply for the lawyer bar examination; it is not a special admission or limited license to practice law.
- (b) **Application.** Every applicant for enrollment in the law clerk program shall:
- (1) Be of good moral character and fitness, as defined in APR 20;
 - (2) Present satisfactory proof of having been granted a bachelor's degree by a college or university with approved accreditation; if the degree was earned in a non-US jurisdiction, the applicant shall provide supporting documentation as to its equivalency;
 - (3) Be engaged in regular, full-time employment in Washington State for an average of 32 hours per week with the primary tutor or primary tutor's employer in a (i) law office, (ii) legal department or (iii) a court of general, limited, or appellate jurisdiction in Washington State. The employment must include tasks and duties which contribute to the practical aspects of engaging in the practice of law;
 - (4) Submit in such form and manner as prescribed by the Bar (i) an application for enrollment in the program, (ii) the tutor's application, and, (iii) the application fee;
 - (5) Appear for an interview, provide any additional information or proof, and cooperate in any investigation, as may be deemed relevant by the Bar; and
 - (6) If applicable, present a petition for Advanced Standing based on law school courses completed or courses completed in this program during a previous enrollment. The Bar may grant Advanced Standing to an applicant approved for enrollment for courses deemed recently and successfully passed and equivalent to courses in the program.
 - (7) Where the Bar is satisfied that a primary tutor has arranged a relationship with the applicant's full-time employer consistent with the purposes of the Program, the requirement that the primary tutor, or primary tutor's employer, be the law clerk's employer may be waived.
- (c) **Tutors.** To be eligible to act as a tutor in the law clerk program, a lawyer or judge shall:
- (1) Act as a tutor for only one law clerk at a time;
 - (2) Be an active member in good standing of the Bar, or be a judicial member who is currently elected or appointed to an elected position, who has not received a disciplinary sanction in the last 5 years, provided that if there is discipline pending or a disciplinary sanction has been imposed upon the member more than 5 years preceding the law clerk's application for enrollment, the Bar shall have the discretion to accept or reject the member as tutor;
 - (3) Have active legal experience in the practice of law as defined by APR 1 or have held the required judicial position for at least 10 of the last 12 years immediately preceding the filing of the law clerk's application for enrollment. The 10 years of practice must include at least 2 years in Washington State and may be a combination of active practice and judicial experience but may not include periods of suspension for any reason;
 - (4) Certify to the applicant's employment as required above and to the tutor's eligibility, and to agree to instruct and examine the applicant as prescribed under this rule; and
 - (5) Act as a tutor only upon the approval of the Bar which may be withheld or withdrawn for any reason.
- (d) **Enrollment.** When an application for enrollment has been approved by the Bar, an enrolled law clerk shall:
- (1) Pay an annual fee as set by the Board of Governors.
 - (2) Meet the minimum monthly requirements of an average of 32 hours per week of employment with the tutor which may include in-office study time and must include an average of 3 hours per week for the tutor's personal supervision of the law clerk. "Personal supervision" is defined as

- time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments.
- (3) Complete the prescribed course of study which shall be the equivalent of four years of study. Each year of study shall consist of 6 courses completed in 12 months. Months of leave, failed courses, and months in which the enrollee does not meet the minimum number of hours of work and study may not be counted toward the completion of a course and may extend the length of a year of study. Advanced Standing granted may reduce the months of program study. The course of study must be completed within 6 years from the initial date of enrollment.
- (4) Abide by APR 6 and the Law Clerk Program Regulations approved by the Board of Governors which provide the course of study, program requirements and other guidelines to successfully complete the program.
- (e) **Course of Study.** The subjects to be studied, the sequence in which they are to be studied, and any other requirement to successfully complete the program shall be prescribed in the Law Clerk Program Regulations. Progress toward completion of the program shall be evaluated by submission of examinations, certificates, reports and evaluations as follows:
- (1) **Examinations.** At the end of each month, the law clerk shall complete a written examination prepared, administered, and graded by the tutor. The examination shall be answered without research, assistance, or reference to source materials during the examination. The examination shall be graded pass/fail.
- (2) **Certificates.** The tutor shall submit the examination, including the grade given for the examination and comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision within 10 business days following the month of study. If an examination is not given, the monthly certificate shall be submitted stating the reason.
- (3) **Book Reports.** The law clerk shall submit three book reports for the Jurisprudence course requirement corresponding to each year of study.
- (4) **Evaluations.** Annually, or at other intervals deemed necessary, the law clerk shall participate with the tutor in an evaluation of the law clerk's progress.
- (f) **Completion of the program.** A law clerk shall be deemed to have successfully completed the program when:
- (1) All required courses have been completed and passed as certified each month by the tutor, and all book reports have been submitted,
- (2) The tutor has certified that the law clerk, in the tutor's opinion, is qualified to take the lawyer bar examination and is competent to practice law; and
- (3) The Bar has certified that all program requirements are completed.
- (g) **Termination.** The Bar may direct a law clerk to change tutors if approval of a tutor is withdrawn. The Bar may terminate a law clerk's enrollment in the program for:
- (1) Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- (2) Failure of the tutor to submit the monthly examinations and certificates at the end of each month in which they are due;
- (3) Failure to comply with any of the requirements of the law clerk program; and
- (4) Any other grounds deemed pertinent.
- (h) **Effective Date.** Revision of this rule shall not apply retroactively. A law clerk may complete the program under the version of the rule in effect at the start of enrollment.
- (i) **Disclosure of Records.** Unless expressly authorized by the Supreme Court, the program applicant, or by a current or former law clerk, application forms and related records, documents, and proceedings shall not be disclosed, except as necessary to conduct an investigation and hearing pursuant to rule 7.

[Amended effective September 1, 1984; March 6, 1992; September 1, 1994; June 2, 1998; April 1, 2003; January 13, 2009; January 1, 2014; September 1, 2017.]

APR 6 LAW CLERK BOARD REGULATIONS
Adopted by the WSBA Board of Governors September 26, 2013
and effective January 1, 2014; amended effective May 19, 2017

Regulation 1.

GENERAL

1-1 Authority

- A. The law clerk program established in APR 6 and implemented in these regulations is conducted by the Bar Association at the direction of the Supreme Court. It is administered by the Law Clerk Board under the direction of the Board of Governors.
- B. The good moral character and fitness of an applicant is determined by the Character and Fitness Board pursuant to Admission and Practice Rules 7 and 20 through 24.4(a).
- C. To facilitate prompt administration of APR 6 and these regulations, designated staff of the Washington State Bar Association may act on behalf of the Law Clerk Board under APR 6 and these regulations.
- D. The Law Clerk Board, with the approval of the Board of Governors, may amend these regulations as necessary. Revisions of these regulations shall not apply retroactively to an enrolled law clerk. These changes shall apply to applications, petitions and requests made after the effective date of the revisions.

1-2 Purpose and Expectations.

- A. The law clerk program provides access to legal education guided by a qualified tutor using an apprenticeship model that includes theoretical, scholastic and clinical components. Successful completion of the law clerk program qualifies a person to apply for the Washington State bar exam. Participation in the law clerk program is not a special admission or limited license to practice law.
- B. The program relies on the good faith and integrity of the participants. The Board cannot administer and supervise the clerkship on a daily basis. The Board assumes the tutor and the law clerk will adhere to the letter and spirit of the program.
- C. The law clerk program is an alternative legal education. The program issues a certificate of completion; it is not approved by the American Bar Association and it does not confer a Juris Doctor degree or other degree.
- D. The Board will not assist an applicant for the law clerk program to find employment or to evaluate in advance the qualifications of a potential tutor.

1-3 Definitions. For the purpose of these regulations, the following terms are defined:

- A. "Approved accreditation" means accredited by an accrediting agency recognized by the US Department of Education.
- B. "Assistant Tutor" means a qualifying lawyer or judge who has been approved to teach specific courses.
- C. "Bar Association" means the Washington State Bar Association.
- D. "Board of Governors" means the Board of Governors of the Washington State Bar Association.
- E. "Board" means the Law Clerk Board.
- F. "Board Liaison" means an individual member of the Law Clerk Board in his or her role as liaison between the law clerk and the Board.
- G. "Employment waiver" means a relationship in which the primary tutor is not the law clerk's direct employer but has received Board approval of an alternative relationship under APR 6(b)(7).
- H. "Law clerk" means a person whose application for enrollment in the law clerk program has been accepted by the Board. It refers to applicants to the program in that applicants must have employment as a law clerk, legal assistant, or equivalent to qualify for enrollment. Law clerks are not authorized or licensed to engage in the practice of law by virtue of APR 6.
- I. "Program" means the law clerk program established by APR 6 and implemented in these regulations.
- J. "Regular, full-time employment" means that the law clerk is hired by the tutor or the tutor's employer in a (i) law office, (ii) legal department, or (iii) a court of general, limited, or appellate jurisdiction located in Washington State, for an average of 32 hours per week for at least 48 weeks each calendar year.
- K. "Tutor" means a qualifying lawyer or judge who has agreed to teach the law clerk and be responsible for all aspects of compliance with the program.

Regulation 2.

LAW CLERK BOARD

2-1 Responsibilities. The Board will make decisions regarding:

- A. Approval or rejection of an application for enrollment in the program.
- B. Approval or rejection of a lawyer or a judge to act as a tutor.
- C. A petition for advanced standing.
- D. A direction to the law clerk to change tutors.
- E. A recommendation to the Board of Governors for the termination of a law clerk's enrollment in the program.
- F. A petition for readmission.
- G. Changes in course contents, course descriptions, or program completion requirements.
- H. Applicability of the effect of prior decisions regarding other law clerks and tutors.
- I. Recommendations to the Board of Governors regarding amendments to these regulations.
- J. Any other matter related to the program or referred to the Board by the Board of Governors.

2-2 Board Liaisons.

- A. A law clerk will be assigned to a Board member who shall act as a liaison between the law clerk and the Board.
- B. A Board liaison will make decisions regarding:
 - (1) Recommendations to the Board regarding the acceptance or rejection of an applicant.
 - (2) An annual evaluation of the law clerk's second and third years.
 - (3) Recommendations regarding any other matter related to the program or referred to the Board.

2-3 Staff Administration.

- A. The Board may delegate duties to staff to facilitate prompt administration of the program.
- B. The duties may regularly include but are not limited to:
 - (1) Review of applications to the program, recommendation regarding their qualifications for the program, and assignment of a Board Liaison;
 - (2) Approval of assistant tutors to teach specific courses;
 - (3) Approval of leaves of absence of less than 12 months;
 - (4) Approval of petitions by law clerks to take courses or electives out of order;
 - (5) Approval of the 4th year courses; and
 - (6) Notices of involuntary withdrawal.

2-4 Filing, general. All applications, petitions or requests shall be in writing and shall be directed to the Board at the Bar Association office.

2-5 Review Procedure.

- A. **Review of Right.** An applicant, law clerk or tutor, has a right to have the Board of Governors review the following decisions of the Board:
 - (1) Rejection of an application for enrollment in the program;
 - (2) Termination of a law clerk's enrollment in the program; or
 - (3) Requiring a law clerk to change tutors.
- B. **Discretionary.** An applicant, law clerk or tutor may ask the Board of Governors to review any decision made by the Board.
- C. **Filing.** A petition requesting either review of right or discretionary review shall be:
 - (1) in writing,
 - (2) directed to the Board of Governors;
 - (3) filed at the Bar Association office; and
 - (4) filed within 30 days of the date the law clerk or applicant received notice of the decision.

Regulation 3.

APPLICATION PROCEDURE

3-1 Applicants. Every applicant for enrollment in the program shall:

- A. Be engaged in regular, full-time employment as defined in Regulation 1-3 unless requesting an employment waiver as defined in Reg. 1-3.
 - (1) Under no circumstances may the tutor assess a fee or require any other form of compensation in return for instructing or employing the law clerk. The law clerk shall receive monetary compensation in compliance with federal and state law governing employment. The Board may require proof of employment as deemed necessary.
 - (2) Approval of any relationship requiring an employment waiver is within the discretion of the Board. The applicant and proposed tutor must explicitly describe the alternative relationship, show how the purpose of the program will be maintained, and describe how client confidentiality and conflicts of interest will be resolved.
- B. Submit the following with the application fee by the deadlines established by the Board:
 - (1) A completed program application and all required supplemental information;
 - (2) Official transcripts from all undergraduate and graduate institutions attended, which show the grades received, the date a bachelor's degree was awarded by a school with approved accreditation, and the subject in which it was granted;
 - (3) Two letters attesting to the applicant's good moral character and appraising the applicant's ability to

undertake and successfully complete the program;
and

- (4) The tutor's application establishing the applicant's and the tutor's eligibility and certifying to compliance with APR 6 and these regulations.
- C. Appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board, the Character & Fitness Board, or the Board of Governors.

3-2 Advanced Standing. A petition to request consideration for advanced standing for law school courses completed or previous enrollment in the law clerk program must be submitted with an application for enrollment.

A. Petition for Advanced Standing. All law clerks must pass the prescribed courses established in these regulations. No courses may be waived. Applicants seeking advanced standing must establish, to the satisfaction of the Board, that the courses for which they seek credit are equivalent to specified prescribed courses in these regulations. The petition shall include:

- (1) A list of courses in the law clerk program for which advanced standing is sought. No advanced standing may be sought for Basic Legal Skills;
- (2) A list of the law school courses and course descriptions from the law school course catalogue with an explanation of how each course is equivalent to the law clerk program courses;
- (3) Official transcripts for the law school courses. Courses in which the applicant earned a grade less than a B- or 2.7 and/or completed more than five years prior to the Law Clerk Program application date will not be considered. For applicants admitted to the practice of law in a foreign jurisdiction, grades older than five years may be considered in combination with proof of current good standing and active practice of law for three out of the last five years; and
- (4) Any additional information the applicant believes will be helpful or which the Board has requested.

B. Determination. In granting advanced standing, the Board will specify:

- (1) Any prescribed courses or portions thereof that the law clerk applicant has been deemed to have completed;
- (2) Any prescribed courses or portions thereof that the law clerk applicant will be required to pass; and
- (3) Any law school courses that the law clerk applicant will be allowed to use to satisfy the fourth-year curriculum.

3-3 Additional and Remedial Courses. In its discretion, the Board may also require the law clerk applicant to take and pass certain subjects which appear necessary to prepare the applicant to practice law in this state, regardless of whether or not those courses are prescribed courses or approved elective courses. The Board may require the law clerk applicant to take remedial or other legal or nonlegal instruction.

3-4 Notification. The Board will notify an applicant of acceptance or rejection of the application for enrollment. If accepted, the notification will specify the month the law clerk is authorized to begin the program. All programs shall begin the first day of the month specified in the notice. If rejected, the notification will provide the basis for the rejection.

3-5 Acknowledgement of Enrollment. Before beginning the program the law clerk must acknowledge enrollment, pay the annual fee, and agree to inform the Bar Association in writing of any incident that occurs while the law clerk is enrolled that might call the law clerk's moral character or fitness into question.

Regulation 4.

TUTORS

4-1 Tutor's Responsibilities.

- A. The tutor is responsible for supervising and guiding the law clerk's education, and for setting an example of the highest ethical and professional conduct. The tutor has an obligation not only to instruct the law clerk, but to ensure only fully competent law clerks are deemed to be qualified to sit for the bar examination.
- B. In addition to any other requirements, a potential tutor shall appear for an interview, provide any additional information or proof, or cooperate in any investigation, as may be directed by the Board.
- C. The tutor is required to continue to meet the qualifications for a tutor established in APR 6 and remain in good standing throughout the period of the clerkship.
- D. In addition to the "personal supervision" required by APR 6, defined as time actually spent with the law clerk for the exposition and discussion of the law, the recitation of cases, and the critical analysis of the law clerk's written assignments, the tutor's responsibilities include:
 - (1) Guiding and assisting the law clerk's study of each subject, using the course descriptions as a basic outline of course content and emphasizing pertinent state law;

- (2) Choosing textbooks, casebooks, and other written, legal materials, selected from those in use at any of the law schools in the state, to guide the law clerk through the subject matter of each course;
- (3) Assisting the law clerk in planning the sequence and timing of each prescribed course and of the fourth-year curriculum;
- (4) Evaluating the law clerk's progress;
- (5) Developing, administering, and grading the monthly examinations;
- (6) Submitting the graded monthly examination with written comments and the required certificate to the Board within 10 working days of the end of the month in which it was administered;
- (7) Assigning the law clerk tasks and duties which are intended to contribute to the law clerk's understanding of the practical aspects of engaging in the practice of law; and
- (8) Providing the law clerk with an adequate work station and with reasonable access to an adequate law library.

4-2 Assistant Tutors. When an assistant tutor is proposed to teach a course instead of the primary tutor, the Board may approve the application(s) of one or more assistant tutors for up to 6 months of each year of study. The assistant tutor may teach only the course(s) for which he/she was approved by the Board. Informal assistance to a lesser degree, by other lawyers, judges or staff is generally acceptable without specific approval.

A. Qualification. The assistant tutor shall meet all the qualifications and continuing qualifications established for the tutor in APR 6 and these regulations, except the assistant tutor shall have been actively and continuously engaged in the practice of law or have held the required judicial position for at least five years immediately preceding the commencement of the assistant tutorship.

B. Scope of Delegation.

- (1) The assistant tutor may undertake the following duties for the course(s) for which he/she is approved:
 - i. Choosing textbooks, casebooks, and resource materials for the course.
 - ii. Guiding and assisting the law clerk's study of the subject, using the course description as a basic outline of course content and emphasizing pertinent state law.
 - iii. Developing, administering, and grading the monthly examination.
- (2) The primary tutor shall:
 - i. In consultation with the assistant tutor, determine if the law clerk passed or failed the course;

- ii. Remain ultimately responsible for the conduct of the clerkship;
- iii. Complete all monthly and other certificates; and
- iv. Appear with the law clerk at all oral evaluations with the Board, although the assistant tutor may also be in attendance where appropriate.

Regulation 5.

COURSE OF STUDY

5-1 Structure.

- A. The program is designed to be a four year course of study in combination with employment. Each year consists of 12 months during which the law clerk is required to study 6 subjects, pass 12 exams and submit 3 book reports.
- B. The program is structured so the law clerk studies only one subject at a time and passes it before beginning the next subject. All courses in a given year must be completed before the law clerk may study courses in a subsequent year. A law clerk may not take more course work in any calendar year than is prescribed by these regulations without prior Board approval. The length of time to be devoted to each subject is prescribed by regulation.
- C. A law clerk may take leave or vacation in increments of one month upon written notice to the Board. A law clerk may take leave of longer than one month only upon advance written request and approval by the Board. Exceptions for emergency medical situations may be considered. A law clerk may not request leave of more than 12 consecutive months.

5-2 Subjects.

- A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.
- B. First Year. To complete the first year of the program, the law clerk shall pass the following prescribed courses. The course entitled "Basic Legal Skills" shall be studied and passed first. Thereafter, the courses may be studied in any order.

Course	Months
Basic Legal Skills	2
Civil Procedure	2
Torts	2
Contracts	2
Agency & Partnership	2
Property	2

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- C. Second Year. To complete the second year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Community Property	1
Criminal Law	2
Constitutional Law I	2
Corporations	2
Evidence	2
Uniform Commercial Code	3
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- D. Third Year. To complete the third year of the program, the law clerk shall pass the following prescribed courses, in any order:

Course	Months
Constitutional Law II	2
Professional Responsibility	1
Domestic Relations	2
Wills, Estates, Trusts, Probate	3
Conflict of Laws	2
Criminal Procedure	2
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- E. Fourth Year. The fourth year of the program is devoted to elective subjects. The law clerk, in consultation with the tutor, shall develop a fourth year curriculum of six electives. The law clerk shall then make a written petition to the Board, at least six months prior to the commencement of the fourth year, for approval of the proposed fourth year course of study.

- (1) Under no circumstances will approval or recognition be given to courses directed to fulfillment of a continuing legal or other professional education requirement, or intended to provide a preparation for a bar examination, or taught through correspondence or any equivalent.
- (2) Recommended Electives. The following electives are recommended because they will broaden the law clerk's legal background, perspective, and skills. A law clerk may petition the Board for approval of alternative areas of study by including a detailed course description for each proposed course.

Course	Months
Administrative Law	2
Personal Federal Income Tax	2
Land Use	2

Labor Law	2
Remedies	2
Antitrust	2
Creditor-Debtor Relations	2
Securities Regulation	2
Legal Accounting	2
International Law	2
Insurance	2
Consumer Protection	2
Environmental Law	2
Real Property Security	2
American Indian Law	2
Trial Practicum	2
Elder and Disability Law	2

5-3 Monthly Examinations. The tutor is responsible for the content and administration of all monthly examinations.

- A. Content. Although no specific substantive content is prescribed by the Board, it is anticipated such an examination will test the law clerk's comprehension of the current subject matter, and the law clerk's understanding of the ethical, professional and practical aspects of practicing law.
- B. Course Descriptions. The course descriptions in Regulation 7 state the minimum level of knowledge the Board expects a law clerk to obtain in each subject, and provide guidance to the tutor in formulating monthly examinations.
- C. Timing. The tutor shall administer an examination covering that month's subjects to the law clerk on or before the last business day of each month.
- D. Grading. All courses in the program are to be graded as pass/fail only. "Pass" means that the law clerk has exhibited reasonable comprehension of the theory and practice of any given subject to the satisfaction of the tutor and the Board. If a law clerk earns a "Fail" grade he or she shall continue to study the subject for an additional month.
- E. Certificates. The tutor shall submit the exam, including the grade given for the examination and written comments to the law clerk, and a monthly certificate, stating the law clerk's hours engaged in employment, study and the tutor's personal supervision, within 10 business days following the month of study.
- (1) If an exam is not given, the monthly certificate shall be submitted stating the reason.
- (2) The date of receipt will be recorded. A pattern of late certificates may be cause for remedial action or termination from the program.

- 5-4 Board Evaluations.** Annually, or at such other intervals as may be established by the Board, the Board shall conduct an evaluation at which the law clerk and the tutor shall be personally present. The Board may at any other time, in its discretion, conduct an evaluation at which the law clerk and the tutor shall be personally present if required to do so.
- A. The Board will not normally test the law clerk's substantive knowledge, but may do so to evaluate whether or not the law clerk is progressing satisfactorily in the program.
- B. Materials. In making its evaluation, the Board may consider:
- (1) The substantive contents of all monthly examinations;
 - (2) The tutor's monthly certificates and timeliness of receipt;
 - (3) Any written course work; and
 - (4) Any other written or oral materials deemed to be pertinent by the Board.
- C. Decision. At the conclusion of the evaluation, the Board may:
- (1) Determine the law clerk has successfully mastered the preceding year's course work and is eligible and authorized to begin the next year of the program;
 - (2) Determine the law clerk has satisfactorily completed the program and is qualified to sit for the bar examination, subject to any other requirements for sitting for the bar examination as set forth in the Admission and Practice Rules;
 - (3) Advise the tutor regarding the quality, timeliness, or appropriateness of coursework, exams, and certificates;
 - (4) Direct the law clerk to repeat designated prescribed or elective courses, devote more time to each course, take remedial legal or nonlegal instruction, appear before the Board at more frequent intervals for an examination which may be written or oral;
 - (5) Require the law clerk to change tutors;
 - (6) Advise the law clerk that the law clerk's enrollment in the program is terminated.
- D. At the conclusion of any evaluation, the Board will provide a brief written summary of its decision to the law clerk and to the tutor.

Regulation 6.

WITHDRAWAL AND TERMINATION OF ENROLLMENT

6-1 Withdrawal by Law Clerk.

- A. Voluntary. A law clerk who wishes to withdraw from the program shall notify the Board in writing, filed as required by Regulation 2-4.
- B. Involuntary. A law clerk will be deemed to have withdrawn from the program if:
 - (1) The law clerk is absent from the program for more than one month in any calendar year without the Board's prior approval of a petition for a leave of absence. Failure to submit exams and tutor's certificates shall be interpreted as absence from the program;
 - (2) The law clerk takes a leave of absence from the program for more than 12 consecutive months; or
 - (3) The annual fee is not paid by the established deadline.

6-2 Withdrawal by Tutor.

- A. Voluntary. A tutor who wishes to withdraw from that position shall notify the Board and the law clerk in writing, filed as required by Regulation 2-4.
- B. Involuntary. If a disciplinary sanction is imposed upon a tutor, the tutor will be deemed to have withdrawn from that position. The Board may determine that the imposition of a sanction does not necessitate automatic withdrawal.
- C. The Board may direct a law clerk to change tutors if approval of a tutor is withdrawn.

6-3 Termination of Enrollment by the Board. The Board may terminate a law clerk's participation in the program for:

- A. Failure to complete the prescribed course of study within 6 years from the date of enrollment;
- B. The law clerk's failure to comply with the requirements of the program or a decision or order of the Board; or
- C. A determination by the Character and Fitness Board that the applicant does not meet the character or fitness requirement for enrollment in the program.

Regulation 7.

COURSE DESCRIPTIONS

- 7-1 Jurisprudence Reading.** A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.
- A. Upon completion of each book, the law clerk shall prepare and submit to the Board a short book report. Reports shall be submitted every 4 months.
 - B. A year's coursework shall not be deemed completed unless the book reports are submitted. A law clerk may not begin the next year's course

work until the current year's book reports are completed and submitted to the Board.

7-2 First Year Clerkship.

- A. Basic Legal Skills. Introduction to basic legal reference materials (including judicial, legislative and administrative primary and secondary sources) and their use; techniques of legal reasoning, analysis and synthesis; legal writing styles. Familiarization with the structure of the federal and state court systems; the concept of case law in a common law jurisdiction; fundamental principles of stare decisis and precedent; the legislative process; principles of statutory construction and interpretation. Law Clerk should be assigned projects of increasing difficulty such as: case abstracts; analysis of a trial record to identify issues; short quizzes to demonstrate ability to locate primary and secondary sources; office memoranda or a trial oriented memorandum of authorities to demonstrate ability to find the law applicable to a factual situation and to differentiate unfavorable authority; an appellate level brief.
- B. Civil Procedure. Fundamentals of pleading and procedure in civil litigation, as structured by the Federal Rules of Civil Procedure and the Washington Superior Court Civil Rules. Study shall include: jurisdiction over the person and subject matter; venue; time limits; commencement of actions; pleadings; parties; impleader; interpleader; motions; class actions and intervention; res judicata and collateral estoppel; discovery and other pretrial devices; joinder; summary judgment; judgments; post-trial motions. Law Clerk should be required to draft summons; pleadings; motions; findings of fact and conclusions of law; judgment; interrogatories; requests for admission.
- C. Contracts. Study of legal principles related to the formation, operation and termination of the legal relation called contract. General topics include: offer and acceptance; consideration; issues of interpretation; conditions; performance; breach; damages or other remedies; discharge; the parol-evidence rule; the statute of frauds; illegality; assignments; beneficiaries.
- D. Property. Study of the ownership, use, and transfer of real property in both historical and modern times. Topics include: estates and interests in land; concurrent ownership; easements; equitable servitudes; conveyances; real estate contracts; nuisance; adverse possession; land use controls; landlord-tenant; the recording system; title insurance.

- E. Torts. Study of the historical development, principles, concepts and purposes of the law relating to redress of private injuries. Topics include: conversion; trespass; nuisance; intentional tort; negligence; strict liability; products liability; concepts of duty, causation, and damage; limitations on liability such as proximate cause, contributory negligence, assumption of the risk, immunity; comparative negligence.
- F. Agency and Partnership. Legal principles of agency law including definition of the agency relationship, authority and power of agents, notice and knowledge, rights and duties between participants in the relationship, termination of agency relationship, master-servant relationship. Partnership law using the Revised Uniform Partnership Act as a model code. Topics include: formation, partners' rights and duties between themselves, powers, unauthorized acts, notice and knowledge, incoming partner liability, indemnification, contribution, partner's two-fold ownership interest, co-ownership interests and liabilities, creditor's claims and remedies, dissolution events, winding up, distribution of asset rules. Study of the Uniform Limited Partnership Act and joint venture law.

7-3 Second Year Clerkship.

- A. Community Property. Relationship necessary for creation of community property, classification of property as community or separate, management and control of community assets, rights of creditors, disposition of community property upon dissolution of the community, problems of conflict of laws encountered in transactions with common-law jurisdictions.
- B. Criminal Law. Study of substantive criminal law including concepts such as elements of criminal responsibility; principles of justification and excuse; parties; attempts, conspiracy; specific crimes; statutory interpretation; some introduction to sentencing philosophies and to juvenile offender law.
- C. Constitutional Law I. Course covers basic constitutional document, excluding the Bill of Rights. Topics include: taxing clause, commerce clause, contract clause, war power and treaty power. Allocation and distribution of power within the federal system, and between federal and state systems, including economic regulatory power and police power; limitations on powers of state and national governments; constitutional role of the courts.
- D. Corporations. Business corporations for profit using the Model Business Corporations Act and state law provisions. Topics include: promotion,

formation and organization; theories of corporations; corporate purposes and powers; disregard of corporateness; common law and statutory duties and liabilities of shareholders, directors, and officers; allocation of control, profit and risk; rights of shareholders; derivative suits and class action suits by shareholders; mergers and consolidations, sale of assets, and other fundamental changes in corporate structure; corporate dissolution; SEC proxy rules and Rule 10(b)(5).

- E. Evidence. Rules of proof applicable to judicial trials. Topics include: admission and exclusion of evidence, relevancy, hearsay rule and its exceptions, authentication of writings, the best evidence rule, examination and competency of witnesses, privileges, opinion and expert testimony, demonstrative evidence, presumptions, burden of proof, judicial notice.
- F. Uniform Commercial Code. Course covers Articles I, II, III, IV, VI, VII, and X of the Uniform Commercial Code. Course first examines problems in the sale of goods as governed by Article II (with a brief survey of its antecedents) including: warranty, risk of loss, acceptance and rejection, tender of delivery, revocation, remedies for breach of contract. Some discussion of other laws relating to warranties, Article VI on Bulk Sales, and Article VII on documents of title and bills of lading. Course next examines commercial paper, bank deposits and collections under UCC Articles III and IV, including: formation and use of negotiable instruments with an emphasis on checks, rights and liability of parties to negotiable instruments, defenses to liability, study of bank collection process and bank's relationship with its customers. Course finally examines secured transactions under UCC Article IX, including: types of security interests, perfection of such interests, priority of claims, rights to proceeds of collateral, multi-state transactions, rights of parties after debtor's default.

7-4 Third Year Clerkship.

- A. Constitutional Law II. Course examines the Bill of Rights. Topics include: free speech, prior restraint, obscenity, libel, fair trial and free press, loyalty oaths, compulsory disclosure laws, sedition and national security, picketing, symbolic conduct, protest, subversive advocacy; due process; equal protection development and analysis; fundamental rights and entitlements; religious clause; jury trial right in civil actions; constitutional protection and interpretation under state as contrasted to federal constitutional documents.

- B. Professional Responsibility. Study of legal ethics and a lawyer's roles in society, including lawyer-client relations, lawyer-public relations, and a lawyer's responsibility to the courts and the profession. Topics also include: organization of an integrated bar, Supreme Court's supervisory powers, professional service corporations, pre-paid legal services arrangements, malpractice, the Admission to Practice Rules, the Rules for the Enforcement of Lawyer Conduct, the Rules of Professional Conduct and the ABA Model Rules of Professional Conduct.
- C. Domestic Relations. Study of the substantive and procedural law affecting the formation, disintegration and dissolution of family relations, including those of husband and wife, parent and child, and non-marital. Topics include: jurisdiction, procedure, costs, maintenance, child support, property division, custody, modification and enforcement of orders, some discussion of conflict of laws, taxation, URESA and UPA.
- D. Wills, Estates, Trusts, Probate. Study of the voluntary transmission of assets in contemplation of and at death. Topics include: disposition by will, creation of and disposition by a trust, effectiveness of the disposition in the creation of present and future interests in property, intestate succession, construction problems, powers of appointment, restrictions on perpetuities and accumulations, alternative methods of wealth transmission, some introduction to the basic tax framework important in formulating plans of disposition, and fiduciary administration and management of decedent's estates and trusts.
- E. Conflict of Laws. Study of that part of the law that determines by which state's law a legal problem will be solved. Topics include: choice-of-law problems in torts, contracts, property, domestic relations, administration of estates, and business associations.
- F. Criminal Procedure. Constitutional doctrines governing criminal procedure. Topics include: Fourth, Fifth, Sixth and Eighth Amendments, pertinent due process provisions of Fourteenth Amendment; search and seizure, confessions, identification procedures, right to counsel, arrest, jury trial, double jeopardy, and pertinent provisions of the state constitution. The Superior Court Criminal Rules are examined as they relate to the procedural aspects of raising the constitutional issues.

7-5 Fourth Year Clerkship; Electives.

- A. Administrative Law. Study of the administrative process and its role in the legal system. Subjects include: powers and procedures of administrative

- agencies, relationship of administrative agencies to executive, judicial and legislative departments of government.
- B. Personal Federal Income Tax. Examination of federal income tax law as it applies to individuals, but not in their role as partners, shareholders, or beneficiaries of trusts or estates. Topics include: concepts of income, gross income, net income, when income should be taxed, to whom it should be taxed and its character as unearned, earned or capital gain income. Deductions are also examined in detail.
- C. Land Use. Study of legal principles and constitutional limitations affecting systems for public regulation of the use of private land. Topics include: planning, zoning, variances, special use permits, subdivision controls, environmental legislation, nuisance, eminent domain, powers of public agencies, "taking" without just compensation, due process, administrative procedures and judicial review, exclusionary zoning and growth control.
- D. Labor Law. Study of the organizational rights of employees and unions and the governance of the use of economic force by employers and unions. Other topics include the duty to bargain collectively, the manner in which collective bargaining is conducted, subjects to which it extends, administration and enforcement of collective bargaining agreements, and relations between a union and its members.
- E. Remedies. Historical development and use of judicial remedies that provide relief for past or potential injuries to interests in real or personal property. Topics include: history of equity, power of equity courts, restitution, specific performance, injunctions, equitable defenses, compensatory and punitive damages, unjust enrichment, constructive trusts, equitable liens, tracing and subrogation.
- F. Antitrust. An examination of the antitrust laws including the Sherman Act, Clayton Act, Robinson-Patman Act, Federal Trade Commission Act; and topics such as monopolies, restraint of trade, mergers, price fixing, boycotts, market allocation, tying arrangements, exclusive dealing and state antitrust law.
- G. Creditor-Debtor Relations. Rights and remedies of creditors and debtors under the Federal Bankruptcy Code, particularly in straight bankruptcy cases and under state laws relating to judgments, judgment liens, executions, attachments, garnishments, fraudulent conveyances, compositions, assignments for the benefit of creditors, and debtor's exemptions.
- H. Securities Regulation. Study of legal control over the issuance and distribution of corporate securities. Topics include: registration and distribution of securities under the Federal Securities Act of 1933, including the definition of a security; basic structure, applicability, and prohibitions of the Act; underwriting; preparation, processing and use of registration statement and prospectuses; exemptions from registration under the Act, including Regulation A, private offerings, and business reorganizations and recapitalizations; secondary distributions; brokers transactions; and civil liability for violation of the Act. Registration, distribution and regulation of securities under state "blue sky" laws, including the State of Washington Securities Act. Regulation of franchise arrangements under the Federal Securities Act of 1933 and the State of Washington Franchise Investment Protection Act. Regulation of national securities exchanges and broker-dealers; registration and listing of securities on national securities exchanges; periodic reporting and public disclosure of information requirements for companies whose securities are traded on national securities exchanges; and civil liability for violation of the Act. Regulation of mutual funds and other types of investment companies under the Federal Investment Company Act of 1940.
- I. Legal Accounting. Bookkeeping, use of journals and ledgers, analysis of financial statements, professional responsibility of a lawyer to a corporate client and relationship to accountants involved in a client's financial affairs. Course also addresses lawyer's accounting and recordkeeping obligations to his or her client under the Rules of Professional Conduct or its successor.
- J. International Law. Legal process by which interests are adjusted and authoritative decisions made on the international level. Topics include: nature and source of international law, law of treaties, jurisdiction, some discussion of international legal organizations, state responsibility and international claims for wrongs to citizens abroad, and application of international law in United States courts.
- K. Insurance. Legal principles governing formal mechanisms for the distribution of risk of loss. Emphasis is on property, casualty, life insurance. Topics include: marketing of insurance, indemnity principle, insurable interest, amount of recovery and subrogation, persons and interests protected, brokers, and identification of risks transferred by insurance.

- L. Consumer Protection. Selected laws for protection of consumers, including federal, state and local laws that prohibit deceptive advertising, mandate disclosure of information, regulate credit practices, license occupations, establish quality standards for products and services, and condemn “unfair” practices. Emphasis on the theoretical justifications for governmental intervention in the marketplace. Attention to problems of consumer justice administration, including informal dispute resolution procedures and representation of consumer interests in administrative and legislative proceedings.
- M. Environmental Law. Survey of citizen, legislative, administrative and judicial action in response to the reality and the threat of man-induced alteration to the natural environment; focuses on National Environmental Policy Act, federal air and water pollution control legislation, state air and water pollution control statutes and shoreline management.
- N. Real Property Security. Methods by which an obligation may be secured by real property of the obligor or of a third person. Covers the common-law principles and statutes that regulate the creation, operation, and extinguishment of the legal relations known as the real property mortgage and deed of trust, considered in the context of financing the purchase or development of land. Some attention must be given to principles governing operation of the lending industry.
- O. American Indian Law. Tribal/state/federal judicial and legislative jurisdiction in Indian country. Criminal and civil jurisdiction. Indian religious freedom. Indian water rights. Special hunting and fishing rights. History of federal laws and policies towards Indians. Current federal law and policy. Judicial trends in Indian cases. The federal trust responsibility toward Indian tribes; tribal powers of self government. Tribal courts. Federal supremacy (preemption) over state law in Indian country.
- P. Trial Practicum. Advanced course in preparing for trial. Resources should include sample cases and text books as well as evidence and civil rules. The clerk will write a fully researched brief, motions in limine, prepare ER 904; prepare objections to opposition motions in limine and ER 904; argue pretrial motions; research and perform voir dire; prepare and give an opening statement; prepare and give a direct exam with introduction of multiple exhibits; prepare and give a cross exam with introduction of exhibits; draft and argue jury instructions; prepare and give a closing statement.
- Then to be assigned an actual case in litigation and add to the above, a mock trial which includes: prepared statement of the “story” of the case; illustrate how each witness fits into the story and what evidence is to be used with each witness; develop direct examination of one witness, cross examination of one witness and at least one exhibit for each witness; prepare and give an opening; conduct voir dire of volunteers; examine a witness; handle objections; and argue sample motions in limine. The clerk is expected to attend court proceedings regularly, and participate to the extent permitted by APR 9, if licensed.
- Q. Elder and Disability Law. An examination and study of the complex legal needs of people who are elderly and people who have a disability. This course examines major issues and substantive laws affecting people who are elderly or who have a disability including income protection, asset preservation and protection, options for financing long-term care and healthcare, planning for incapacity and the use of traditional and nontraditional estate and life care planning devices such as wills, trusts, special needs trusts, powers of attorney, guardianships, adult protection actions and other devices but in the context of the needs of people who are elderly or who have a disability. This course will also address the special ethical challenges and concerns of lawyers who are practicing elder and disability law.

Jurisprudence Reading Procedures effective Jan 1, 2014

Jurisprudence Reading Regulations

Regulation 5. COURSE OF STUDY

5-2 Subjects. A. Jurisprudence Reading. Every law clerk is required to take the Jurisprudence course, which is a four year reading program, intended to familiarize the law clerk with legal history, philosophy, theory and biography.

Regulation 7. COURSE DESCRIPTIONS

7-1 Jurisprudence Reading. A four-year course of reading consisting of three (3) books each year, to be selected from a list approved by the Board. The Board has discretion to select and require specific books which must be read to meet this requirement.

Requirements to Fulfill Jurisprudence Reading Course

The Jurisprudence Reading course is required for each year of study. Law clerks must submit three reports per year of study for a total of 12 to complete the program. Law clerks must schedule their reading and reports to submit a report approximately every 4 months. Early submission is acceptable. However, all 3 book reports must be submitted with or before submission of the 12th exam for the year of study. A clerk may not proceed with the next year of study until three book reports are submitted for the year.

All law clerks starting the program January 1, 2014 are required to read and report on The Bitter Waters of Medicine Creek, by Richard Kluger, for their first book report. Clerks already enrolled before January 1, 2014 are encouraged to read this title but it is not required.

Content of Reports

Clerks' reports generally range from two to ten pages in length. Reports must be the clerk's own original work and should reflect the clerk's thoughts on the substance of the book and its implications for the legal profession or personal development as a law clerk. Graduate-level analysis and writing quality is expected.

Be sure that your name is on the report. It's helpful if you number it by year as well (ex. Book report 1-1, 1-2, 1-3, 2-1, etc.).

Requests to Add Titles

The current Jurisprudence Reading List is attached. Clerks may request that a book be added to the Jurisprudence Reading List by submitting a petition to the Law Clerk Board. In addition to listing the author, title, publication date and publishing company, number of pages, and ISBN, petitions should include a short synopsis showing why publication should be added and a recommendation of the category under which it should be listed. The Board will make their determination at a quarterly meeting. You may not receive credit for a book report before the book is approved.

**WSBA APR 6 LAW CLERK PROGRAM
JURISPRUDENCE READING LIST**

Author	Title	Year of Original Publication
AUTOBIOGRAPHY AND BIOGRAPHY		
Atkinson, Charles M.	Jeremy Bentham -- His Life and Works	(1970)
Beveridge, Albert	Life of John Marshall	(1916)
Bumpers, Dale	The Best Lawyer in a One-Lawyer Town	(2003)
Chase, Frederick	Lemuel Shaw -- Chief Justice	(1918)
Clark, Hunter R.	Justice Brennan, The Great Conciliator	(1995)
Darrow, Clarence	The Story of My Life	(1932)
Dean, John W.	The Rehnquist Choice: The Untold Story of the Nixon Appointment	(2002)
Douglas, William O.	Go East, Young Man	(1974)
Frankfurter, Felix	Justice Holmes	(1938)
Friedman, Jane M.	America's First Woman Lawyer, The Biography of Myra Bradwell	(1993)
Fuess, Claude M.	Rufus Choate: The Wizard of the Law	(1928)
Greenhouse, Linda	Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey	(2005)
Gunther, Gerald	Learned Hand: The Man and the Judge	(1994)
Hirsch, H.N.	The Enigma of Felix Frankfurter	(1981)
Liman, Arthur	Lawyer: A Life of Counsel and Controversy	(2003)
Marjoribanks, Edward	The Life of Sir Edward Marshall Hall	(1929)
Mason, Alpheus	Brandeis: A Free Man's Life	(1946)
McCullough, David	John Adams	(2001)
Murphy, Bruce	Fortas: The Rise and Ruin of a Supreme Court Justice	(1988)
Murphy, Bruce	Wild Bill: The Legend and Life of William O. Douglas	(2003)
Nizer, Louis	My Life in Court	(1961)
Novick, Sheldon	Honorable Justice: The Life of Oliver Wendell Holmes	(1989)
O'Connor, Sandra D.	The Majesty of the Law: Reflections of a Supreme Court Justice	(2004)
Randall, Willard S.	Thomas Jefferson, A Life	(1993)
Rovere, Richard	Senator Joe McCarthy	(1959)
Rowan, Carl	Dream Makers, Dream Breakers: The World of Justice Thurgood Marshall	(1994)
Sanger, Margaret	An Autobiography	(1971)
Simon, James F.	Independent Journey: The Life of William O. Douglas	(1980)
Steiner, Bernard	Life of Roger Taney	(1922)
Strong, Theron	Joseph H. Choate: New Englander, New Yorker, Lawyer, Ambassador	(1917)
Swisher, Carl	Stephen J. Field: Craftsman of the Law	(1930)
Todd, Alden	Justice on Trial: The Case of Louis Brandeis	(1964)
Turow, Scott	One L: The Turbulent True Story of a First Year at Harvard Law School	(1977)
Ware, Gilbert	William Hastie: Grace Under Pressure	(1984)
Weinberg, Arthur	Clarence Darrow: A Sentimental Rebel	(1987)
White, G. Edward	Earl Warren: A Public Life	(1982)
Williams, Edward B.	One Man's Freedom	(1961)
Williams, Juan	Thurgood Marshall, American Revolutionary	(1998)
CAPITAL PUNISHMENT		
Mailer, Norman	The Executioner's Song	(1979)
Meltsner, Michael	Cruel and Unusual: The Supreme Court and Capital Punishment	(1973)
Turow, Scott	Ultimate Punishment: A Lawyer's Reflections on Dealing with the Death Penalty	(2004)
White, Welsh S.	Death Penalty in the Nineties	(1991)
CIVIL RIGHTS		
Alexander, Michelle	The New Jim Crow - Mass Incarceration in the Age of Colorblindness	(2010)
Halberstam, David	The Children	(1998)

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Author	Title	Year of Original Publication
King, Jr., Martin L.	Letter from A Birmingham Jail	(1963)
McNeil, Genna	Groundwork: Charles Hamilton Houston and the Struggle for Civil Rights	(1983)
Patterson, James T.	Brown v. Board of Education : A Civil Rights Milestone and Its Troubled Legacy	(2001)
Simon, James F.	The Antagonists: Hugo Black, Felix Frankfurter and Civil Liberties in Modern America	(1969)
Woodward, C. Vann	The Strange Career of Jim Crow	(1974)

CONSTITUTIONAL LAW

Alderman & Kennedy	In Our Defense: The Bill of Rights	(1991)
Alderman & Kennedy	The Right to Privacy	(1995)
Amar, Akhil Reed	America's Constitution	(2005)
Amar, Akhil Reed	The Bill of Rights	(2000)
Bollinger, Lee C.	The Tolerant Society	(1986)
Breyer, Stephen	Active Liberty: Interpreting Our Democratic Constitution	(2005)
Carp, Robert A.	The Federal Courts 2nd Edition	(1991)
Feldman, Daniel L.	The Logic of American Government: Applying the Constitution to the Contemporary World	(1990)
Friendly & Elliott	The Constitution: That Delicate Balance	(1984)
Garraty, John A.	Quarrels That Have Shaped the Constitution	(1964)
Hamilton, Madison, Jay	The Federalist Papers	(1788)
Irons, Peter	Courts, Kids, and the Constitution	(2000)
Lewis, Anthony	Gideon's Trumpet	(1964)
Lewis, Anthony	Make No Law: The Sullivan Case and the First Amendment	(1992)
Lieberman, Jethro K.	The Enduring Constitution: A Bicentennial Perspective	(1987)
Rakove, Jack N.	Original Meanings, Politics and Ideas in the Making of the Constitution	(1996)
Sunstein, Cass	Democracy and the Problem of Free Speech	(1994)

CRIMINAL LAW

Bailey, F. Lee	The Defense Never Rests	(1971)
Baker, Liva	Miranda: Crime, Law & Politics	(1983)
Fletcher, George P.	A Crime of Self-Defense: Bernard Goetz and the Law on Trial	(1988)
Grishham, John	An Innocent Man	(2006)
Hirsch, James	Hurricane: The Miraculous Journey of Rubin Carter	(2000)
Katz, Leo	Bad Acts and Guilty Minds: Conundrums of the Criminal Law	(1987)
Lefkowitz, Bernard	Our Guys	(1997)
Scheck/Neufeld/Dwyer	Actual Innocence: Five Days to Execution and Other Dispatches	(2000)

ECONOMICS

Bork, Robert H.	The Antitrust Paradox: A Policy at War with Itself	(1997)
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ETHICS AND THE LAW

Dershowitz, Alan	The Best Defense	(1982)
Herrmann, Mark	The Curmudgeon's Guide to Practicing Law	(2006)
Kahlenberg, Richard D.	Broken Contract: A Memoir of Harvard Law School	(1992)
Kelley, James L.	Lawyers Crossing Lines: Nine Stories	(2001)
Kelley & Seigel	Lawyers Crossing Lines: Ten Stories, 2nd Ed.	(2010)
Lessig, Lawrence	CODE and Other Laws of Cyberspace	(1999)
Wilson, James	Moral Judgment: Does the Abuse Excuse Threaten Our Legal System?	(1997)
Wise, Stephen M.	Rattling the Cage: Toward Legal Rights for Animals	(2000)

**WSBA APR 6 LAW CLERK PROGRAM
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Author	Title	Year of Original Publication
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FAMOUS CASES

Barthel, Joan	A Death in Canaan	(1976)
Dershowitz, Alan	Reversal of Fortune: Inside the Von Bulow Case	(1986)
Dershowitz, Alan	America on Trial: Inside the Legal Battles that Transformed Our Nation	(2004)
Dwyer, William L.	The Goldmark Case: An American Libel Trial	(1984)
Fehrenbacher, Don E.	The Dred Scott Case	(1978)
Harr, Jonathan	A Civil Action	(1995)
Hersey, John	The Algiers Motel Incident	(1968)
Irons, Peter	Justice at War: The Story of the Japanese American Internment Cases	(1983)
McKernan, Maureen	The Amazing Crime and Trial of Leopold and Loeb	(1989)
Mitford, Jessica	The Trial of Dr. Spock	(1969)
Morrison & Lacour	Birth of a Nation-hood: Gaze, Script, and Spectacle in the O.J. Simpson Case	(1997)
Schiller, Lawrence	An American Tragedy: An Uncensored Story of the Simpson Defense	(1998)
Stern, Gerald	The Buffalo Creek Disaster	(2008)
Timothy, Mary	Jury Woman	(1974)
Weinstein, Allen	Perjury: The Hiss-Chambers Case	(1978)

FEMINIST JURISPRUDENCE

Estrich, Susan	Real Rape	(1987)
Gilligan, Carol	In a Different Voice: Psychological Theory and Women's Development	(1982)
Glendon, Mary Ann	Abortion and Divorce in Western Law	(1987)
Jack & Jack	Moral Vision and Professional Decisions: The Changing Values of Women and Men Lawyers	(1989)
MacKinnon, Catharine	Toward a Feminist Theory of State	(1989)
Steiner, Gilbert	Constitutional Equality: The Political Fortunes of the Equal Rights Amendment	(1985)
Tribe, Laurence	Abortion: The Class of Absolutes	(1990)
Vrato, Elizabeth	The Counselors	(2003)
Weddington, Sarah	A Question of Choice	(1993)

FICTION

Becker, Stephen	Covenant with Death	(1965)
Cozzens, James G.	The Just and the Unjust	(1942)
Kafka, Franz	The Trial	(1937)
Kerr, Baine	Harmful Intent	(1999)
Morris, Norval	The Brothel Boy: And Other Parables of the Law	(1994)
Traver, Robert	Anatomy of a Murder	(1958)

HISTORY OF LAW

Bellow, Gary	Law Stories: Law, Meaning and Violence	(1998)
Blackstone, William	Commentaries (jurisprudence sections)	(1766)
Campbell, John	The lives of the chief justices of England (<i>any one life</i>)	(1873)
Campbell, John	Lives of the Lord Chancellors (<i>any one life</i>)	(1847)
Dershowitz, Alan	The Genesis of Justice	(2001)
Gilmore, Grant	The Ages of American Law	(1977)
Gray, John Chipman	Nature and Sources of the Law	(1909)
Holland, Thomas	The Elements of Jurisprudence	(1916)
Holmes, Oliver	Common Law	(1881)
Horwitz, Morton J.	The Transformation of American Law 1780 - 1860	(1977)

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Author	Title	Year of Original Publication
Nunez & Marx	And Justice for All: The Legal Rights of Young People	(1997)
Plucknett, Theodore	A Concise History of the Common Law* <i>* Three book reports may be written for this title.</i>	(1956)
Pound, Roscoe	Interpretation of Legal History	(1923)
Radin, Max	Anglo-American Legal History	(1936)
Simpson, A.W. Brian	Cannibalism and the Common Law: The Story of the Tragic Last Voyage of the Mignonette and the Strange Legal Proceedings to Which It Gave Rise	(1984)

INDIAN LAW

Kluger, Richard	The Bitter Waters of Medicine Creek: A Tragic Clash Between White and Native America	(2011)
Lansing, Ronald B.	Juggernaut: The Whitman Massacre Trial	(1993)
Pevar, Stephen	The Rights of Indians and Tribes	(1992)

INTERNATIONAL LAW

Bedford, Sybille	The Faces of Justice	(1961)
Kassindja & Bashir	Do They Hear You When You Cry	(1998)
Musmanno, Michael	Verdict!	(1954)
Nordstrom, Carolyn	Global Outlaws: Crime, Money, and Power in the Contemporary World	(2007)
Power, Samantha	A Problem from Hell: America and the Age of Genocide	(2002)*
Tusa & Tusa	The Nuremberg Trial	(1986)

JUDICIAL INTERPRETATION

Cardozo, Benjamin	The Growth of the Law	(1924)
Cardozo, Benjamin	The Nature of the Judicial Process	(1921)
Dwyer, William L.	Ipse Dixit: How the World Looks to a Federal Judge	(2007)
Fuller, Lon	The Law In Quest of Itself	(1966)
Hohfeld, Wesley	Fundamental Legal Conceptions as Applied in Judicial Reasoning, pp. 23-114	(1920)
Murphy, Walter	Elements of Judicial Strategy	(1964)
Murphy, Walter	Wiretapping on Trial: A Case Study in the Judicial Process	(1965)
Scalia, Antonin	A Matter of Interpretation	(1997)
Scalia & Garner	Making Your Case: The Art of Persuading Judges	(2008)

LITIGATION AND TRIAL

Aldisert, Ruggero J.	Winning on Appeal: Better Briefs and Oral Argument	(2003)
Abramson, Jeffrey	We, The Jury: The Jury System and the Ideal of Democracy	(2000)
Adler, Stephen J.	The Jury	(1995)
Couric, Emily	The Trial Lawyers	(1988)
Hans & Vidmar	Judging the Jury	(1986)
Kalven & Ziesel	The American Jury	(1966)
Lief, Caldwell, Bycel	Ladies and Gentlemen of the Jury	(1998)
Osborn, Albert	The Mind of the Juror	(1982)
Rogers, James (ed.)	Anatomy of a Personal Injury Lawsuit, (3 rd ed.)	(1995)
Spence, Gerry	How to Argue and Win Every Time	(1996)
Spence, Gerry	Win Your Case: How To Present, Persuade and Prevail	(2006)
Wellman, Francis	The Art of Cross-Examination	(2007)

MEDICINE AND THE LAW

Annas, George J.	Judging Medicine	(1988)
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Author	Title	Year of Original Publication
MacKlin, Ruth	Mortal Choices: Ethical Dilemmas In Modern Medicine	(1987)
Merry & McCall Smith	Errors, Medicine and the Law	(2001)
Werth, Barry	Damages	(2010)

PHILOSOPHY AND LOGIC

Aldisert, Ruggero J.	Logic for Lawyers: A Guide to Clear Legal Thinking	(1997)
Cardozo, Benjamin	Paradoxes of Legal Science	(1928)
Cohen, Morris	Law and Social Order	(1933)
Cohen, Morris	“Place of Logic in the Law,” Harvard Law Review 29: pp. 622-639	(1912)
Dickinson, John	“Legal Rules -- Their Function in the Process of Decision,” Univ. of Penn. Law Review 79: pp. 835-68	(1931)
Dworkin, Ronald	Taking Rights Seriously	(1977)
Frank, Jerome	Law and the Modern Mind	(1930)
Hayek, F.A.	The Constitution of Liberty: The Definitive Edition	(2011)
Holmes, Oliver W.	“The Path of the Law,” Harvard Law Review 10: pp 457-478	(1987)
Howard, Philip	The Death of Common Sense	(1995)
Llewellyn, Karl	A Realistic Jurisprudence: The Next Step	(1930)
Radin, Max	The Law and Mr. Smith	(1938)
Rawls, John	A Theory of Justice	(1971)

POLITICAL SCIENCE, POLITICAL PROCESS, POLITICAL ADVOCACY

Caplan, Lincoln	The Tenth Justice: The Solicitor General and the Rule of Law	(1987)
Chemerinsky, Erwin	The Conservative Assault on the Constitution	(2010)
de Tocqueville, Alexis	Democracy in America	(1835)
Edelman, Murray	The Symbolic Use of Politics	(1964)
Glendon, Mary Ann	A Nation Under Lawyers	(1994)
Graham, Fred P.	The Self-Inflicted Wound	(1970)
Higgenbotham, Leon	In the Matter of Color: Race and the American Legal Process	(1978)
Navasky, Victor	Kennedy Justice	(1971)
Neier, Aryeh	Defending My Enemy	(1979)
Nozick, Robert	Anarchy, State & Utopia	(1977)
Reich, Charles A.	“The New Property,” Yale Law Journal 73: p. 733	(1964)
Sikkink, Katherine	The Justice Cascade: How Human Rights Prosecutions are Changing World Politics	(2011)
Taylor, Telford	Nuremberg and Vietnam: An American Tragedy	(1970)
Toobin, Jeffrey	The Oath: The Obama White House and the Supreme Court	(2012)
Valof, David Alistair	Presidential Politics and the Selection of Supreme Court Justices	(1999)

UNITED STATES HISTORY

Bass, Jack	Unlikely Heroes	(1981)
Branch, Taylor	Parting the Waters: America in the King Years 1954 - 1963	(1988)
Bronner, Ethan	Battle for Justice: How the Bork Nomination Shook America	(1989)
Dees & Corcoran	The Gathering Storm: America’s Military Threat	(1999)
Dwyer, William L.	In the Hands of the People: The Trial Jury’s Origins	(2002)
Fine, Sidney	Violence in the Model City...The Detroit Riot of 1967	(1989)
Friedman, Lawrence	A History of American Law, 3rd Edition	(2005)
Friedman, Lawrence	Law in America: A Short History	(2002)
Garrow, David J.	The FBI and Martin Luther King, Jr.	(1981)
Hoffer, Peter	A Nation of Laws: America’s Imperfect Pursuit of Justice	(2010)
Jackson, Robert	The Struggle for Judicial Supremacy	(1941)

WSBA APR 6 LAW CLERK PROGRAM
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Author	Title	Year of Original Publication
Lukas, J. Anthony	Common Ground: A Turbulent Decade in the Lives of Three American Families	(1985)
McGuire, Phillip	He Spoke for Democracy: Judge Hastie, World War II, and the Black Soldier	(1988)
Nelson, Jill	Police Brutality	(2000)
Olson, Walter K.	The Litigation Explosion: What Happened When America Unleashed the Lawsuit	(1992)
Petzinger, Thomas, Jr.	Oil & Honor: The Texaco-Pennzoil Wars, Inside the \$11 Billion Battle for Getty Oil	(1987)
Phelps & Kline	Burning the Ships: Intellectual Property and the Transformation of Microsoft	(2010)
Simon, James F.	What Kind of Nation: Thomas Jefferson, John Marshall, and the epic struggle to create a United States	(2002)
Walzer, Michael	Just and Unjust Wars, a Moral Argument with Historical Illustrations	(1992)

UNITED STATES SUPREME COURT

Danelski, David	A Supreme Court Justice is Appointed	(1964)
Irons & Guitton	May it Please the Court	(1993)
Lawson, Don	Landmark Supreme Court Cases	(1987)
Lazarus, Edward	Closed Chambers: The First Eyewitness Account of the Epic Struggles Inside the Supreme Court	(1998)
O'Connor, Sandra Day	Out of Order: Stories from the History of the Supreme Court	(2013)*
Rehnquist, William	The Supreme Court: How It Was -- How It Is	(1987)
Schwarz, Bernard	History of the Supreme Court	(1993)
Sloan, Clif	The Great Decision: Jefferson, Adams, Marshall, and the Battle for the Supreme Court	(2011)
Toobin, Jeffrey	The Nine: Inside the Secret World of the Supreme Court	(2007)
Woodward & Armstrong	The Brethren: Inside the Supreme Court	(2005)*

*Approved 2/7/2014

Appendix H

One member of the Committee has listed the individuals who do not have a bachelor's degree.³⁴ Those individuals are:

- Bill Gates - Microsoft
- Mark Zuckerberg - Facebook
- Ellen DeGeneres -Media
- Ted Turner - Turner Broadcasting/CNN
- Anna Wintour - Vogue
- Larry Ellison - Oracle
- Russell Simmons - Def Jam
- Steve Jobs - Apple
- Rachael Ray - Media
- David Geffen - Geffen Records
- Paul Allen - Microsoft
- John D. Rockefeller -Standard Oil
- Dave Thomas - Wendy's
- Kevin Rose - Digg
- Ted Turner – Founder of CNN
- Anthony Robbins – Motivational speaker
- Joel Osteen – Pastor
- Soichiro Honda – Founder of Honda
- Jan Koum – Co-founder of WhatsApp
- Frederick Henry Royce – Founder of Rolls Royce
- Amadeo Peter Giannini – Founder of the Bank of America
- George Eastman – Founder of Kodak

³⁴ <http://time.com/money/5013563/15-super-successful-people-who-never-graduated-college/>;
<http://smartandrelentless.com/100-ultra-successful-people-who-did-not-get-a-college-degree/>

- Orville and Wilbur Wright – Inventors of the aeroplane
- Thomas Edison – Inventor incandescent bulb, phonograph
- Lee Byung-chul – Founder of Samsung
- Sir Richard Branson – Founder of the Virgin Group
- Ray Kroc – McDonalds
- Colonel Harland David Sanders – KFC
- Ralph Lauren – Fashion designer
- Frederick Laker – Airline entrepreneur
- Milton Hershey – Hershey chocolate
- Jack Dorsey – Co-founder of Twitter
- Travis Kalanick – Founder of Uber
- Mary Kay Ash – Founder of Mary Kay Cosmetics
- Michael Dell – Founder of Dell Computers
- F. Scott Fitzgerald – Writer
- Vidal Sassoon – Hairstylist
- Michael Faraday – Scientist
- John D. Rockefeller Sr. – Oil tycoon (high school dropout)
- Walt Disney – Founder of Disney (high school dropout)
- Ingvar Kampard – Ikea founder
- Oprah Winfrey – Media mogul
- George Washington – First American president
- Abraham Lincoln – 16th U.S. president
- Albert Einstein – Nobel Laureate in Physics
- Henry Ford – Founder of Ford Motor Company
- Folorunso Alakija – Entrepreneur and fashion designer
- TD Jakes – Pastor and movie producer
- Jack Cohen – Founder of Tesco (elementary education only)

- DeWitt Wallace – Founder of *Reader's Digest*
- Tom Anderson – Founder of MySpace (High School dropout)
- Tyler Perry – Movie producer (High School dropout)
- Rush Limbaugh – Radio presenter
- Richard DeVos – Co-founder of Amway
- Kevin Kelly – Co-founder of *Wired Magazine*
- James Cameron – Movie producer
- Nikola Tesla – Inventor
- Haim Saban – Media mogul and creator of Power Rangers
- Shawn Fanning – Napster
- Frank Lloyd Wright – Iconic architect
- Pete Cashmore – Founder of Mashable
- Alex Ferguson – Legendary English football manager
- Hiroshi Yamauchi – Founder of Nintendo
- Roman Abramovich – Entrepreneur and owner of Chelsea football club
- Marcus Loew – Pioneer founder MGM/Loew's Theatres
- Jim Rohn – Pioneer of the self-help industry
- Jeremy Corbyn – Politician (Leader of Labour Party)
- Malcolm X – African American activist
- David Green – Founder of Hobby Lobby
- Steve Wozniak – Co-founder of Apple
- Sir John Major – British politician (Prime Minister)
- Femi Otedola – Businessman
- Amancio Ortega – Founder of Zara clothing (high school dropout)
- Lex Wexner – Business tycoon
- Charles Dickens – Writer
- David Ogilvy – Marketing guru

- Helena Rubinstein – Beauty entrepreneur
- Madam C. J. Walker – 1st self-made millionaire in America
- Sir Alan Sugar – British entrepreneur
- Ty Warner – Founder of Beanie Babies
- Arash Ferdowsi – Founder of Dropbox
- Ansel Adams - Legendary photographer (high school dropout)
- Billy Joe “Red” McCombs – Business leader
- Zhou Qunfei – Businesswoman
- Louis Farrakhan – Activist
- Subhash Chandra – India media tycoon (high school dropout)
- Gautam Adani – Business leader
- Matt Mullenweg – Founder of WordPress
- Wayne Huizenga – Founder of Blockbusters
- Larry Ellison – Co-founder of Oracle
- Daniel Ek – Co-founder of Spotify
- David Neeleman – Founder of JetBlue airlines
- President Muhammadu Buhari – Nigerian president
- Evan Williams – Co-founder of Twitter
- David Karp – Founder of Tumblr
- Gabrielle “Coco” Chanel
- Dhirubhai Ambani – Indian business tycoon
- Julian Paul Assange – Wikileaks
- Li Ka-Shing – Business tycoon
- John Mackey – Founder of Whole Foods
- Simon Cowell – Music entrepreneur
- Mark Burnett – TV producer

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Helen M. Hierschbiel
Re: Health Insurance for Members

Action Recommended

Decide whether to pursue health insurance as a member benefit in 2019.

Background

During OSB President Nordyke's travels around the state of Oregon, several members asked what the bar can do to provide affordable health insurance for members, particularly sole practitioners. OSB President Nordyke asked to place this topic on the Board's agenda so that the Board of Governors could discuss whether the Oregon State Bar can and should do something to assist members with obtaining affordable health insurance for members. The bar has a long history on this topic, which is provided below as additional context for the board's discussion.

The Multnomah Bar Association currently provides a group health insurance plan for Oregon lawyers, which is available and marketed throughout the state of Oregon. The MBA plan is structured as a Multiple Employer Welfare Arrangement ("MEWA"), also known as an Association Health Plan ("AHP"). By operating as a group, individuals and small employers can access large group rates, which may be more competitive than individual and small group plans. The greater the customer base, the greater the potential cost savings for individual members. This year, the MBA plan experienced a significant increase in enrollment (about 1,000 currently enrolled), allowing it to become much more competitive. One downside is that regulatory requirements for MEWAs make the MBA health plan unavailable for true solos; you must have at least one employee in order to qualify for the plan. In addition, MBA membership is required for joining the health plan, and some members may not want to pay that extra membership fee.

An alternative to the MEWA is a private exchange. A private exchange offers members health insurance products separate from what is available on the state or federal exchange. There are several mandatory state bars that provide health insurance to members through a private exchange, including the Florida State Bar, State Bar of Georgia, the Missouri Bar, and most recently, the Washington State Bar Association. Staff has not researched this model in depth and cannot speak at this time to the advantages and disadvantages as compared to the MEWA.

It's worth noting that the MBA health plan is a significant driver for membership in the MBA. Offering an alternative health plan to Oregon State Bar members could reduce enrollment in the MBA plan. And a dramatic reduction in plan enrollees could cause a death spiral for the MBA health plan.¹

¹ For an explanation of "death spiral" in the health insurance context, see: [https://en.wikipedia.org/wiki/Death_spiral_\(insurance\)](https://en.wikipedia.org/wiki/Death_spiral_(insurance)).

The Board of Governors has periodically reviewed affinity programs and member benefit options available to members. An affinity service is a group plan offered by a company to an organization's members. The rationale for such plans is that not everyone has the option of joining a group package for services such as life or auto insurance. With the buying power of a large group, the organization can take advantage of affinity services to provide discounts and group plans to its members. At one time, the Oregon State Bar had health and related insurance benefit programs, as well as member discounts on rental cars, credit cards, hotels and computers.

Over the years, the board has gradually reduced these types of member benefits. The only remaining member benefit relationship is with Beecher Carlson Insurance Agency. This relationship allows bar members to obtain various types of insurance policies; however, the bar receives no commission from the sale of these plans, and we provide no marketing or endorsement on their behalf. Attached is a copy of the information we provide to members about these products.

The Board of Governors made a decision approximately six years ago not to pursue affinity relationships. There were several reasons for this decision. First, the Multnomah Bar Association relies heavily on affinity relationships and the board did not want to compete with the MBA or other local/specialty bars that might want to pursue them. The issue arose most recently in a discussion about whether to pursue an affinity relationship with LawPay. In the end, the board agreed to provide marketing support with all proceeds going to the MBA.

Second, the bar's past relationship with a credit card company was problematic. Every so often the company would get creative (i.e. aggressive) with their marketing, making it look like their solicitations were coming from the Oregon State Bar. The bar received quite a few member complaints about the company over the years, resulting in more administrative and reputation costs than the money generated was worth. When the credit card company decided to cancel all of its affinity contracts, the board shed no tears.

Third, a member survey more than ten years ago asked bar members about affinity relationships, and members were pretty strongly opposed to them. One of the reasons members did not like them was the proliferation of spam. Of course, that was many years ago, and member views on the topic may have changed.

Finally, a common thread throughout has been discomfort with implied endorsements when the bar does not actually have any quality control over an affinity partner, particularly given the bar's regulatory role and responsibilities. The PLF, on the other hand, has partnered with a number of vendors to provide practice management tools to lawyers in private practice at a discounted rate. <https://www.osbplf.org/resources/save-money-with-discounts.html>.

Given this history, staff is seeking the Board's input prior to investing significant time into researching the possible development of an Oregon State Bar health plan for members. Further, if the Board is interested in pursuing these types of member benefits, it may also want to consider developing a policy with parameters for what types of benefits the bar should pursue so that we have guidance and consistency when responding to future partnership requests.

Attachment: Insurance options for OSB members

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Chris Costantino, Policy & Governance Committee Chair
Re: OSB Bylaws regarding section CLE activities

Action Recommended

Accept the Policy and Governance Committee's recommendation to waive the one-meeting notice requirement and adopt amendments to OSB Bylaws Section 15.6 relating to section CLE activities.

Background

During its September 5, 2014 meeting the BOG approved changes to section CLE policies requiring sections to offer co-sponsorship of all full-day CLE programs with the CLE Seminars Department and use OSB registration services for all remaining CLE programs. Outreach with sections was conducted in 2015 and 2016 to communicate these changes and based on feedback the BOG continued to discuss the co-sponsorship requirement into 2017. In an effort to compromise with sections on the co-sponsorship requirement, during the June 23, 2017 meeting, the BOG voted to require sections to co-sponsor at least one CLE program of four hours or more every three years. The BOG's decision requiring sections to use OSB registration services for all CLE programs not co-sponsored with the bar still stands.

Implementation of the new section CLE program requirements was set to coincide with the transition to the new database platform. Section memberships will be tracked in Aptify beginning this compliance season and the following recommended bylaw changes should take effect beginning January 1, 2019.

Section 15.6 Continuing Legal Education Activities

Subsection 15.600 CLE ~~Publications and Seminars Scheduling~~

The Bar is the informational clearinghouse for the CLE activities of each section. [To allow the Bar to perform its role, e](#)Each section ~~should must~~ advise the Bar's CLE ~~Publications and Seminars Departments~~ of ~~any all~~ proposed [section](#) CLE activities at the earliest possible date, ~~and in accordance with timelines established by the CLE Committee.~~

Subsection 15.601 CLE Event Co-sponsorship with Bar

~~If a section decides to seek co-sponsorship for a CLE event, it is encouraged to first contact Bar's CLE Seminars Department. If the CLE Seminars Department is unavailable to co-sponsor the seminar event, the section then may seek co-sponsorship with other organizations. Sections that provide CLE programs of four MCLE credit hours or more must co-sponsor such a program with the Bar's CLE Seminars Department at least once out of every three years.~~ The CLE Seminars Department will establish policies ~~sections must adhere to when co-sponsoring for bar CLE Seminars co-sponsorship of section~~ CLE events. These policies will address issues such as [the division of](#) event revenues and expenses [between the section and the CLE Seminars Department,](#) [as well as the CLE](#) topic, speakers, date and location.

Subsection 15.602 CLE Event Registration

The Bar's CLE Seminars Department will provide registration services for all section CLE programs not co-sponsored by the CLE Seminars Department with the Bar. The CLE Seminars Department will determine the cost to provide registration services and establish policies sections must follow. A section that plans a seminar without the CLE Seminars Department's co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar and paying any associated fees.

Subsection 15.602-603 Oregon State Bar Logo

A section that plans a seminar or a publication without the Bar's co-sponsorship by a bar department must indicate clearly on all publicity, printed seminar materials and publications that the seminar or publication is a section endeavor and list the name of the sponsoring section. The section must not use the Oregon State Bar logo or the phrase Oregon State Bar CLE. ~~A section that plans a seminar without the Bar's co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar.~~

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Policy and Governance Committee
Re: Oregon New Lawyers Division

Action Recommended

1. Approve the proposed ONLD program changes and amend the Oregon New Lawyer Division (ONLD) Bylaws to reflect those changes.
2. Approve creation of the ONLD CLE, Membership, Access to Justice, and Student Outreach Standing Committees.
3. Approve housekeeping amendments to the ONLD Bylaws.

Overview of ONLD Program Review

The Policy & Governance Committee (“PGC”) began its review of the ONLD in June 2017, with an overview of its mission, goals, structure, and activities, and some areas for possible discussion.

Thereafter, the President asked that a survey of the Oregon new lawyer membership be done in preparation for a discussion of the OSB new lawyer programming at the November 2017 retreat. The ONLD Executive Committee was asked for feedback in developing questions for the survey, and the survey was conducted in the fall of 2017. The results of the survey were presented and discussed at the Board’s retreat in November.

Rather than move forward with its program review at that point, the board decided to provide the ONLD with an opportunity to consider the survey results and to develop recommendations regarding a number of issues discussed during the Board’s retreat. In particular, the board sought feedback from the ONLD about: whether the ONLD mission, goals, and programming are well-aligned with the mission and goals of the Oregon State Bar; whether the structure and funding of the ONLD ought to be changed, and; whether all bar committees and sections ought to have an ex officio ONLD member or a seat reserved specifically for a new lawyer.

On April 20, 2018, the ONLD presented its recommendations to a joint meeting of the Policy & Governance Committee and the Budget & Finance Committee. The ONLD memo is attached. A second joint meeting of the Policy & Governance Committee and the Budget & Finance Committee was held in May, during which time the ONLD budget was discussed in detail. Thereafter, the PGC devoted substantial time at each of its subsequent meetings in June, July and September, to discuss the ONLD recommendations.

Recommendations

The Policy & Governance Committee has nearly completed its review of the Oregon New Lawyers Division. It now recommends the following:

1. The ONLD should remain a Division, funded with general membership fees, and retain the current membership criteria.

The PGC was swayed by ONLD arguments regarding the value of the division structure and not imposing additional fees on new lawyers. In addition, the ONLD Executive Committee showed good faith and stewardship of member fees by proposing a reduction in program expenses of approximately \$20,000. This budget proposal was submitted to the Budget & Finance Committee and approved. The budget will be submitted to the BOG for approval at the November 2018 BOG meeting.

2. Adopt the following mission and goals for the ONLD:

Mission

The mission of the Oregon New Lawyers Division is to assist new lawyers with the transition to practicing law in Oregon and to engage and leverage new lawyers in support of the mission, functions, and values of the Oregon State Bar.

Goals

- ONLD members understand the mission, functions and values of the Oregon State Bar and participate in its leadership, programs, services, and activities;
- Assist new lawyers with the transition to practicing law in Oregon;
- ONLD members have opportunities to use their unique talents and perspectives to explore development of services and activities that advance the mission, functions and values of the Oregon State Bar;
- The sharing of information and ideas about the challenges and opportunities for ONLD members in the legal profession.

3. Require Board approval of ONLD standing committees. Approve new ONLD standing committees.

In order to provide greater oversight of the ONLD, the PGC concluded that the ONLD bylaws should be amended to require BOG approval to create standing committees. And, in order to ensure that the ONLD's programming is well-aligned with its mission and goals, the PGC is recommending that the BOG approve the creation of the ONLD CLE, Membership, Access to Justice, and Student Outreach Standing Committees. The general goals and specific responsibilities, as well as proposed outcomes are attached hereto.

4. Create a liaison position for ONLD leadership on select committees and sections

The PGC is also recommending the creation of a liaison position for ONLD leadership on select committees and sections that have particular relevance to new lawyers and the work of the ONLD. The ONLD currently has a liaison position on the Loan Repayment Assistance Program Committee (LRAP), the Pro Bono Committee and the Advisory Committee on Diversity and Inclusion (ACDI). In addition to these committees, the PGC decided to recommend that an ONLD Executive Committee member liaison position on the following: Solo and Small Firm Executive Committee; Minimum Continuing Legal Education (MCLE) Committee; Quality of Life Committee; Public Service Advisory Committee, and; Legal Services Committee. The purpose of creating this liaison position is to promote useful and effective partnerships and help avoid duplication of efforts.

5. Approve additional housekeeping amendments to the ONLD bylaws.

The ONLD bylaws include a number of provisions and processes that are antiquated and do not reflect the manner in which the ONLD has actually operated for decades. The PGC is recommending that these provisions be removed from the ONLD bylaws.

The Policy and Governance Committee has one decision point remaining in its ONLD review—the ONLD leadership selection process. The PGC will be discussing at its meeting on November 17 how to provide for a more transparent and inclusive ONLD leadership selection process, as required in the Diversity Action Plan Membership Sphere, Goal 3, Strategy 2, Action 3.2.2. The PGC has a proposal for amendments to Article 6 of the ONLD bylaws and the addition of a section 7.3, which are included in the attached redline of the ONLD bylaws. It will be making a decision about how to proceed regarding that proposal at its meeting on November 17.

Options

1. Approve the proposed ONLD program recommendations and amend the ONLD Bylaws as recommended in the attached redline version of the ONLD bylaws to reflect those changes.
2. Approve the proposed ONLD program recommendations and amend the ONLD Bylaws as recommended in the attached redline version of the ONLD bylaws to reflect those changes, *except for those bylaws relating to the leadership selection process in Article 6 and section 7.3.*
3. Approve the proposed housekeeping amendments to the ONLD bylaws.
4. Approve creation of the ONLD CLE, Membership, Access to Justice, and Student Outreach Standing Committees.
5. Ask the Policy and Governance Committee to discuss further and bring back alternate proposals on any one or all of its recommendations.

Attachments: Redline version of ONLD bylaws
Clean version of ONLD bylaws
ONLD Continuing Legal Education Committee
ONLD Membership Committee
ONLD Access to Justice Committee
ONLD Student Outreach Committee
2018.04.20 ONLD Memo to Policy & Governance Committee

New Lawyers Division Bylaws

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Article 1.

Name, ~~Purpose~~ Mission and Fiscal Year

1.1 Name.

The name of this organization shall be the Oregon New Lawyers Division (“Division”) of the Oregon State Bar (“Bar”).

1.2 Mission/Purposes.

~~The mission of the Oregon New Lawyers Division supports the mission and values of the Oregon State Bar by assisting new lawyers with the transition to practicing law in Oregon; and to engage and leverage new lawyers in support of the mission, functions, and values of the Oregon State Bar. promoting respect for the rule of law and access to justice; and promoting diversity and professionalism among new lawyers and law students.~~

~~The purposes of the Division shall be to encourage new lawyers to participate in the activities of the bar, to conduct programs of value to new lawyers and law students, to promote public awareness of and access to the legal system, and to promote professionalism among new lawyers in Oregon.~~

1.3 Functions/Goals.

~~The functions/goals of the Oregon New Lawyers Division shall be:~~

~~(a) to encourage the interest and participation of ONLD members in the mission, purpose and values of the Oregon State Bar;~~

~~1. ONLD members understand the mission, functions and values of the Oregon State Bar and participate in its leadership, programs, services, and activities;~~

~~(b) to aid and promote the advancement of ONLD members in the activities of the Oregon State Bar;~~

~~(c) 2. to assist new lawyers with the transition to practicing law in Oregon;~~

~~3. ONLD members have opportunities to use their unique talents and perspectives to explore development of services and activities that advance the mission, functions and values of the Oregon State Bar;~~

~~4. The sharing of information and ideas about the challenges and opportunities for ONLD members in the legal profession.~~

~~(d) to foster among ONLD members the principles of professionalism, duty, and service to the public;~~

~~(e) to provide ONLD members with an opportunity to participate in leadership opportunities and activities directed toward improving the public's access to justice;~~

~~(f) to foster discussion and interchange of ideas among ONLD members relating to the duties, responsibilities, and problems of ONLD members; and~~

~~(g) to provide a full and complete program of activities and projects in those areas of the Oregon State Bar in which ONLD members are particularly suited.~~

Commented [HH1]: PGC decision to amend ONLD Mission and Goals

1.34 Public Office.

The Division shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

1.54 Fiscal Year.

The fiscal year of the Division shall coincide with the fiscal year of the Bar.

1.65 Bar Policies.

The Division shall comply with the policies of the Board of Governors of the Bar that apply to sections, except as otherwise provided in these bylaws.

Article 2. Membership and Dues

Commented [HH2]: PGC decision to fund ONLD with general membership fees

2.1 Members.

Each member of the Bar shall be eligible to be a member of the Division until the last day of the Division's fiscal year in which such member attains the age of thirty-six (36) years or until the last day of the sixth full fiscal year in which any such member has been admitted to practice in this state, whichever is later. All eligible members of the Bar shall automatically be members of the Division. ~~unless and until membership dues are assessed under this Article, in which case all eligible members of the Bar who pay the Division membership dues shall be members of the Division.~~

2.2 Associate Members.

Any law student presently attending an ABA accredited law school in Oregon shall automatically be considered an associate member of the Division without payment of dues. Individual students at other ABA accredited schools shall be associate members upon written request.

2.3 Dues.

~~Membership dues may be set by the membership of the Division at the annual meeting of the Division, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. The Executive Committee may establish free or discounted membership rates for new admittees or for attorneys with incomes below a specified level. If assessed, membership dues shall be collected annually by the Bar with Bar membership fees.~~

2.34 Associate Member Participation in Division Business.

Associate members may not serve as voting members of the Executive Committee and may not vote at Division meetings. However, they may serve on any Division Standing Committee or Special Committee.

Article 3. Division Executive Committee

3.1 Composition.

The Executive Committee shall be composed of eleven Division members. There shall be one Executive Committee position for each of the following seven (7) regions.

Region 1:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

Region 2:

Lane County.

Region 3:

Coos, Curry, Douglas, Jackson, Klamath and Josephine Counties.

Region 4:

Clatsop, Columbia, Lincoln, Tillamook, Washington, and Yamhill Counties.

Region 5:

Multnomah County.

Region 6:

Benton, Linn, Marion, and Polk Counties.

Region 7:

Clackamas County.

The remaining four Executive Committee members shall be elected at-large by the Division membership. In addition, the past Chairperson shall serve as a non voting member of the Executive Committee, whether or not he or she falls within the membership criteria of Article 2.

3.2 Duties.

The Executive Committee shall supervise and control the affairs of the Division subject to these bylaws and the bylaws and policies of the Board of Governors of the Bar.

3.3 Majority Vote, Quorum.

A quorum consisting of a majority of the Executive Committee, not including the past chairperson, shall be required to conduct its business. Action of the Executive Committee shall be by majority vote.

3.4 Meetings.

The Chairperson may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

3.5 Action Between Meetings.

Between meetings of the Division, the Executive Committee shall have full power to do and perform all acts and functions that the Division itself might perform. The Executive Committee shall provide a summary of such actions at the next meeting of the Division membership.

3.6 Membership Votes.

The Executive Committee may direct that a matter be submitted to the members of the Division for a vote by mail, electronic vote or for a vote at any Division meeting.

3.7 Compensation.

No salary or compensation for services shall be paid to any member of the Executive Committee or member of any other committee ~~with the exception of the Editor and other staff of a Division newsletter (if applicable).~~

Commented [HH3]: Housekeeping.

Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Executive Committee and members of all Division standing and special committees.

3.8 Removal.

Executive Committee members missing two consecutive Executive Committee meetings or three of eight consecutive Executive Committee meetings may be removed from office by majority vote of the Executive Committee members. Executive Committee members who are suspended from membership in the Oregon State Bar may be removed at any time during the period of suspension by a two-thirds majority of the Executive Committee members or by a two-thirds majority of members voting at the Division's annual business meeting.

~~3.9 Rescission.~~

~~The membership of the Division shall have the right to rescind or modify any action or decision by the Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Executive Committee shall not include power to invalidate contracts or payments previously made under~~

~~direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Executive Committee must be taken at a meeting at which two-thirds of members present vote in favor of the motion.~~

Commented [HH4]: Housekeeping.

Article 4. Officers

Commented [HH5]: Housekeeping.

4.1 Composition.

The officers of the Division shall be a Chairperson, a Chairperson-Elect, a Secretary, a Treasurer and such other officers as may be determined to be necessary by the membership. The officers shall be elected from among the Executive Committee members.

4.2 Chairperson.

The Chairperson, or the Chairperson-Elect in the absence of the Chairperson, shall preside at all meetings of the Division and of the Executive Committee. The Chairperson shall appoint the chairperson and members of all committees of the Division pursuant to Article 7; plan and monitor the programs of the Division; keep the Executive Committee duly informed and carry out its decisions; and perform such other duties as may be designated by the Executive Committee. ~~The Chair shall serve as an ex-officio delegate to the Oregon State Bar House of Delegates.~~

4.3 Chairperson-Elect.

The Chairperson-Elect shall aid the Chairperson in the performance of his or her responsibilities, and shall perform such further duties as may be designated by the Executive Committee. In the event of the death, disability, or resignation of the Chairperson, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term or disability. The Chairperson-Elect shall automatically become the Chairperson immediately following the annual election of officers.

4.4 Secretary.

~~The Secretary shall maintain all books, papers, documents and other property pertaining to the work of the Division, and shall keep a true record of proceedings of all meetings of the Division and of the Executive Committee and Typed minutes of all meetings of the Division and of the Executive Committee shall be distributed to all members of the Executive Committee as soon as possible but no later than fourteen (14) days (excluding weekends and holidays) after the meeting and shall be subject to amendment and approval at the next Executive Committee Meeting. In addition, the Chairperson or Secretary shall, whenever possible, distribute notice of scheduled Executive Committee meetings to all Executive Committee members at least ten (10) days (excluding weekends and holidays) prior to such meeting. The Secretary shall perform other such duties as designated by the Executive Committee. Minutes and agendas distributed to Executive Committee Members shall be contemporaneously provided to the Bar.~~

4.5 Treasurer.

~~The Treasurer, shall keep an accurate record of all receipts and expenditures approved by the Division; shall report on the Division's present and projected financial condition at each meeting of the Division Executive Committee; prepare, in conjunction with the Bar staff administrator, an annual projected budget for approval by the Executive Committee; and submit a report of the Division's financial affairs and financial condition to the members at the Division annual business meeting. The budget shall then be submitted to the Board of Governors for its approval no later than September 1. The treasurer shall submit any requests for general Bar funding to the Board of Governors no later than September 30 1 of the year prior to the fiscal year for which such funds are requested.~~

**Article 5.
Meetings**

Commented [HH6]: Housekeeping.

5.1 Open Meetings.

The Division (including meetings of the Executive Committee) is subject to the Public Meetings Law. ~~Therefore, the bar shall be notified twenty (20) days in advance (excluding weekends and holidays) of Division meetings. If 20 days' notice is not practical, notice shall be given as soon as possible. Reasonable notice shall be given to Division members of all Division meetings.~~

5.2 Meeting.

Each year there shall be at least one membership meeting for the purpose of conducting Division business, which meeting shall be known as the Division annual business meeting. The Division annual business meeting ~~may be held in conjunction with the annual meeting of the Bar at a time and place to be coordinated with the Bar's Executive Director, or on any other dates~~ shall be held no later than November 15.

5.3 Special Meetings.

Special meetings of the Division may be scheduled from time to time by the Executive Committee.

5.4 Action.

Action at a meeting of the Division membership shall be by a majority of those members present and voting. At least six members who maintain offices in at least three different regions must be present to establish a quorum at a meeting of the Division membership.

~~5.5 Floor vote.~~

~~During the meetings described in the preceding two paragraphs, the Division membership at large may call any matter to the floor upon the vote of the majority of the members who are present.~~

5.6 Rules.

Except as otherwise provided herein, all meetings of the Division shall be conducted in accordance with the then current version of Roberts Rules of Order.

**Article 6.
Terms In Office And Elections**

6.1 Limitation on Executive Committee Membership.

No member may be elected or appointed to serve on the Executive Committee for more than six years, except that a member who first serves an unexpired term shall be eligible for election or appointment to two full three year terms.

6.2 Term.

Commented [HH7]: Housekeeping.

Each term of office to the Executive Committee shall begin January 1. Members of the Executive Committee shall serve three-year terms. The terms of office shall be staggered so that approximately one-third of the positions are up for election each year, as outlined below:

Positions 1 and 2 (Region 1 and 2)

Terms expire: ~~2012, 2015~~, 2018, 2021, 2024, 2027

Positions 3 and 4 (Region 3 and 4)

Terms expire: ~~2011, 2014, 2017~~, 2020, 2023, 2026, 2029

Positions 5 and 6 (Region 5 and 6)

Terms expire: ~~2013, 2016~~, 2019, 2022, 2025, 2028

Positions 7 (Region 7)

Terms expire: ~~2011, 2014, 2017~~, 2020, 2023, 2026, 2029

Position 8 (At Large)

Terms expire: ~~2011, 2014, 2017~~, 2020, 2023, 2026, 2029

Positions 9 and 10 (At Large)

Terms expire: ~~2012, 2015~~, 2018, 2021, 2024, 2027

Position 11 (At Large)

Term expires: ~~2013, 2016~~, 2019, 2022, 2025, 2028

6.3 Vacancies.

Except as provided by Article 4.3, the Executive Committee shall fill by appointment any officer or Executive Committee position that becomes vacant. In doing so, the Executive Committee will solicit nominations from the ONLD membership for open positions. The Executive Committee shall review all applications and consider the diversity factors outlined in bylaw 6.9 when making appointments. However, ~~if said the vacancy exists at the time of the annual meeting, it shall be filled by election.~~

Commented [HH8]: The ACDI recommended that the word "diversity" be removed.

6.4 Unexpired Term.

Any officer or Executive Committee member appointed to fill an unexpired term shall serve the unexpired period.

Commented [HH9]: This was a staff suggestion, intended to make the nominating process less insular, provide a broader pool of individuals, and create greater diversity in ONLD leadership.

6.5 Eligibility for Executive Committee Membership.

No person shall be eligible for election or appointment to the Executive Committee unless that person is a member of the Division at the time of the election or appointment.

6.5.1 Effect of Article 2.1.

The fact that a person will not be eligible under Article 2.1 to remain a Division member for the entire term of office does not preclude that person from being appointed or elected to the Executive Committee. However, that person's term will automatically be deemed vacant at the annual meeting which immediately precedes the end of that member's eligibility for Division membership.

6.5.2 Regional Requirements.

At the time of election or appointment to a Regional position, and throughout the member's term, the member's principal office must be in that region. ~~but subsequent moves during that term of office shall not result in disqualification.~~

Commented [HH10]: This suggestion came from staff. Allowing a person to continue to represent a region in which the person no longer lives does not further the bar's diversity and inclusion goals.

6.6 Eligibility for Officers.

When elected, all officers must be Executive Committee Members who are eligible for Division membership through the entire term of office. In the case of the Chairperson elect, the person selected must be eligible to remain a member of the Division through the Chairperson-elect's term of office, and through his or her term as chairperson. However, a person may be selected for the Chair-elect position even though his or her term as an Executive Committee member will expire before the end of the term as Chairperson. He or she shall automatically be deemed to have been re-elected to the Executive Committee until the term as Chairperson ends, at which time the unexpired portion of the three-year Executive Committee term will be filled in accordance with Article 6.3.

6.7 Terms for Officers.

The term for each officer position shall be one year. The Chairperson-Elect shall automatically succeed to the office of Chairperson. No officer shall serve two successive terms in the same office, except the Treasurer, who may serve no more than two successive terms in office. Partial terms of office shall not be taken into account

for purposes of the preceding sentence. No person shall simultaneously hold two offices for a period exceeding four months.

6.8 Nominating Committee.

At least ninety (90) days prior to the Division's annual business meeting, the Executive Committee shall appoint a nominating committee of not less than three ~~ONLD Bar~~ members and no more than three-fourths of whom may be on the Executive Committee. ~~Unless excluded by reason of conflict of interest, the Chairperson, Chair-Elect and at least one other Executive Committee member shall serve on the nominating committee, with preference given to those Executive Committee members who have served the longest on the Executive Committee. The Executive Committee shall select the remaining member(s) of the nominating committee from the ONLD membership. Those persons who accept a position on the n~~Nominating committee members and their relatives and partners are ineligible for nomination to a new term or position for the upcoming year. ~~Nominating Committee members must relinquish their role as nominating committee members if they have any actual or apparent conflicts of interest with applicants who are being considered for nomination. At least 75 days before the annual meeting the nominating committee will solicit nominations from the ONLD membership for open executive committee positions. The nominating committee shall seek to fill vacant positions from the pool of applicants who have preferenced the ONLD in the OSB volunteer recruitment process, make and review all applications for Officer positions and shall. The ONLD Nominating Committee shall report to the Executive Committee at least thirty (30) days or within a reasonable time prior to the Division's annual business meeting, the names of all applicants considered and a recommendation for a slate of candidates consisting of one nomination for each Division position to be filled by election. The report shall include a discussion of the committee's consideration of the factors set forth in Article 6.9. The nominating committee's proposed slate of candidates for Executive Committee positions shall be submitted to the membership unless rejected by a majority of the Executive Committee. If the slate or a portion of it is rejected, the Executive Committee shall, at least 30 days prior to the election date, formulate the slate with the assistance of the nominating committee. The nominating committee's proposed slate of officers shall automatically be submitted to the newly elected Executive Committee for its approval or rejection.~~

Commented [HH11]: The ONLD Executive Committee was right to focus on this section to address concerns about the insularity of ONLD leadership. Staff suggests not using the term "conflict of interest" which is not defined by the bylaws and has multiple meanings, depending on the context. Instead, staff suggests "relatives and partners" or some similar descriptive phrase.

Commented [HH12]: This is a staff recommendation, intended to increase the size and diversity of the pool of candidates for leadership positions.

Commented [HH13]: This addition was suggested by the ACDI.

6.9 Diversity.

The ~~Executive Committee and the~~ nominating committee shall use reasonable efforts to ~~elect, appoint or nominate members to the Executive Committee~~ who reflect a ~~reasonable, representative~~ cross section of the Division's membership, taking into account all relevant factors including, without limitation, ~~the practice area, geographic, age, gender and ethnic make up of the Division membership page, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, practice area, race, religion, sex, sexual orientation, socioeconomic status, and veteran status.~~ To the extent possible, no more than one person from the same law firm, company or public agency in the same department may serve on the Executive Committee at the same time.

Commented [HH14]: The ACDI recommended deletion of the word "representative."

6.10 Notice.

The report of the nominating committee shall be communicated by mail or electronically to the Division membership along with the notice of the time and place of the election at least fourteen (14) days (excluding holidays and weekends) in advance of such election. The notice may be consolidated with other communications of the Bar or its sections so long as the notice is reasonably calculated to reach all Division members prior to the election.

6.11 Election of Executive Committee Members.

Elections shall be conducted at the Division's annual meeting, by mail, or electronically.

6.12 Election of Executive Committee Members at Annual Meeting.

If elections are conducted at the Division's annual meeting, additional nominations may be made for any position from the floor. Elections for contested positions may be by written ballot or voice vote. Each contested position shall be set forth and voted upon separately. Elections shall be by plurality. All Division members may vote for all "at large" positions. For any given regional vacancy, only those Division members who maintain

their principal office in that region may vote, with any ties to be broken by a plurality vote of the entire Division membership.

6.13 Election of Executive Committee Members by Mail or Electronically.

Upon approval of the Executive Committee, elections of Executive Committee members may be by written or electronic ballot sent to the Division membership provided the process allows: (1) for write-in votes, (2) that ballots are returned to an appropriate Division officer for tabulation and (3) that the results are certified to the Bar Center no later than November 15. candidacy for each regional representative to the Executive Committee shall be limited to those members who maintain their principal office in that region.

6.14 Election of Officers.

Officers shall be elected by a majority vote of the Executive Committee immediately prior to the annual election of Executive Committee Members and ratified at the Division Annual Meeting.

Article 7. Committees

7.1 Standing Committees.

With approval of the Board of Governors, the Executive Committee may establish as many standing committees as it deems necessary and may set the names, functions, and length of service of those committees. The Chairperson of the Executive Committee, with the approval of the Executive Committee, shall appoint the Chairperson and members of the standing committees. The Executive Committee chairperson shall use the same reasonable efforts outlined in bylaw 6.8 when making recommendations for subcommittee chairperson. The standing committee chair may establish subcommittees to carry out the standing committee responsibilities.

7.2 Other Committees.

In addition to the standing committees as provided above, and also with approval of the Board of Governors, the Executive Committee may appoint as many special committees for particular purposes as the Division Executive Committee deems necessary and may set the name, function, and length of service of those committees. The Chairperson, with the approval of the Executive Committee, shall appoint the chairperson and members of all special committees using the same process outlined in bylaw 7.1. The special committee chair may establish subcommittees to carry out the special committee responsibilities.

7.3 Board of Governor Oversight

The Chairperson of the Executive Committee shall submit all annual committee appointments to the Board of Governors as soon as possible after appointments are made.

Commented [HH15]: PGC decision regarding ONLD standing committees.

Commented [HH16]: This is a staff suggestion, intended to provide greater accountability and transparency in the ONLD appointment process. It would allow the ONLD to continue making its own appointments, but would require submission of those appointments to the BOG, so that the BOG could review and provide comment to the ONLD, similar to the process used for BBX appointments.

Commented [HH17]: Housekeeping.

Article 8. ~~Representation Of The Oregon State Bar's~~ Legislation and Public Policy Positions

8.1 Approval Required.

The Division may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the Division without the majority approval of the Division Executive Committee and the prior approval of the Board of Governors, except as is provided in OSB Bylaw Section 12.4. Any position or proposal must be consistent with the Mission and Goals of the Division, as well as the guidelines set forth in OSB Bylaw 12.1. Except as provided below, the Division shall not present to the legislature, or any committee or agency thereof, a position or proposal on any bill or express any position of the Division without the majority approval of the Executive Committee and the approval of the Board of Governors. If the Division's Legislative Committee requests the Executive Committee to take a position on a bill, and if it is reasonably necessary to act prior to the next regularly scheduled Executive Committee meeting, the officers of the Executive Committee may act upon the request. At least three officers shall be required to establish a quorum to take such action. Any one officer shall have the power to reject a proposed position and refer the matter instead to the Executive Committee.

8.2 Bar Approval Process.

During regular legislative sessions the Executive Committee may, by majority vote, tentatively approve a position on a bill if that position is consistent with the purposes ~~Mission and Functions~~Goals of the Division. Rather than initiating legislation, the Division will have the ability with this process to object or defend bills already introduced or surfacing to the attention of the Division with minimal notice.

The proposed position shall be submitted to the Bar's Public Affairs Director or the Chairperson of the Board of Governors' Public Affairs Committee. After receipt of the proposal, the person to whom notice was given shall have up to 72 hours to notify the Division either (a) that the position is approved or (b) that the position is being submitted to the Public Affairs Committee for approval. If such notice is not given within 72 hours, or if the position is approved, it then becomes an official position of the Division and representatives of the Division may testify or make other appropriate statements. The Bar's Public Affairs Director shall be kept informed about the status of such positions and related activities.

If the proposal is referred to the Public Affairs Committee, it shall determine, on behalf of the Board of Governors, whether or not it is in the best interests of the entire Bar (1) for the Bar to take an official position or (2) to allow the Division to take a position as requested.

Article 9. Receipts And Expenditures

Commented [HH18]: Housekeeping.

9.1 Dues.

Membership dues shall be collected by the Bar and any other receipts of the Division shall be remitted promptly to the Bar and placed in an account designated for use by the Division.

9.2 Assessments.

The Bar may regularly assess the Division an amount of money to cover both direct and indirect costs of Division activities performed by Bar staff.

9.3 Expenditures.

Expenditure of the balance of Division funds after such assessment shall be as determined by the Executive Committee, to be disbursed by the Bar's Executive Director, or the Director's designee, solely as authorized in writing by the Division's Treasurer using forms and following procedures established by the Executive Director. If the Treasurer is unavailable for authorization, the Division Chairperson may authorize disbursement of Division funds followed by written notice of the action taken. Any reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Division's Chairperson. Expenditure of Division funds shall not be in excess of the available Division fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Bar.

9.4 Retention of Funds.

Division annual reserves, if any, shall be set and maintained as provided for in the Division's annual budget as approved by the Board of Governors.

Article 10. Minutes And Reports

Commented [HH19]: Housekeeping.

10.1 Minutes.

Minutes shall be kept of all meetings of the Executive Committee and of the Division and a copy of the minutes of each such meeting shall be promptly delivered to the Bar's ~~Executive Director~~CEO or ONLD staff administrator and to each member of the Executive Committee within fourteen (14) days (excluding weekends and holidays) of the meeting so recorded.

10.2 Request for BOG Action.

Whenever the Division desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the ~~Executive Director~~CEO. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

10.3 Report.

Not later than December 1, the Chairperson shall file with the Bar's ~~Executive Director~~CEO a concise report summarizing the activities of the current year and anticipated activities for the ensuing year, ~~together with the full text of any proposed legislation. The report shall contain a description of the budget and expenditures for that year as well as the proposed budget for the next year.~~ This information will be summarized by Bar staff and included with the Bar Annual Reports distributed to all active members each year.

10.4 Budget.

A proposed annual budget and proposed annual dues shall be provided to the ~~Executive Director~~CEO for approval by the Board of Governors no later than September 30th of the preceding year, ~~if it contains a proposal for charging membership dues. For any year in which funds are requested from the Bar's general funds, a proposed annual budget shall be submitted to the Board of Governors no later than September 30th of the preceding year.~~

10.5 In Person Report.

The Chair or Chair-elect, in so much as possible, will attend Board of Governor meetings to make a report on Division activities and programs.

Article 10. Amendments To Bylaws

Commented [HH20]: Housekeeping.

11.1 Amendments by BOG.

These bylaws may be amended by the Board of Governors. Notice of intent to so promulgate and pass bylaw amendments shall be given to the Executive Committee in sufficient time to allow review and comment. Bylaw amendments so passed by the Board of Governors become effective upon passage.

11.2 Amendments by Division.

~~The Division may make recommendations for bylaw amendments upon a majority vote of the Executive Committee or These bylaws may be amended by the Division by majority vote of the ONLD membership by ballot, or at any membership meeting of the Division by majority vote of the members present and voting, to become effective upon subsequent approval of the Board of Governors.~~ Notice of intent to propose amend bylaws amendments shall be publicized in a manner which is calculated to provide Division members with reasonable notice and opportunity to comment before the Division acts. Determination as to what notice is reasonable under any provision of these bylaws may take the cost of notification into account.

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Article 1.
Name, Mission and Fiscal Year

1.1 Name.

The name of this organization shall be the Oregon New Lawyers Division (“Division”) of the Oregon State Bar (“Bar”).

1.2 Mission/.

The mission of the Oregon New Lawyers Division is to assist new lawyers with the transition to practicing law in Oregon and to engage and leverage new lawyers in support of the mission, functions, and values of the Oregon State Bar.

1.3 Goals.

The goals of the Oregon New Lawyers Division shall be:

1. ONLD members understand the mission, functions and values of the Oregon State Bar and participate in its leadership, programs, services, and activities;
2. Assist new lawyers with the transition to practicing law in Oregon;
3. ONLD members have opportunities to use their unique talents and perspectives to explore development of services and activities that advance the mission, functions and values of the Oregon State Bar;
4. The sharing of information and ideas about the challenges and opportunities for ONLD members in the legal profession.

1.4 Public Office.

The Division shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

1.5 Fiscal Year.

The fiscal year of the Division shall coincide with the fiscal year of the Bar.

1.6 Bar Policies.

The Division shall comply with the policies of the Board of Governors of the Bar that apply to sections, except as otherwise provided in these bylaws.

Article 2.
Membership

2.1 Members.

Each member of the Bar shall be eligible to be a member of the Division until the last day of the Division’s fiscal year in which such member attains the age of thirty-six (36) years or until the last day of the sixth full fiscal year in which any such member has been admitted to practice in this state, whichever is later. All eligible members of the Bar shall automatically be members of the Division.

2.2 Associate Members.

Any law student presently attending an ABA accredited law school in Oregon shall automatically be considered an associate member of the Division without payment of dues. Individual students at other ABA accredited schools shall be associate members upon written request.

2.3 Associate Member Participation in Division Business.

Associate members may not serve as voting members of the Executive Committee and may not vote at Division meetings. However, they may serve on any Division Standing Committee or Special Committee.

Article 3. Division Executive Committee

3.1 Composition.

The Executive Committee shall be composed of eleven Division members. There shall be one Executive Committee position for each of the following seven (7) regions.

Region 1:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

Region 2:

Lane County.

Region 3:

Coos, Curry, Douglas, Jackson, Klamath and Josephine Counties.

Region 4:

Clatsop, Columbia, Lincoln, Tillamook, Washington, and Yamhill Counties.

Region 5:

Multnomah County.

Region 6:

Benton, Linn, Marion, and Polk Counties.

Region 7:

Clackamas County.

The remaining four Executive Committee members shall be elected at-large by the Division membership. In addition, the past Chairperson shall serve as a non voting member of the Executive Committee, whether or not he or she falls within the membership criteria of Article 2.

3.2 Duties.

The Executive Committee shall supervise and control the affairs of the Division subject to these bylaws and the bylaws and policies of the Board of Governors of the Bar.

3.3 Majority Vote, Quorum.

A quorum consisting of a majority of the Executive Committee, not including the past chairperson, shall be required to conduct its business. Action of the Executive Committee shall be by majority vote.

3.4 Meetings.

The Chairperson may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

3.5 Action Between Meetings.

Between meetings of the Division, the Executive Committee shall have full power to do and perform all acts and functions that the Division itself might perform. The Executive Committee shall provide a summary of such actions at the next meeting of the Division membership.

3.6 Membership Votes.

The Executive Committee may direct that a matter be submitted to the members of the Division for a vote by mail, electronic vote or for a vote at any Division meeting.

3.7 Compensation.

No salary or compensation for services shall be paid to any member of the Executive Committee or member of any other committee. Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Executive Committee and members of all Division standing and special committees.

3.8 Removal.

Executive Committee members missing two consecutive Executive Committee meetings or three of eight consecutive Executive Committee meetings may be removed from office by majority vote of the Executive Committee members. Executive Committee members who are suspended from membership in the Oregon State Bar may be removed at any time during the period of suspension by a two-thirds majority of the Executive Committee members or by a two-thirds majority of members voting at the Division's annual business meeting.

Article 4. Officers

4.1 Composition.

The officers of the Division shall be a Chairperson, a Chairperson-Elect, a Secretary, a Treasurer and such other officers as may be determined to be necessary by the membership. The officers shall be elected from among the Executive Committee members.

4.2 Chairperson.

The Chairperson, or the Chairperson-Elect in the absence of the Chairperson, shall preside at all meetings of the Division and of the Executive Committee. The Chairperson shall appoint the chairperson and members of all committees of the Division pursuant to Article 7; plan and monitor the programs of the Division; keep the Executive Committee duly informed and carry out its decisions; and perform such other duties as may be designated by the Executive Committee.

4.3 Chairperson-Elect.

The Chairperson-Elect shall aid the Chairperson in the performance of his or her responsibilities, and shall perform such further duties as may be designated by the Executive Committee. In the event of the death, disability, or resignation of the Chairperson, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term or disability. The Chairperson-Elect shall automatically become the Chairperson immediately following the annual election of officers.

4.4 Secretary.

The Secretary shall keep a true record of proceedings of all meetings of the Division and of the Executive Committee and perform other such duties as designated by the Executive Committee.

4.5 Treasurer.

The Treasurer shall report on the Division's present and projected financial condition at each meeting of the Division Executive Committee; prepare, in conjunction with the Bar staff administrator, an annual projected

budget for approval by the Executive Committee; and submit a report of the Division's financial affairs and financial condition to the members at the Division annual business meeting.

Article 5.
Meetings

5.1 Open Meetings.

The Division (including meetings of the Executive Committee) is subject to the Public Meetings Law.

5.2 Meeting.

Each year there shall be at least one membership meeting for the purpose of conducting Division business, which meeting shall be known as the Division annual business meeting. The Division annual business meeting shall be held no later than November 15.

5.3 Special Meetings.

Special meetings of the Division may be scheduled from time to time by the Executive Committee.

5.4 Action.

Action at a meeting of the Division membership shall be by a majority of those members present and voting. At least six members who maintain offices in at least three different regions must be present to establish a quorum at a meeting of the Division membership.

5.5 Rules.

Except as otherwise provided herein, all meetings of the Division shall be conducted in accordance with the then current version of Roberts Rules of Order.

Article 6.
Terms In Office And Elections

6.1 Limitation on Executive Committee Membership.

No member may be elected or appointed to serve on the Executive Committee for more than six years, except that a member who first serves an unexpired term shall be eligible for election or appointment to two full three year terms.

6.2 Term.

Each term of office to the Executive Committee shall begin January 1. Members of the Executive Committee shall serve three-year terms. The terms of office shall be staggered so that approximately one-third of the positions are up for election each year, as outlined below:

Positions 1 and 2 (Region 1 and 2)

Terms expire: 2018, 2021, 2024, 2027

Positions 3 and 4 (Region 3 and 4)

Terms expire: 2020, 2023, 2026, 2029

Positions 5 and 6 (Region 5 and 6)

Terms expire: 2019, 2022, 2025, 2028

Positions 7 (Region 7)

Terms expire: 2020, 2023, 2026, 2029

Position 8 (At Large)

Terms expire: 2020, 2023, 2026, 2029

Positions 9 and 10 (At Large)

Terms expire: 2018, 2021, 2024, 2027

Position 11 (At Large)

Term expires: 2019, 2022, 2025, 2028

6.3 Vacancies.

Except as provided by Article 4.3, the Executive Committee shall fill by appointment any officer or Executive Committee position that becomes vacant. In doing so, the Executive Committee will solicit nominations from the ONLD membership for open positions. The Executive Committee shall review all applications and consider the factors outlined in bylaw 6.9 when making appointments. If the vacancy exists at the time of the annual meeting, it shall be filled by election.

6.4 Unexpired Term.

Any officer or Executive Committee member appointed to fill an unexpired term shall serve the unexpired period.

6.5 Eligibility for Executive Committee Membership.

No person shall be eligible for election or appointment to the Executive Committee unless that person is a member of the Division at the time of the election or appointment.

6.5.1 Effect of Article 2.1.

The fact that a person will not be eligible under Article 2.1 to remain a Division member for the entire term of office does not preclude that person from being appointed or elected to the Executive Committee. However, that person's term will automatically be deemed vacant at the annual meeting which immediately precedes the end of that member's eligibility for Division membership.

6.5.2 Regional Requirements.

At the time of election or appointment to a Regional position, and throughout the member's term, the member's principal office must be in that region.

6.6 Eligibility for Officers.

When elected, all officers must be Executive Committee Members who are eligible for Division membership through the entire term of office. In the case of the Chairperson elect, the person selected must be eligible to remain a member of the Division through the Chairperson-elect's term of office, and through his or her term as chairperson. However, a person may be selected for the Chair-elect position even though his or her term as an Executive Committee member will expire before the end of the term as Chairperson. He or she shall automatically be deemed to have been re-elected to the Executive Committee until the term as Chairperson ends, at which time the unexpired portion of the three-year Executive Committee term will be filled in accordance with Article 6.3.

6.7 Terms for Officers.

The term for each officer position shall be one year. The Chairperson-Elect shall automatically succeed to the office of Chairperson. No officer shall serve two successive terms in the same office, except the Treasurer, who may serve no more than two successive terms in office. Partial terms of office shall not be taken into account for purposes of the preceding sentence. No person shall simultaneously hold two offices for a period exceeding four months.

6.8 Nominating Committee.

At least ninety (90) days prior to the Division's annual business meeting, the Executive Committee shall appoint a nominating committee of not less than three ONLD members and no more than three-fourths of whom

may be on the Executive Committee. Nominating committee members and their relatives and partners are ineligible for nomination to a new term or position for the upcoming year.. The nominating committee shall seek to fill vacant positions from the pool of applicants who have preferenced the ONLD in the OSB volunteer recruitment process. The ONLD Nominating Committee shall report to the Executive Committee at least thirty (30) days or within a reasonable time prior to the Division's annual business meeting, the names of all applicants considered and a recommendation for a slate of candidates consisting of one nomination for each Division position to be filled by election. The report shall include a discussion of the committee's consideration of the factors set forth in Article 6.9. The nominating committee's proposed slate of candidates for Executive Committee positions shall be submitted to the membership unless rejected by a majority of the Executive Committee. If the slate or a portion of it is rejected, the Executive Committee shall, at least 30 days prior to the election date, formulate the slate with the assistance of the nominating committee. The nominating committee's proposed slate of officers shall automatically be submitted to the newly elected Executive Committee for its approval or rejection.

6.9 Diversity.

The Executive Committee and the nominating committee shall use reasonable efforts to elect, appoint or nominate members to the Executive Committee who reflect a cross section of the Division's membership, taking into account all relevant factors including, without limitation, age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, practice area, race, religion, sex, sexual orientation, socioeconomic status, and veteran status. To the extent possible, no more than one person from the same law firm, company or public agency in the same department may serve on the Executive Committee at the same time.

6.10 Notice.

The report of the nominating committee shall be communicated by mail or electronically to the Division membership along with the notice of the time and place of the election at least fourteen (14) days (excluding holidays and weekends) in advance of such election. The notice may be consolidated with other communications of the Bar or its sections so long as the notice is reasonably calculated to reach all Division members prior to the election.

6.11 Election of Executive Committee Members.

Elections shall be conducted at the Division's annual meeting, by mail, or electronically.

6.12 Election of Executive Committee Members at Annual Meeting.

If elections are conducted at the Division's annual meeting, additional nominations may be made for any position from the floor. Elections for contested positions may be by written ballot or voice vote. Each contested position shall be set forth and voted upon separately. Elections shall be by plurality. All Division members may vote for all "at large" positions. For any given regional vacancy, only those Division members who maintain their principal office in that region may vote, with any ties to be broken by a plurality vote of the entire Division membership.

6.13 Election of Executive Committee Members by Mail or Electronically.

Upon approval of the Executive Committee, elections of Executive Committee members may be by written or electronic ballot sent to the Division membership provided the process allows: (1) for write-in votes, (2) that ballots are returned to an appropriate Division officer for tabulation and (3) that the results are certified to the Bar Center no later than November 15. candidacy for each regional representative to the Executive Committee shall be limited to those members who maintain their principal office in that region.

6.14 Election of Officers.

Officers shall be elected by a majority vote of the Executive Committee immediately prior to the annual election of Executive Committee Members and ratified at the Division Annual Meeting.

Article 7.
Committees

7.1 Standing Committees.

With approval of the Board of Governors, the Executive Committee may establish as many standing committees as it deems necessary and may set the names, functions, and length of service of those committees. The Chairperson of the Executive Committee, with the approval of the Executive Committee, shall appoint the Chairperson and members of the standing committees. The Executive Committee chairperson shall use the same reasonable efforts outlined in bylaw 6.8 when making recommendations for subcommittee chairperson. The standing committee chair may establish subcommittees to carry out the standing committee responsibilities.

7.2 Other Committees.

In addition to the standing committees as provided above, and also with approval of the Board of Governors, the Executive Committee may appoint as many special committees for particular purposes as the Division Executive Committee deems necessary and may set the name, function, and length of service of those committees. The Chairperson, with the approval of the Executive Committee, shall appoint the chairperson and members of all special committees using the same process outlined in bylaw 7.1. The special committee chair may establish subcommittees to carry out the special committee responsibilities.

7.3 Board of Governor Oversight

The Chairperson of the Executive Committee shall submit all annual committee appointments to the Board of Governors as soon as possible after appointments are made.

Article 8.
Legislation and Public Policy Positions

8.1 Approval Required.

The Division may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the Division without the majority approval of the Division Executive Committee and the prior approval of the Board of Governors, except as is provided in OSB Bylaw Section 12.4. Any position or proposal must be consistent with the Mission and Goals of the Division, as well as the guidelines set forth in OSB Bylaw 12.1.

Article 9.
Minutes And Reports

10.1 Minutes.

Minutes shall be kept of all meetings of the Executive Committee and of the Division and a copy of the minutes of each such meeting shall be promptly delivered to the Bar's CEO or ONLD staff administrator and to each member of the Executive Committee within fourteen (14) days (excluding weekends and holidays) of the meeting so recorded.

10.2 Request for BOG Action.

Whenever the Division desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the CEO. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

10.3 Report.

Not later than December 1, the Chairperson shall file with the Bar's CEO a concise report summarizing the activities of the current year and anticipated activities for the ensuing year. This information will be summarized by Bar staff and included with the Bar Annual Reports distributed to all active members each year.

10.4 Budget.

A proposed annual budget and proposed annual dues shall be provided to the CEO for approval by the Board of Governors no later than September 30th of the preceding year.

10.5 In Person Report.

The Chair or Chair-elect, in so much as possible, will attend Board of Governor meetings to make a report on Division activities and programs.

Article 10.
Amendments To Bylaws

11.1 Amendments by BOG.

These bylaws may be amended by the Board of Governors. Notice of intent to so promulgate and pass bylaw amendments shall be given to the Executive Committee in sufficient time to allow review and comment. Bylaw amendments so passed by the Board of Governors become effective upon passage.

11.2 Amendments by Division.

The Division may make recommendations for bylaw amendments upon a majority vote of the Executive Committee or by majority vote of the ONLD membership by ballot, or at any membership meeting of the Division by majority vote of the members present and voting. Notice of intent to propose bylaw amendments shall be publicized in a manner which is calculated to provide Division members with reasonable notice and opportunity to comment before the Division acts. Determination as to what notice is reasonable under any provision of these bylaws may take the cost of notification into account.

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Article 1.
Name, Mission and Fiscal Year

1.1 Name.

The name of this organization shall be the Oregon New Lawyers Division (“Division”) of the Oregon State Bar (“Bar”).

1.2 Mission/.

The mission of the Oregon New Lawyers Division is to assist new lawyers with the transition to practicing law in Oregon and to engage and leverage new lawyers in support of the mission, functions, and values of the Oregon State Bar.

1.3 Goals.

The goals of the Oregon New Lawyers Division shall be:

1. ONLD members understand the mission, functions and values of the Oregon State Bar and participate in its leadership, programs, services, and activities;
2. Assist new lawyers with the transition to practicing law in Oregon;
3. ONLD members have opportunities to use their unique talents and perspectives to explore development of services and activities that advance the mission, functions and values of the Oregon State Bar;
4. The sharing of information and ideas about the challenges and opportunities for ONLD members in the legal profession.

1.4 Public Office.

The Division shall not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office.

1.5 Fiscal Year.

The fiscal year of the Division shall coincide with the fiscal year of the Bar.

1.6 Bar Policies.

The Division shall comply with the policies of the Board of Governors of the Bar that apply to sections, except as otherwise provided in these bylaws.

Article 2.
Membership

2.1 Members.

Each member of the Bar shall be eligible to be a member of the Division until the last day of the Division’s fiscal year in which such member attains the age of thirty-six (36) years or until the last day of the sixth full fiscal year in which any such member has been admitted to practice in this state, whichever is later. All eligible members of the Bar shall automatically be members of the Division.

2.2 Associate Members.

Any law student presently attending an ABA accredited law school in Oregon shall automatically be considered an associate member of the Division without payment of dues. Individual students at other ABA accredited schools shall be associate members upon written request.

2.3 Associate Member Participation in Division Business.

Associate members may not serve as voting members of the Executive Committee and may not vote at Division meetings. However, they may serve on any Division Standing Committee or Special Committee.

Article 3. Division Executive Committee

3.1 Composition.

The Executive Committee shall be composed of eleven Division members. There shall be one Executive Committee position for each of the following seven (7) regions.

Region 1:

Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

Region 2:

Lane County.

Region 3:

Coos, Curry, Douglas, Jackson, Klamath and Josephine Counties.

Region 4:

Clatsop, Columbia, Lincoln, Tillamook, Washington, and Yamhill Counties.

Region 5:

Multnomah County.

Region 6:

Benton, Linn, Marion, and Polk Counties.

Region 7:

Clackamas County.

The remaining four Executive Committee members shall be elected at-large by the Division membership. In addition, the past Chairperson shall serve as a non voting member of the Executive Committee, whether or not he or she falls within the membership criteria of Article 2.

3.2 Duties.

The Executive Committee shall supervise and control the affairs of the Division subject to these bylaws and the bylaws and policies of the Board of Governors of the Bar.

3.3 Majority Vote, Quorum.

A quorum consisting of a majority of the Executive Committee, not including the past chairperson, shall be required to conduct its business. Action of the Executive Committee shall be by majority vote.

3.4 Meetings.

The Chairperson may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

3.5 Action Between Meetings.

Between meetings of the Division, the Executive Committee shall have full power to do and perform all acts and functions that the Division itself might perform. The Executive Committee shall provide a summary of such actions at the next meeting of the Division membership.

3.6 Membership Votes.

The Executive Committee may direct that a matter be submitted to the members of the Division for a vote by mail, electronic vote or for a vote at any Division meeting.

3.7 Compensation.

No salary or compensation for services shall be paid to any member of the Executive Committee or member of any other committee. Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Executive Committee and members of all Division standing and special committees.

3.8 Removal.

Executive Committee members missing two consecutive Executive Committee meetings or three of eight consecutive Executive Committee meetings may be removed from office by majority vote of the Executive Committee members. Executive Committee members who are suspended from membership in the Oregon State Bar may be removed at any time during the period of suspension by a two-thirds majority of the Executive Committee members or by a two-thirds majority of members voting at the Division's annual business meeting.

Article 4. Officers

4.1 Composition.

The officers of the Division shall be a Chairperson, a Chairperson-Elect, a Secretary, a Treasurer and such other officers as may be determined to be necessary by the membership. The officers shall be elected from among the Executive Committee members.

4.2 Chairperson.

The Chairperson, or the Chairperson-Elect in the absence of the Chairperson, shall preside at all meetings of the Division and of the Executive Committee. The Chairperson shall appoint the chairperson and members of all committees of the Division pursuant to Article 7; plan and monitor the programs of the Division; keep the Executive Committee duly informed and carry out its decisions; and perform such other duties as may be designated by the Executive Committee.

4.3 Chairperson-Elect.

The Chairperson-Elect shall aid the Chairperson in the performance of his or her responsibilities, and shall perform such further duties as may be designated by the Executive Committee. In the event of the death, disability, or resignation of the Chairperson, the Chairperson-Elect shall perform the duties of the Chairperson for the remainder of the Chairperson's term or disability. The Chairperson-Elect shall automatically become the Chairperson immediately following the annual election of officers.

4.4 Secretary.

The Secretary shall keep a true record of proceedings of all meetings of the Division and of the Executive Committee and perform other such duties as designated by the Executive Committee.

4.5 Treasurer.

The Treasurer shall report on the Division's present and projected financial condition at each meeting of the Division Executive Committee; prepare, in conjunction with the Bar staff administrator, an annual projected

budget for approval by the Executive Committee; and submit a report of the Division's financial affairs and financial condition to the members at the Division annual business meeting.

Article 5. Meetings

5.1 Open Meetings.

The Division (including meetings of the Executive Committee) is subject to the Public Meetings Law.

5.2 Meeting.

Each year there shall be at least one membership meeting for the purpose of conducting Division business, which meeting shall be known as the Division annual business meeting. The Division annual business meeting shall be held no later than November 15.

5.3 Special Meetings.

Special meetings of the Division may be scheduled from time to time by the Executive Committee.

5.4 Action.

Action at a meeting of the Division membership shall be by a majority of those members present and voting. At least six members who maintain offices in at least three different regions must be present to establish a quorum at a meeting of the Division membership.

5.5 Rules.

Except as otherwise provided herein, all meetings of the Division shall be conducted in accordance with the then current version of Roberts Rules of Order.

Article 6. Terms In Office And Elections

6.1 Limitation on Executive Committee Membership.

No member may be elected or appointed to serve on the Executive Committee for more than six years, except that a member who first serves an unexpired term shall be eligible for election or appointment to two full three year terms.

6.2 Term.

Each term of office to the Executive Committee shall begin January 1. Members of the Executive Committee shall serve three-year terms. The terms of office shall be staggered so that approximately one-third of the positions are up for election each year, as outlined below:

Positions 1 and 2 (Region 1 and 2)

Terms expire: 2018, 2021, 2024, 2027

Positions 3 and 4 (Region 3 and 4)

Terms expire: 2020, 2023, 2026, 2029

Positions 5 and 6 (Region 5 and 6)

Terms expire: 2019, 2022, 2025, 2028

Positions 7 (Region 7)

Terms expire: 2020, 2023, 2026, 2029

Position 8 (At Large)

Terms expire: 2020, 2023, 2026, 2029

Positions 9 and 10 (At Large)

Terms expire: 2018, 2021, 2024, 2027

Position 11 (At Large)

Term expires: 2019, 2022, 2025, 2028

6.3 Vacancies.

Except as provided by Article 4.3, the Executive Committee shall fill by appointment any officer or Executive Committee position that becomes vacant. In doing so, the Executive Committee will solicit nominations from the ONLD membership for open positions. The Executive Committee shall review all applications and consider the factors outlined in bylaw 6.9 when making appointments. If the vacancy exists at the time of the annual meeting, it shall be filled by election.

6.4 Unexpired Term.

Any officer or Executive Committee member appointed to fill an unexpired term shall serve the unexpired period.

6.5 Eligibility for Executive Committee Membership.

No person shall be eligible for election or appointment to the Executive Committee unless that person is a member of the Division at the time of the election or appointment.

6.5.1 Effect of Article 2.1.

The fact that a person will not be eligible under Article 2.1 to remain a Division member for the entire term of office does not preclude that person from being appointed or elected to the Executive Committee. However, that person's term will automatically be deemed vacant at the annual meeting which immediately precedes the end of that member's eligibility for Division membership.

6.5.2 Regional Requirements.

At the time of election or appointment to a Regional position, and throughout the member's term, the member's principal office must be in that region.

6.6 Eligibility for Officers.

When elected, all officers must be Executive Committee Members who are eligible for Division membership through the entire term of office. In the case of the Chairperson elect, the person selected must be eligible to remain a member of the Division through the Chairperson-elect's term of office, and through his or her term as chairperson. However, a person may be selected for the Chair-elect position even though his or her term as an Executive Committee member will expire before the end of the term as Chairperson. He or she shall automatically be deemed to have been re-elected to the Executive Committee until the term as Chairperson ends, at which time the unexpired portion of the three-year Executive Committee term will be filled in accordance with Article 6.3.

6.7 Terms for Officers.

The term for each officer position shall be one year. The Chairperson-Elect shall automatically succeed to the office of Chairperson. No officer shall serve two successive terms in the same office, except the Treasurer, who may serve no more than two successive terms in office. Partial terms of office shall not be taken into account for purposes of the preceding sentence. No person shall simultaneously hold two offices for a period exceeding four months.

6.8 Nominating Committee.

At least ninety (90) days prior to the Division's annual business meeting, the Executive Committee shall appoint a nominating committee of not less than three ONLD members and no more than three-fourths of whom

may be on the Executive Committee. Nominating committee members and their relatives and partners are ineligible for nomination to a new term or position for the upcoming year.. The nominating committee shall seek to fill vacant positions from the pool of applicants who have preferenced the ONLD in the OSB volunteer recruitment process. The ONLD Nominating Committee shall report to the Executive Committee at least thirty (30) days or within a reasonable time prior to the Division's annual business meeting, the names of all applicants considered and a recommendation for a slate of candidates consisting of one nomination for each Division position to be filled by election. The report shall include a discussion of the committee's consideration of the factors set forth in Article 6.9. The nominating committee's proposed slate of candidates for Executive Committee positions shall be submitted to the membership unless rejected by a majority of the Executive Committee. If the slate or a portion of it is rejected, the Executive Committee shall, at least 30 days prior to the election date, formulate the slate with the assistance of the nominating committee. The nominating committee's proposed slate of officers shall automatically be submitted to the newly elected Executive Committee for its approval or rejection.

6.9 Diversity.

The Executive Committee and the nominating committee shall use reasonable efforts to elect, appoint or nominate members to the Executive Committee who reflect a cross section of the Division's membership, taking into account all relevant factors including, without limitation, age, culture, disability, ethnicity, gender and gender identity or expression, geographic location, national origin, practice area, race, religion, sex, sexual orientation, socioeconomic status, and veteran status. To the extent possible, no more than one person from the same law firm, company or public agency in the same department may serve on the Executive Committee at the same time.

6.10 Notice.

The report of the nominating committee shall be communicated by mail or electronically to the Division membership along with the notice of the time and place of the election at least fourteen (14) days (excluding holidays and weekends) in advance of such election. The notice may be consolidated with other communications of the Bar or its sections so long as the notice is reasonably calculated to reach all Division members prior to the election.

6.11 Election of Executive Committee Members.

Elections shall be conducted at the Division's annual meeting, by mail, or electronically.

6.12 Election of Executive Committee Members at Annual Meeting.

If elections are conducted at the Division's annual meeting, additional nominations may be made for any position from the floor. Elections for contested positions may be by written ballot or voice vote. Each contested position shall be set forth and voted upon separately. Elections shall be by plurality. All Division members may vote for all "at large" positions. For any given regional vacancy, only those Division members who maintain their principal office in that region may vote, with any ties to be broken by a plurality vote of the entire Division membership.

6.13 Election of Executive Committee Members by Mail or Electronically.

Upon approval of the Executive Committee, elections of Executive Committee members may be by written or electronic ballot sent to the Division membership provided the process allows: (1) for write-in votes, (2) that ballots are returned to an appropriate Division officer for tabulation and (3) that the results are certified to the Bar Center no later than November 15. candidacy for each regional representative to the Executive Committee shall be limited to those members who maintain their principal office in that region.

6.14 Election of Officers.

Officers shall be elected by a majority vote of the Executive Committee immediately prior to the annual election of Executive Committee Members and ratified at the Division Annual Meeting.

Article 7. Committees

7.1 Standing Committees.

With approval of the Board of Governors, the Executive Committee may establish as many standing committees as it deems necessary and may set the names, functions, and length of service of those committees. The Chairperson of the Executive Committee, with the approval of the Executive Committee, shall appoint the Chairperson and members of the standing committees. The Executive Committee chairperson shall use the same reasonable efforts outlined in bylaw 6.8 when making recommendations for subcommittee chairperson. The standing committee chair may establish subcommittees to carry out the standing committee responsibilities.

7.2 Other Committees.

In addition to the standing committees as provided above, and also with approval of the Board of Governors, the Executive Committee may appoint as many special committees for particular purposes as the Division Executive Committee deems necessary and may set the name, function, and length of service of those committees. The Chairperson, with the approval of the Executive Committee, shall appoint the chairperson and members of all special committees using the same process outlined in bylaw 7.1. The special committee chair may establish subcommittees to carry out the special committee responsibilities.

7.3 Board of Governor Oversight

The Chairperson of the Executive Committee shall submit all annual committee appointments to the Board of Governors as soon as possible after appointments are made.

Article 8. Legislation and Public Policy Positions

8.1 Approval Required.

The Division may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the Division without the majority approval of the Division Executive Committee and the prior approval of the Board of Governors, except as is provided in OSB Bylaw Section 12.4. Any position or proposal must be consistent with the Mission and Goals of the Division, as well as the guidelines set forth in OSB Bylaw 12.1.

Article 9. Minutes And Reports

10.1 Minutes.

Minutes shall be kept of all meetings of the Executive Committee and of the Division and a copy of the minutes of each such meeting shall be promptly delivered to the Bar's CEO or ONLD staff administrator and to each member of the Executive Committee within fourteen (14) days (excluding weekends and holidays) of the meeting so recorded.

10.2 Request for BOG Action.

Whenever the Division desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the CEO. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

10.3 Report.

Not later than December 1, the Chairperson shall file with the Bar's CEO a concise report summarizing the activities of the current year and anticipated activities for the ensuing year. This information will be summarized by Bar staff and included with the Bar Annual Reports distributed to all active members each year.

10.4 Budget.

A proposed annual budget and proposed annual dues shall be provided to the CEO for approval by the Board of Governors no later than September 30th of the preceding year.

10.5 In Person Report.

The Chair or Chair-elect, in so much as possible, will attend Board of Governor meetings to make a report on Division activities and programs.

Article 10.
Amendments To Bylaws

11.1 Amendments by BOG.

These bylaws may be amended by the Board of Governors. Notice of intent to so promulgate and pass bylaw amendments shall be given to the Executive Committee in sufficient time to allow review and comment. Bylaw amendments so passed by the Board of Governors become effective upon passage.

11.2 Amendments by Division.

The Division may make recommendations for bylaw amendments upon a majority vote of the Executive Committee or by majority vote of the ONLD membership by ballot, or at any membership meeting of the Division by majority vote of the members present and voting. Notice of intent to propose bylaw amendments shall be publicized in a manner which is calculated to provide Division members with reasonable notice and opportunity to comment before the Division acts. Determination as to what notice is reasonable under any provision of these bylaws may take the cost of notification into account.

ONLD Access to Justice Committee

General Goal: ONLD members develop a passion for public service while gaining practical legal and leadership skills and increasing access to justice.

Specific responsibilities:

Identify pro bono and other public service needs not being addressed by other organizations or programs and suggest programs to fill those gaps.

Familiarize ONLD members with the pro bono and public service volunteer opportunities in Oregon and facilitate connection with those opportunities.

Host or support special pro bono and public service events (e.g. Refugee Adjustment Day, Wills for Heroes).

Organize opportunities for new lawyers to gain practical skills through pro bono service.

Collaborate with the OSB Pro Bono Committee and local and specialty bar pro bono committees to identify and implement ways to engage ONLD members in pro bono service.

Collaborate with the OSB Public Service Advisory Committee and the Classroom Law Project to identify and implement ways to educate and inform the public about the law.

Consider the changing landscape of the legal profession, the delivery of legal services, and innovations in technology when implementing the responsibilities of the Committee.

Outcomes:

ONLD members are familiar with the pro bono and public service volunteer opportunities in Oregon.

ONLD members develop experience in new practice areas through pro bono service.

High number of ONLD members providing pro bono and public service.

High number of individuals who receive pro bono and public service from ONLD members.

High satisfaction among ONLD members with the special pro bono and public service events.

ONLD feedback is collected and used to inform future special pro bono and public service events.

Pro bono and public service opportunities are provided for ONLD members outside of the Portland metro area.

Partnerships with OSB departments and entities occur.

Innovative approaches to improving access to justice occur.

Partnerships with legal profession organizations outside of the OSB occur.

ONLD Student Outreach Committee

General Goal: Allows the OSB, through the ONLD, to connect with law students, as well as college and high school students considering a legal-oriented career, to encourage pursuit of a legal career, and law students are offered guidance in their transition to practicing attorneys.

Specific Responsibilities:

Identify opportunities for connecting with students and partner with the organizations affording those opportunities.

Collaborate with the three Oregon law schools to conduct programs at each school introducing students to the Oregon State Bar and assist with the transition from student to practicing attorney.

Partner with the Classroom Law Project and other organizations to ensure that volunteers are available throughout the state to connect with high school students.

Develop outreach programs geared toward encouraging diverse students to consider law school.

Partner with the OSB Diversity and Inclusion Department on outreach to high school and college students.

Outcomes:

A specific committee dedicated to legal education and facilitating transition from student to practicing attorney demonstrates that OSB values a smooth and opportunity-filled transition from law school to applying the law degree

ONLD members are engaged in quality volunteer activities that interest them.

High satisfaction among ONLD members with the volunteer activities

Oregon law students are well aware of the activities of the ONLD and the OSB, generally.

Oregon college and high school students are exposed to the rule of law, and to the possibility of practicing law.

Partnerships with OSB departments and sections occur.

Partnerships with The Classroom Law Project, and other organizations occur.

ONLD members outside of the Portland metro area have volunteer opportunities.

Feedback is collected and used to inform future programming.

ONLD Membership Committee

General Goal: ONLD members are introduced to and welcomed into the Oregon State Bar community.

Specific responsibilities:

Host a reception for new lawyers immediately following each of the two annual swearing-in ceremonies in Salem.

Identify networking opportunities that exist for new lawyers in Oregon and provide information to ONLD members about those opportunities.

Collaborate with sections and specialty bars to provide networking opportunities for ONLD members with specialized interests.

Collaborate with local bars to provide networking opportunities to ONLD members throughout the state of Oregon.

Collaborate with the OSB Diversity & Inclusion Department to support OLIO events.

Provide networking opportunities to fill gaps not addressed by networking opportunities that currently exist or that cannot be met through collaborative efforts.

Consider lawyer wellness in planning networking events.

Outcomes:

ONLD members are familiar with the Oregon State Bar mission, values, programs, services and activities.

ONLD members are engaged in OSB leadership, programs, services, and activities.

High satisfaction among ONLD members with the networking opportunities provided.

High participation in ONLD networking opportunities.

ONLD feedback is collected and used to inform future networking events.

ONLD members outside of the Portland metro area are served.

Partnerships with OSB departments and entities occur.

Partnerships with legal profession organizations outside of the OSB occur.

ONLD Continuing Legal Education Committee

General Goal: A diverse array of low-cost and high-quality CLE programming is provided that meets the particular needs of, and is accessible to, ONLD members.

Specific Responsibilities:

Identify particular educational needs of new lawyers in Oregon. (E.g. basic skills, practical skills, business operations and development, NLMP requirements, access to justice, professionalism, technology, lawyer wellness. Consider survey for others.)

Collaborate with the Professional Liability Fund in developing and implementing the annual Learning the Ropes Program, as well as other programming and resources that meet the particular needs of ONLD members.

Collaborate with OSB CLE Seminars to provide live webcast CLE programming that meets the particular needs of ONLD members.

Collaborate with OSB sections and local bar associations throughout the state to provide CLE programming that meets the particular needs of ONLD members.

Develop and implement CLE programming to fill gaps in needs not addressed through collaborative efforts.

Consider the changing landscape of the legal profession, the delivery of legal services, and innovations in technology when implementing the responsibilities of the Committee.

Provide input to the MCLE Committee regarding continuing legal education requirements for new lawyers.

Outcomes (could establish actual numbers/percentages for each of these):

High satisfaction among ONLD members with the quality and content of CLE programs.

High participation in ONLD CLE programming by ONLD members.

ONLD feedback is collected and used to inform future programming.

ONLD members outside of the Portland metro area are served.

ONLD members are aware of the changing landscape of the legal profession, the delivery of legal services, and innovations in technology.

Partnerships with OSB departments and entities occur.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Policy & Governance Committee
Re: Editorial Advisory Committee for the *Bulletin*

Action Recommended

Approve general and specific charges to the Bulletin Editorial Advisory Committee; approve committee size and membership guidelines.

Background

At its September 21, 2018 meeting the BOG approved creation of an Editorial Advisory Committee for the bar *Bulletin* and amended the OSB bylaws accordingly. The new bylaw (section 11.2.1) gives the BOG authority to appoint an advisory committee and states the purpose of the committee, which is also the basis of the proposed general committee charge below. Staff are also providing proposed specific charges, along with options for the committee structure and membership.

Proposed Committee Charge

General: Provide guidance on editorial policies and content for the bar Bulletin. Work closely with the Editor to ensure the magazine's content is topical, thought-provoking, aligned with the bar's mission and of interest to significant segments of the bar.

Specific:

- Review and recommend editorial policies for approval of the Board of Governors.
- Identify and develop topics for feature articles and columns of general interest to Oregon bar members and/or that support identified OSB priorities.
- Recruit volunteer authors as needed; identify bar members and others as potential sources for feature articles assigned to contract writers.
- Work with volunteer authors who have submitted articles that need revision before further consideration.
- Advise on publication of sensitive material as requested by the editor or contributors.
- Ensure that multiple and diverse perspectives are considered in planning and publishing all editorial content.

Options

1. Approve the Proposed Editorial Advisory Committee Charge outline above.
2. Edit the Proposed Editorial Advisory Committee Charge and approve the edited version of the charge.
3. Ask staff to make revisions to the charge based on the PGC discussion and bring back to the next Policy & Governance Committee meeting.

Committee Structure and Composition

Committee size. Staff recommend a committee of 7-9 members, including one public member. Based on a review of successful models in other states, those with smaller boards report more active engagement by committee members.

Committee composition. An effective committee would include bar members from different practice settings around the state who practice in a variety of substantive legal areas. Writing and editing experience would also be helpful. At least one OSB committee, the Loan Repayment Assistance Committee, designates seats for committee members within its program policies. Most OSB committees rely on the board development committee, along with instructions to officers and liaisons in making recommendations, to ensure diversity of membership. Staff recommend following the regular appointment process for this new committee, noting that the draft charge includes a diversity element. In addition, the committee itself may wish to propose additional guidelines, which could be inserted into the editorial policies subject to board approval.

BOG participation. The Policy & Governance Committee indicated a desire to have a member of the Board of Governors sit on the Editorial Advisory Committee. One option would be for the seat to be a BOG liaison position, with the expectation of regular participation, similar to the BOG liaison position on the ONLD and the BBX. As a liaison to the Editorial Advisory Committee, the BOG member would be expected to share with the EAC perspectives of the BOG as a whole and bring any concerns from or issues about the EAC back to the full BOG. The liaison position would provide the BOG with insight into and oversight of the EAC, but not an actual vote on specific matters before it.

Alternatively, the BOG seat on the Editorial Advisory Committee could be an ex officio voting member of the committee. In this model, the Board would essentially delegate its oversight of the activities of the EAC to a single BOG member who would have a vote regarding specific matters before the Editorial Advisory Committee. If this is the preferred model, it may be worth discussing this Committee's expectations of how that BOG member should vote. In other words, should the BOG member's vote reflect the perspective of the BOG as a whole or the individual BOG member perspective.

Recruitment. Staff recommend announcing the new committee through a BOG Update and in the Bulletin. The new committee would be added to the existing volunteer opportunities online form and formed through the current appointments process.

Options

1. Approve an Editorial Advisory Committee with a minimum of 7 and a maximum of 9 members, including one public member, to be appointed by the Board of Governors through its Board Development Committee appointment process. Include a BOG member as an ex officio voting member of the committee.
2. Approve an Editorial Advisory Committee with a minimum of 7 and a maximum of 9 members, including one public member, to be appointed by the Board of Governors through its Board Development Committee appointment process. Include a BOG liaison position on the committee.
3. Propose an alternative committee structure and composition.

OSB Program/Service/Activity Scoresheet

Program/Service/Activity		
Description	The objectives of the Leadership Academy are to increase participation in the OSB of historically underrepresented groups in the OSB and the community at large and thereby retain diverse attorneys in the Oregon legal community.	
Factors	Data	Score
Member Impact	Each cohort will be comprised of 15 bar members who will directly benefit from the skills acquired from the academy. While only a small number of members will directly benefit each year, the impact on the whole OSB membership will be felt as the number of OSB leaders from non-dominant cultures grows over time.	3
Impact on lawyers from non-dominant cultures	Cohort participants will be required to volunteer in a leadership role after completing the academy. The goal is to have more non-dominant cultures represented in OSB leadership and community volunteer roles.	4
Public Impact	Leaders who reflect the community they serve.	4
Competition	There are no other known programs in the state directly competing with the proposed Leadership Academy.	5
Volunteer Engagement	A development committee of approximately 12 members will be utilized to establish curriculum and assist in selecting members of the first cohort. Additional volunteers will be involved in facilitating the monthly academy training sessions. Approximately 45 volunteers per year.	3
Revenue/Cost	<ol style="list-style-type: none"> 1. Direct cost: \$20k for cohort and facilitator travel; \$5k for catering during sessions; \$2k for misc. expenses 2. Indirect Cost: None, the FTE for this program will be absorbed by the D&I Department 3. Capital Cost: None 4. Revenue Generated: None 5. Net: \$27,000 annually 6. Percent of Operating Budget: .041% 	1
Cost per Member Served	The cost per academy participant is approximately \$2,000. All other department activities are geared toward law students, this program will be the first department program to focus on enhancing skills and retaining diverse members of the OSB.	3
Cost per Member	The budget for this program will come from the \$45 D&I assessment each active member pays annually with their membership fee. With nearly 15,000 active members, the cost to each active member is \$1.80 annually.	5
Total		28
Average		3.5

Mission Alignment		
Strategic Goals	Comments	Score
Support judicial system	A component of the academy training will focus on professional development and one piece will outline the steps to take to become a judge. Research shows having a bench that represents the community it serves narrows the justice gap.	4
Improve administration of justice	Another component of the academy will address and train cohort members on how to be efficient and effective in their practice and dealings with the court	4
Protect public	While ethics and professionalism topics will be discussed as part of the curriculum, public protection and attorney regulation will not be a primary focus for the academy.	2
Advance DEI	The primary goal of the academy is to advance non-dominant attorneys in all area of the legal community.	5
Educate public	The program will focus on educating attorneys and will not have a component for public education.	1

OSB Program/Service/Activity Scoresheet

Promote professional development	Another goal of the program will focus on leadership development and work towards attaining the highest standards of professionalism as they volunteer in the community and through the OSB.	5
Increase access to justice	When the bench and bar reflects the communities it serves, research shows it narrows the justice gap.	3
Total		24
Average		3.4

Combined Total (Factors + Mission Alignment Average) 3.4 average

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Guy Greco, Board Development Committee Chair
Re: Appointments to various bar committees, councils, and boards (1 of 2)

Action Recommended

On November 2 the Board Development Committee selected the following members for appointment:

Advisory Committee on Diversity and Inclusion

Chair: Kasia Rutledge
Secretary: Aruna Masih
Members with terms expiring 12/31/2021:
Judah Largent
Nathaniel Aggrey
Melina Martinez
Erious Johnson
May Low
Yazmin Wadia

Client Security Fund Committee

Chair: Douglas Stamm
Secretary: Daniel Steinberg
Members with terms expiring 12/31/2021:
David Hytowitz
Michelle Teed
Valerie Wright
Brian Decker
Melissa May
Steven Bergmann (public member)

Legal Heritage Interest Group

Chair: Darsee Staley
Secretary: Michael Turner
Members with terms expiring 12/31/2021:
Jessica Price
Leslie Wolf
Rachel Kotkin
Jack Kinsey

MCLE Committee

Chair: John Mellgren
Secretary: Camilla Asante Thurmond
Members with terms expiring 12/31/2021:
Laura Markham
Michael McNichols
Joshua Orem

Public Service Advisory Committee:

Members with terms expiring 12/31/2021:
Karen Mockrin
Victoria Moffet
Joel Overlund
David Schor
Theresa Winebarger (public member)

Procedure and Practice Committee:

Chair: Faith Morse
Secretary: Michelle Burrows
Members with terms expiring 12/31/2021:
Michelle Burrows
Robert Koch
Joshua Lay-Perez
Anna Malmberg
Akeem Williams

Quality of Life Committee

Chair: Michelle Ryan
Members with terms expiring 12/31/2021:
Timothy Johnson
Avalyn Taylor
Kyra Hazilla
Phillip Spicerkuhn

Uniform Civil Jury Instructions Committee

Chair: Jeffrey Young
Secretary: Sheri Browning
Members with terms expiring 12/31/2019:
Kelly Huedepohl
Grant Engrav
Members with terms expiring 12/31/2021:
Daniel Le Roux
Robert Beatty-Walters
Bridget Donegan
Gregory Skillman

Uniform Criminal Jury Instructions Committee

Chair: Anna Belias
Secretary: Lisa Donnell
Members with terms expiring 12/31/2020:
Michael Wu
Members with terms expiring 12/31/2021:
Lauren Robertson
Per Olson
Megha Desai
Jonathan Cable
Jordan Barbeau

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: John Bachofner, Board Development Committee Vice-Chair
Re: Appointments to various bar committees, councils, and boards (2 of 2)

Action Recommended

On November 16 the Board Development Committee selected the following members for appointment:

Bar/Press/Broadcasters Council

Members with terms expiring 12/31/2021:

Ann Lininger
Dawn Andrews
Rachel Philips
Ashley Lathrop

Client Security Fund Committee

Members with terms expiring 12/31/2021:

Arnold Wuhrman

Legal Ethics Committee

Chair: Justin Thorp

Secretary: Jonathan Monson

Members with terms expiring 12/31/2021:

Eugene Thompson
Susan Alterman
Lorelei Craig
AJ Wahl
Jacqueline Alarcon
A Vada Camacho

Legal Services Committee

Chair: Sara Kobak

Secretary: Laurie Craghead

Members with terms expiring 12/31/2021:

Sandy Hansberger

Pro Bono Committee:

Co-Chair: Natalie Hedman

Co-Chair: Tiffany Blackmon

Secretary: Kevin Kress

Members with terms expiring 12/31/2021:

Kristine Almquist
Amanda Guile-Hinman
Rio Capper
Adele Ridenour

Public Service Advisory Committee:

Chair: Janay Haas

Secretary: Rachel Bertoni

Quality of Life Committee

Secretary: Aaron Johnson

State Lawyers Assistance Committee

Chair: Ed Versteeg (public member)

Secretary: Jonathan Strauhull

Members with terms expiring 12/31/2022:

Sara Butcher
Sharon Maynard
Mae Lee Browning
Wyatt Baum

Based on Bar Rule 12.1, the Supreme Court makes appointments to the UPL Committee. The Board Development Committee recommends the BOG approve the following new member recommendations for the court's consideration.

Unlawful Practice of Law Committee

Members with terms expiring 12/31/2021:

Joel Corcoran
Kelly Kritzer

OREGON STATE BAR

Board of Governors Meeting

Meeting Date: November 16, 2018
From: Budget and Finance Committee
Subject: 2019 Budget

Background

In preparation for the upcoming fiscal calendar year, attached is the second and proposed final draft of the 2019 Budget covering the period from January 1st through December 31st, 2019. This version of the 2019 budget is balanced for the fiscal year and incorporates the following:

- Increase in total Revenues over the 2018 budget due to:
 - Conservative 2018 budget, and a slight Increase in total 2019 membership of .2%.
 - Previously approved Increase of \$5.00 in the Client Security Fund assessment.
 - Already implemented increase in the Admissions application fee from \$625 to \$750.
 - Increase in Referral services revenue of 20%.
 - Increase in Fanno Creek revenue of 6%.
- Salary pool increase of 3.5%, offset with a generic attrition rate of -1%.
- Overall decrease of -5% in direct department expenditures.

Per by-law 7.2: The Budget and Finance Committee will submit its recommendation for final approval to the Board.

Recommendation

The Budget and Finance committee approved the budget contained herein. The Budget and Finance committee moves that the BOG approve the 2019 budget.

Summary of Key Activities

Membership Fees

Membership fees include the \$5.00 increase to the Client Security Fund, and no further changes to the membership fee structure for 2019. The proposed fee structure presented to the HOD for approval (including late fees) are captured in the table below:

Category	2018 Fee through January 31st	2018 Fee effective February 1st	2019 Fee through January 31st	2019 Fee effective February 1 st
Active Over 2 Years	\$552.00	\$652.00	\$557.00	\$657.00
Active Under 2 Years *	\$465.00	\$565.00	\$470.00	\$570.00
Active Pro-Bono	\$125.00	\$125.00	\$125.00	\$125.00
Inactive	\$125.00	\$175.00	\$125.00	\$175.00
Retired	\$125.00	\$175.00	\$125.00	\$175.00

Fee Breakdown:

General	\$ 477.00
Subscription	\$ 10.00
CSF	\$ 15.00
AAP	\$ 45.00
LRAP	\$ 10.00
Total	\$ 557.00

Admissions

While admissions is anticipating a 2.2% drop in applications from the 2018 budget to 880 total, the application fee increase from \$625 to \$750 has been in effect from August 1, 2018. Thus, revenues from application fees should total \$660K (up 13% from 2018 budget). This coming year is also the first year that attorneys can become members of the Oregon State Bar through reciprocity, which should generate a small increase in investigation fees. Last, an increase in the rebate revenue for exams taken by laptop. The overall net generated by Admissions (after ICA) is expected to increase from \$42K to \$95K.

Referral Services

Revenue from Referral Services is on pace to exceed \$900K in 2018 (against a budget of \$830K) and continues a strong upward trend. Of particular note are calls that go unattended due to being short-handed on staff. The budget for 2019 comprehends addressing RIS staffing shortage and is projecting revenue of \$994K.

Fanno Creek

A new tenant has signed a 7 year lease to occupy the vacancy in Suite 175 starting October 1st, 2018, and will bring the building to full occupancy for all of 2019. The revenue budget for 2019 is therefore increased \$57K over 2018, however this amount is partially offset by increased maintenance expenses. The next opening in our tenant roster under contract occurs in 2020, when we have 2 tenants whose leases are set to expire; one in June and one in September.

Wages and Benefits

Total wages and benefits expenses are forecasted to end 2018 at approximately \$9,623K. This is down \$220K from the budget due to preceding long standing employee resignations (and therefore reduced applied pension expense), and the time to fill those and other positions requiring backfill. The total salary expense projected for 2019 is \$9.850M, and is \$227K higher than the total forecasted expense for 2018. This increase is based on a 3.5% salary pool increase, and incorporates a 1% rate of attrition.

The marginal effect of a 4% salary pool, would increase wages and benefits ~ \$47K in 2019, and over the five-year period 2019-2023 (unadjusted for attrition and additional year over year increases) would be approximately \$235K.

Direct Program Expenses

Direct program expenditures have been reduced significantly in this year's budget, generating a total savings of more than \$400K, through a combination of already in-process cost reduction efforts and other newly identified actions. These activities range from continued focus efforts on the part of staff to operate "paperless" and reduce copying expenditures, lower total postal expenditures, reduction in CLE video expenses, and consolidation of various I/T activities into one central department.

Other Key activities and Operating Objectives

A critical project objective for the Bar is to continue to upgrade our overall I/T infrastructure while reducing expenses. The implementation of Aptify will be mostly completed by December 31st 2018, with some module completion taking place in the first half of 2019. The total cost of the Aptify project at completion is estimated to be \$1.2M, and will be depreciated over a 5 year period. This will add \$200K of non-cash expense to the P&L. This expense and neutral impact on cash is comprehended in the 2019 budget and the five-year projection.

A line item has been included in the 2019 budget (and in the five-year projection), to migrate from biennial to an annual audit cycle. This should add at most, approximately \$10K to the total audit fees over a two-year period as opposed to conducting a single audit every two years. This would reduce the burden considerably on internal staff in supporting the audit.

Five Year Projection

The five year projected budget has been built with the following base conditions:

- Flat membership revenues from 2019 through 2023.
- Salary pool increases of 3.5%, offset by a -1.0% attrition rate.
- Flat direct program expenditures.
- Decrease in operating expenses starting in 2020 of -\$100K due to loan refinancing
- Increase in the G&A offset due to Section assessment increase to \$9.50 in 2020.

Included in the five-year projection is a modest refinancing of the current \$13M mortgage loan, to lower the overall annual payments from \$934K to \$790K. This loan has an interest rate of 5.99%, for which we make monthly payments totaling \$934K annually. Interest rates available

to the Bar are currently at 4.875% (and likely better). Refinancing the loan, in conjunction with a \$1M - \$2M further pay down of loan principal has the potential to reduce the annual payments from \$934K to \$634K annually. The terms of the current loan carry a balloon payment that is due in 2023. The Director of Finance is researching available refinancing options.

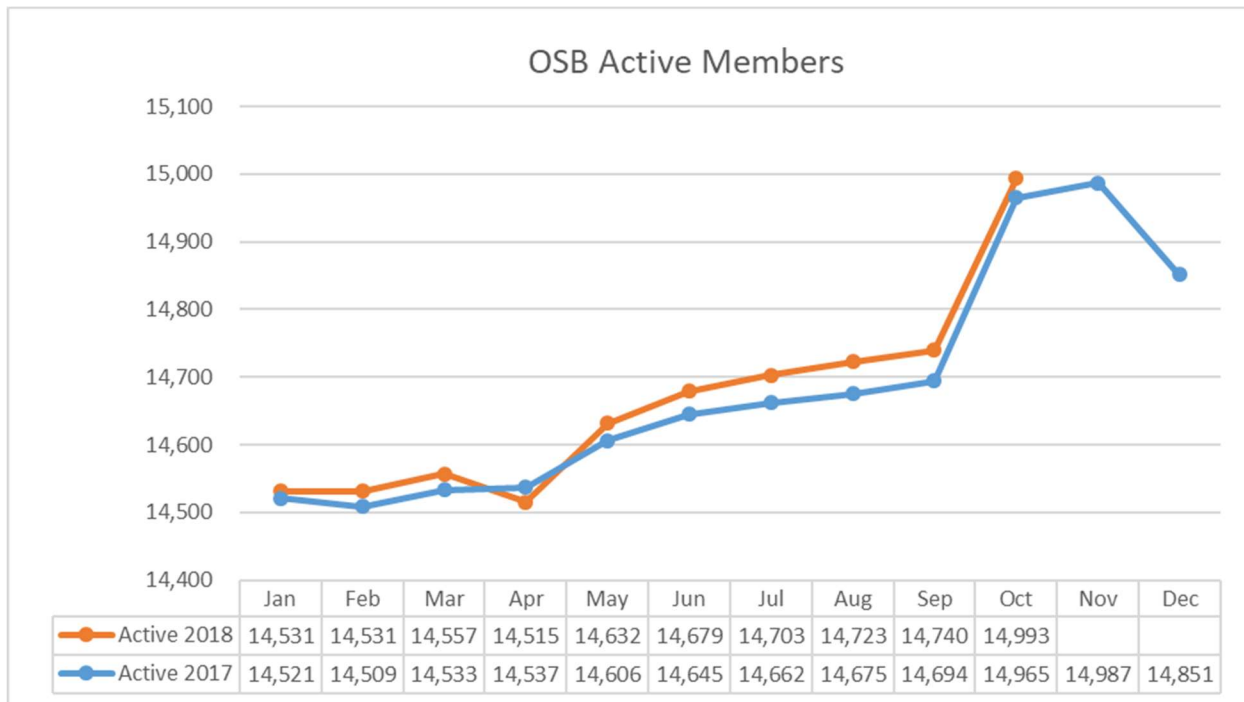
The cumulative impact of these factors, at present, suggests a balanced budget will be attained in the Years 2020 and 2021, however a deficit appears in the Years 2022 and 2023. In the absence of identifying additional sources of revenue in the interim to cover those deficits, executing a favorable refinancing of the mortgage loan, or significant expense savings being identified, a minor increase in fees will need to be approved.

It is the objective of the Bar executive management to present a request for a fee increase only as an option of last resort.

Five Year Projection:

OREGON STATE BAR							
Consolidated Financial Statements							
Description	Budget 2018	Budget 2019	Budget 2020	Budget 2021	Budget 2022	Budget 2023	
Membership Fees	\$7,968,200	\$8,143,955	\$8,143,955	\$8,143,955	\$8,143,955	\$8,143,955	Inc 2019 to 2018(F), then flat
Program Fees	3,817,755	4,103,343	4,133,343	4,163,343	4,193,343	4,223,343	Adm +100K/Ref +160K, then +30K/yr
Investment Income	238,766	241,200	230,000	230,000	230,000	230,000	Flat
PLF Grant	200,000	200,000	200,000	200,000	200,000	200,000	Flat
Fanno Creek Place	906,796	957,488	986,212	1,015,799	1,046,273	1,077,661	+49K (Suite 175), and then 3% YoY
Departments	7,248,800	7,306,660	7,306,660	7,306,660	7,306,660	7,306,660	increase in 2019, then flat
TOTAL REVENUE	20,380,317	20,952,645	21,000,170	21,059,756	21,120,230	21,181,618	
EXPENSES		3.5%	3.5%	3.5%	3.5%	3.5%	Raise %
		-1.0%	-1.0%	-1.0%	-2.0%	-2.0%	Attrition %
Salaries	6,984,548	7,260,172	7,441,677	7,627,719	7,742,135	7,858,267	
Taxes and Benefits	2,858,665	2,586,416	2,651,076	2,717,353	2,758,113	2,799,485	
Salaries and Benefits	9,843,213	9,846,588	10,092,753	10,345,072	10,500,248	10,657,751	
Direct Program Expense	9,245,486	8,844,932	8,844,932	8,844,932	8,844,932	8,844,932	-\$400K 2019, then flat
Operating Expense	376,840	382,348	384,378	392,065	399,907	407,905	+2% / yr
Depreciation	513,400	760,974	765,974	770,974	775,974	780,974	\$75K capital budget / year
Meeting Rooms Marketing	1,500	1,500	1,500	1,500	1,500	1,500	flat
Mortgage Interest	646,462	628,739	530,000	530,000	530,000	530,000	< refinancing of mortgage loan in 2020 >
Non-Operating Expense	1,161,362	1,391,213	1,297,474	1,302,474	1,307,474	1,312,474	
General and Administrative Expense	836,258	1,031,802	836,258	836,258	836,258	836,258	flat
Indirect Cost Allocation Net	0	(0)	-	-	-	-	
Less: Assessment - Sections	(138,700)	(138,700)	(164,050)	(164,050)	(164,050)	(164,050)	fee increase to \$9.50/member in 2020
Less: Expense offsets	(76,925)	(49,151)	(76,925)	(76,925)	(76,925)	(76,925)	flat
Less: Service Reimbursements	(13,250)	(14,040)	(13,250)	(13,250)	(13,250)	(13,250)	flat
Net General & Admin Offsets	(228,875)	(201,891)	(254,225)	(254,225)	(254,225)	(254,225)	
Contingency	25,000	25,000	25,000	25,000	25,000	25,000	
TOTAL EXPENSE	21,259,284	21,319,993	21,226,570	21,491,576	21,659,594	21,830,095	
NET OPERATING REVENUE (EXP)	(878,967)	(367,348)	(226,400)	(431,820)	(539,364)	(648,477)	
Unrealized Investment Gains /(Losses)	(579,588)	0	-	-	-	-	forecast neutral
Realized Investment Gains/(Losses)	639,417	0	-	-	-	-	forecast neutral
NET REVENUE (EXPENSE)	(819,138)	(367,348)	(226,400)	(431,820)	(539,364)	(648,477)	
Revenue (Expense) 2018 forecast	842,000						
Addback: Depreciation	513,400	760,974	760,974	770,974	775,974	780,974	
Subtract: Capital Projects	(189,000)	(88,057)	(153,900)	(75,000)	(75,000)	(75,000)	
Subtract: Mortgage Principal	(287,846)	(305,569)	(259,507)	(259,507)	(259,507)	(259,507)	
Net Cash Contribution	59,416	0	121,167	4,647	(97,896)	(202,010)	

Membership:



Forward Looking Opportunities & Challenges:

Bar staff will continue to explore other opportunities for revenue improvement, however those opportunities may be offset by the presence of other challenges carrying additional expense.

Opportunities:

- More robust Non-Bar memberships, for which we can charge \$225 per member.
- Developing other “exchange” based products.
- Comity Certificate fee.
- Charge active fee to over 50-year members.
- Reconfigure existing space to allow for more rentable office suites to tenants.

Challenges

- Wage and Benefits expenses continue to comprise a larger % of the budget.
- High cost of mortgage, interest plus principal equals \$934K annually.
- Reducing travel expenditures and reimbursements.
- Building maintenance.
- Decreasing Legal Publications revenue.

OREGON STATE BAR

Board of Governors Meeting

Meeting Date: November 16, 2018
From: Budget and Finance Committee
Subject: 2019 Section Dues

Background

This memo outlines that there are four (4) sections that are proposing an increase in their section dues for 2019. Those sections are:

1. Real Estate and Land Use Section, from \$25 to \$30
2. Business Law Section, from \$30 to \$35
3. Taxation Section, from \$25 to \$30
4. Juvenile Law, from \$25 to \$30

Per by-law 15.4: The Board must approve the dues for each section. Each section should set dues at an appropriate level to pay for programs and activities.

Recommendation

The Budget and Finance committee approved the dues increases noted above. All other Section dues are unchanged from 2018 levels. The Budget and Finance committee moves that the BOG approve the section dues for 2019.

		2018	2019
Sec #	Section	Dues	Dues
801	Admiralty Section	15	15
802	Dispute Resolution Section	25	25
803	Antitrust, Trade Reg Section	25	25
804	Appellate Practice Section	20	20
805	Aviation Law Section	25	25
806	Business Law Section	30	35
807	Business Litigation Section	20	20
808	Civil Rights Section	27	27
809	Computer & Internet Law Section	24	24
810	Construction Law Section	15	15
811	Criminal Law Section	20	20
812	Debtor/Creditor Section	35	35
813	Environment & Natural Res. Section	20	20
814	Estate Planning & Admin. Section	20	20
815	Family Law Section	25	25
816	Government Law Section	15	15
817	Health Law Section	15	15
818	International Law Section	25	25
819	Labor & Employment Law Section	25	25
821	Litigation Section	30	30
823	Intellectual Property Section	25	25
824	Energy,Telecom,Utility Law Section	27	27
825	Real Estate & Land Use Section	25	30
826	Disability Law Section	20	20
827	Securities Regulation Section	25	25
828	Taxation Section	25	30
829	Product Liability Section	20	20
830	Workers' Compensation Section	25	25
833	Indian Law Section	20	20
834	Animal Law	15	15
835	Sustainable Future	20	20
836	Corporate Counsel Section	20	20
837	Agricultural Law Section	17	17
838	Consumer Law Section	15	15
840	Sole & Small Firm Pract. Section	19	19
841	Constitutional Law Section	25	25
842	Elder Law Section	25	25
843	Juvenile Law Section	25	30
844	Administrative Law Section	20	20
845	Diversity Section	25	25
846	Nonprofit Organizations Law	25	25
847	Military &Veterans Law-Fund Balance	20	20
848	Cannabis Law Section	20	20

OREGON STATE BAR

Board of Governors Meeting

Meeting Date: November 16, 2018
From: Budget and Finance Committee
Subject: Receipt of Report of Independent Auditors Letter to the BOG

Background

Independent auditors Moss Adams, LLC was contracted to perform the financial audit of the Oregon State Bar Fund for the two-year period ending December 31st, 2017. The auditors concluded their work, having noted that the Bar's financial records are in good standing and fairly represent the Bar's financial condition. These findings were reported to the Budget and Finance committee September 21st in person by Julie Desimone, the partner in charge of the audit, and recorded in Moss Adams' letter to the Board of Governors dated October 1, 2018. The acknowledgement by the BOG of the receipt of Independent Auditors Letter marks the formal end of the audit.

Recommendation

The Budget and Finance committee moves that the BOG acknowledge receipt of the Report of Independent Auditors letter dated October 1st, 2018.



MOSSADAMS

Report of Independent Auditors

The Board of Governors
Oregon State Bar
Oregon State Bar Fund

We have audited the accompanying statements of net position of the Oregon State Bar Fund (the Bar), as of December 31, 2017, and the related statements of revenues, expenses and changes in net position and cash flows for the two-year period then ended, and the related notes to the financial statements, as listed in the table of contents.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement to the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Oregon State Bar Fund as of December 31, 2017, and the respective changes in financial position and cash flows, where applicable thereof for the two-years then ended in conformity with accounting principles generally accepted in the United States of America.

Emphasis of Matter

As discussed in Note 1, the financial statements present only the Oregon State Bar Fund and do not purport to, and do not, present fairly the financial position of the Oregon State Bar as of December 31, 2017, and the changes in its financial position, or, where applicable, its cash flows for the two-year period ended December 31, 2017 in conformity with accounting principles generally accepted in the United States of America.

Other Matter***Required Supplementary Information***

Accounting principles generally accepted in the United States of America require that the Management's Discussion and Analysis on pages 3 through 7, and the schedule of proportionate share of the net pension liability, and schedule of contributions on pages 30 through 31 be presented to supplement the basic financial statements. Such information, although not part of the basic financial statements, is required by Governmental Accounting Standards Board, who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated October 1, 2018 on our consideration of the Bar's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be considered in assessing the results of our audit.



Portland, Oregon
October 1, 2018

OREGON STATE BAR

Board of Governors

Meeting Date: November 16, 2018
From: Kathleen Rastetter, Public Affairs Committee Chair
Re: 2019 Law Improvement Program

Action Recommended

Submit some but not all of the Law Improvement Program proposals for consideration to the Oregon State Legislature for the 2019 Legislative Session.

Background

Every long legislative session, the Oregon State Bar's Board of Governors, the Professional Liability Fund, and the bar's sections and committee have the opportunity to develop and submit legislation.

The OSB's Law Improvement Program (LIP) package is intended to include proposed legislation from sections, workgroups, and committees that clarify statutory ambiguities, remove unnecessary procedural requirements, modify unforeseen glitches in previous legislation, or otherwise improve the administration of justice. Policy changes are also included in the bar package of legislation when deemed appropriate. In order for a legislative concept to be considered it must be approved by a majority of the section or committee's executive committee, and we encourage executive committees to be representative of the diverse views on the section. Bar groups are encouraged to be mindful of differing viewpoints in the practice area.

Proposals approved by the bar's Board of Governors are submitted to the Senate or House Judiciary Committees as committee bills for consideration by the Oregon State Legislature. Proposed legislation must conform to the bar's bylaws ([Article 12 Legislation and Public Policy](#)) and the limitations placed on the bar by *Keller v. State of California*, 499 US 1, 111 S.Ct 2228 (1990).¹

On May 2, 2018, the Public Affairs Committee (PAC) of the Board of Governors reviewed thirteen law improvement proposals from bar sections and committees. After review and discussion, the PAC proposed and the board approved forwarding the legislative proposals on to Legislative Counsel Office for drafting at its May 18, 2018 meeting. Legislative concepts were drafted over the summer and fall of 2018. A list of the Legislative Concepts with bar sponsor and title is attached.

The Public Affairs Committee will submit the Oregon State Bar's 2019 Law Improvement Program Legislative Package with a recommendation to the OSB Board of Governors. The Public

¹ For more information on the Oregon State Bar bylaws and the *Keller* case, please visit http://www.osbar.org/leadership/bog/bog_resources.html.

Affairs Department will assist in submitting those legislative concepts approved by the BOG to the Senate or House Judiciary Committees for pre-session filing as either Senate or House bills.

Of these thirteen concepts, the PAD recommends the submission of nine of these proposals. Please note that in some cases individual statutory concepts reviewed by PAC and BOG members have been merged into one bill draft.

Submit for consideration at this time.

OSB BOG Priority Legislation

- LC 603 – Legal Aid Statutory Allocation
- LC 605 – Oregon State Bar housekeeping bill including:
 - Modifies 50 year membership fee requirement,
 - Allows Department of Revenue to share Information with OSB, and
 - Clarifies lawyer trust account certification and disclosure submission requirement.

Business Law Section

- LC 608 – Ratification of Defective Corporate Acts

Debtor-Creditor Section

- LC 609 – Lien Information Statements

Elder Law Section

- LC 610 – Heir Liability for deferred property taxes

Military & Veterans Section

- LC 611 – Housing Hotline and Assistance for Servicemembers
- LC 612 – Servicemembers Court Assistance Data Collection and Task Force

Nonprofit Section

- LC 613 – Rewrite of ORS Chapter 65

Sustainable Futures Section

- LC 614 – Prudent Investor Rule

Do not submit for consideration at this time.

Over the last several months, PAD staff has worked with proponents, stakeholders, and agency representatives regarding proposed concepts, and when available, draft language. This has allowed PAD staff to gather feedback, amend the original proposals as appropriate, and develop a more comprehensive view of the 2019 legislative landscape. Supporting the remaining proposals would be an ineffective use of bar resources at this time.



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 15-17, 2018
Memo Date: October 26, 2018
From: PLF Board of Directors
Re: 2019 Coverage Plans (Primary, Excess and Pro Bono)

Action Recommended

At the September 2018 BOG meeting, the BOG approved the 2019 Primary Plan. Since then, the PLF Board of Directors approved an additional change. Therefore, we are asking the BOG to approve the 2019 Primary Plan as amended (Exhibit B), the 2019 Excess Plan (Exhibit C), and the 2019 Pro Bono Plan (Exhibit D). There are no additional changes to the Excess or Pro Bono Plans; the same changes to the Primary Plan will be incorporated into those Plans.

Background

The purpose of the new change is to clarify the PLF's long-standing position that claims seeking recovery of attorney fees are not covered by the Plan. The PLF's denial of claims for fees is consistent with virtually every other legal malpractice insurance policy on the commercial market.

Currently, the PLF 2018 Plan defines "**Damages**" to "not include...disgorgement, set-off of any fees, costs or consideration paid to or charged by a **Covered Party**, or any personal profit or advantage to a **Covered Party**." The proposed revision (see Exhibit A, page 1) is consistent with this language but makes it clear that the "return, forfeiture, disgorgement, restitution, reduction or offset of any fees..." is not "**Damages**" and therefore not covered.

We have also added a new paragraph 5 under the Duty to Defend section:

The PLF does not have a duty to defend any **Claim**, or the portion of any **Claim**, that is not a **Claim** for **Damages**, as defined in Section I A. In the event the PLF voluntarily agrees to defend any **Claim**, or any portion of a **Claim**, that does not seek **Damages**, it will be subject to the **Covered Party's** agreement that the **Covered Party** will cooperate with the PLF's attempt to settle or dismiss any alleged **Claim** for **Damages** that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.

Again, this is consistent with how we have historically interpreted the Plan but makes the position of the PLF clear.

Finally, we are changing Exclusion 10 which relates to **Business Activities** which are not covered by the Plan. Historically, we have included language in Exclusion 10 similar to the definition of Damages: claims for fees, costs or expenses paid were not covered by the Plan. In order to avoid confusion, we have deleted this from Exclusion 10 as this concept is fully covered by the definition of Damages. We have also added language to the proposed Exclusion 10 to make the reader aware that with respect to claims for fees, that the elimination of this language from Exclusion 10 is not a change in the Plan, simply that the language excluding those types of claims is now solely in the definition of Damages.

The affected 2018 Plan language and the 2019 proposed Plan language is set forth fully in Exhibit A.

For your information, I am also attaching as Exhibit E the memo I submitted to the BOG in September 2018 with the Plan changes you previously approved.

CJB/clh

Exhibits:

- A – 2018 Plan language and 2019 proposed Plan language
- B – 2019 Primary Plan
- C – 2019 Excess Plan
- D – 2019 Pro Bono Plan
- E – 2018-08-27 Memo to BOG – September BOG Meeting

POTENTIAL REVISION—DAMAGES DEFINITION (2019 PLAN)

Damages means monetary compensation a **Covered Party** must pay for loss and does not include:

- a. Fines; penalties, statutorily enhanced damages, or enhanced prevailing fees;
- b. Punitive or exemplary damages;
- c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any **Covered Party** or to any **Law Entity** with which any **Covered Party** was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;
- d. Rescission, injunctions, accountings, restitution, equitable relief;
- e. Any personal profit or advantage to a **Covered Party**;
- f. Any award of attorney fees, costs, or interest arising from any claim referenced in (a) through (d) above, or from any excluded claim.

*The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of **Damages** covered under the Plan:*

***Example 1:** Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A, which allegedly were excessive. Because this is not a claim for **Damages**, it is not covered.*

***Example 2:** Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill but later sues Attorney B to recover the fees paid. This is not a claim for **Damages**, as defined in the Plan. Therefore, it is not covered.*

***Example 3:** Attorney C writes a demand letter to Client for unpaid fees and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under the definition of **Damages**, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.*

***Example 4:** Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under the definition of **Damages**, there is no coverage for the claim.*

***Example 5:** Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees, and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under the definition of **Damages**, there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.*

***Example 6:** Attorney F advises client to sue a third party, charging substantial fees to file and litigate the suit. Client receives a very small recovery and sues Attorney F alleging that Attorney F was negligent in advising Client to sue the third party. Client sues Attorney F to recover the fees and costs Client spent or owes for pursuing the third party claim. Client alleges Attorney F should have realized the cost of pursuing the claim was not justified. This claim is not covered because the amounts sought by Client are not **Damages**. The same is true if Client claims that Attorney F was negligent for not advising Client that Attorney F, or another attorney, may have agreed to pursue the claim for a contingent fee.*

***Example 7:** Attorney G fails to properly request attorney fees from an opposing party. As a result Client sues Attorney G because Client could have recovered fees if Attorney G had properly pursued them. This claim seeks **Damages** covered under the Plan.*

2018 PLAN—DAMAGES DEFINITION (Section I A.)

Damages means monetary compensation a **Covered Party** must pay for harm or loss and does not include: fines; penalties; punitive or exemplary damages; statutorily enhanced damages; rescission; injunctions; accountings; equitable relief; restitution; disgorgement; set-off of any fees, costs, or consideration paid to or charged by a **Covered Party**; or any personal profit or advantage to a **Covered Party**.

POTENTIAL REVISION—DUTY TO DEFEND (2019 PLAN)	2018 PLAN—DUTY TO DEFEND (Section I B.)
<p>B. Defense</p> <p>1. The PLF will defend a Covered Party against any Suit seeking Damages to which this Plan applies until the Claims Expense Allowance and the Limit of Coverage are exhausted. The PLF is not bound by any Covered Party's agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.</p> <p style="padding-left: 20px;"> Suit means a civil lawsuit. Suit also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.</p> <p>2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a Claim and, in its discretion, to settle any Claim to which this Plan applies. The PLF has no duty to contribute to the settlement of a Claim based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures to investigate, prevent, mitigate, review, or repair any Claim or matter that may create the potential for a Claim.</p> <p>3. The PLF will pay Claims Expense the PLF incurs.</p> <p style="padding-left: 20px;"> Claims Expense means: fees and expenses charged by any attorney designated by the PLF; all other fees, costs, and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair, or appeal of a Claim, or any matter that may create the potential for a Claim; or fees charged by any attorney designated by the Covered Party with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered Claims Expense and do not reduce the available Limit of Coverage.</p> <p>4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend Claims for which coverage is excluded under Exclusion 4, and Claims for malicious prosecution, abuse of process, and wrongful initiation of civil proceedings, provided such Claims arise out of Your Covered Activities and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.</p> <p>5. The PLF does not have a duty to defend any Claim, or the portion of any Claim, that is not a Claim for Damages, as defined in Section I A. In the event the PLF voluntarily agrees to defend any Claim, or any portion of a Claim, that does not seek Damages, it will be subject to the Covered Party's agreement that the Covered Party will cooperate with the PLF's attempt to settle or dismiss any alleged Claim for Damages that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.</p>	<p>B. Defense</p> <p>1. Until the Claims Expense Allowance and the Limit of Coverage are exhausted, the PLF will defend a Covered Party against any Suit seeking Damages to which this Plan applies. The PLF is not bound by any Covered Party's agreement to resolve a dispute through arbitration or any other alternative dispute resolution proceeding and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.</p> <p style="padding-left: 20px;"> Suit means a civil lawsuit. Suit also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.</p> <p>2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a Claim and, in its discretion, to settle any Claim to which this Plan applies. The PLF has no duty to contribute to the settlement of a Claim based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures to investigate, prevent, mitigate, review, or repair any Claim or matter that may create the potential for a Claim.</p> <p>3. The PLF will pay Claims Expense the PLF incurs.</p> <p style="padding-left: 20px;"> Claims Expense means: fees and expenses charged by any attorney designated by the PLF; all other fees, costs, and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair, or appeal of a Claim, or any matter that may create the potential for a Claim; or fees charged by any attorney designated by the Covered Party with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered Claims Expense and do not reduce the available Limit of Coverage.</p> <p>4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend Claims for which coverage is excluded under Exclusion 4, and Claims for malicious prosecution, abuse of process, and wrongful initiation of civil proceedings, provided such Claims arise out of Your Covered Activities and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.</p>

POTENTIAL REVISION—EXCLUSION 10 (2019 PLAN)	2018 PLAN—EXCLUSION 10
<p>10. Law Practice Business Activities Exclusion. This Plan does not apply to any Claim:</p> <p>Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any Covered Party, or any Law Entity with which any Covered Party is now associated, or was associated at the time of the conduct giving rise to the Claim.</p> <p><i>The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a Covered Party or court in interpreting the PLF’s intent as to the scope of Exclusion 10:</i></p> <p>Example 1: <i>Attorney A writes a demand letter to Client for unpaid fees and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under Exclusion 10, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney A.</i></p> <p>Example 2: <i>Attorney B is owed fees for work performed for a client and files a lien against property in order to secure payment of the fees. The property owner sues Attorney B claiming the lien is improperly asserted. The claim against Attorney B is not covered.</i></p> <p>IMPORTANT NOTE: THIS EXCLUSION WAS AMENDED AS OF 1/1/19 BUT THIS IS NOT AN EXPANSION OF PREVIOUS COVERAGE. PLEASE SEE THE AMENDED DEFINITION OF “DAMAGES” REGARDING CLAIMS INVOLVING ATTORNEY FEES, COSTS, EXPENSES OR DISBURSEMENTS.</p>	<p>10. Law Practice Business Activities or Benefits Exclusion. This Plan does not apply to any Claim:</p> <ol style="list-style-type: none"> For any amounts paid, incurred, or charged by any Covered Party as fees, costs, or disbursements (or by any Law Entity with which any Covered Party was associated at the time the fees, costs, or expenses were paid, incurred, or charged), including but not limited to fees, costs, and disbursements alleged to be excessive, not earned, or negligently incurred, whether claimed as restitution of specific funds, forfeiture, financial loss, set-off, or otherwise. Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any Covered Party, or any Law Entity with which any Covered Party is now associated or was associated at the time of the conduct giving rise to the Claim; or For damages or the recovery of funds or property that have benefitted or will directly or indirectly benefit any Covered Party. <p>In the event the PLF defends any Claim or Suit that includes any claim within the scope of this exclusion, the Covered Party is required to consent to and cooperate with the PLF’s attempt to settle or dismiss any other claim(s) not falling within this exclusion. The PLF will have the right to withdraw from the defense following the settlement or dismissal of any such claim(s).</p> <p>This exclusion does not apply to the extent a Claim is based on an act, error, or omission that eliminates, reduces, or prejudices a client’s right or ability to recover fees, costs, or expenses from an opposing party. The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a Covered Party or court in interpreting the PLF’s intent as to the scope of Exclusion 10:</p> <p>Example 1: <i>Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A, which allegedly were excessive and negligently incurred by Attorney A. Under subsection (a), there is no coverage for the claim.</i></p> <p>Example 2: <i>Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill but later sues Attorney B to recover the fees paid. Under subsection (a), there is no coverage for the claim.</i></p> <p>Example 3: <i>Attorney C writes a demand letter to Client for unpaid fees and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under subsection (b), there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.</i></p> <p>Example 4: <i>Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D’s own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under subsection (b), there is no coverage for the claim.</i></p> <p>Example 5: <i>Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees, and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under subsection (c), there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.</i></p>

2019

PLF Primary
Coverage Plan



Professional
Liability Fund

The Professional Liability Fund (“PLF”) is an instrumentality of the Oregon State Bar created pursuant to powers delegated to it in ORS 9.080(2)(a). The PLF Primary Coverage Plan (“Plan”) is not intended to cover all claims that can be made against Oregon lawyers. The limits, exclusions, and conditions of the Plan are in place to enable the PLF to meet the statutory requirements and to meet the Mission and Goals set forth in Chapter One of the PLF Policies, including, “To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective loss prevention.” The limits, exclusions, and conditions of the Plan are to be fairly and objectively construed for that purpose.

While mandatory malpractice coverage and the existence of the PLF provide incidental benefits to the public, the Plan is not to be construed as written with the public as an intended beneficiary. The Plan is not an insurance policy.

Because the Plan has limits and exclusions, members of the Oregon State Bar are encouraged to purchase excess malpractice coverage and coverage for excluded claims through general liability and other insurance policies. Lawyers and their firms should consult with their own insurance agents as to available coverages. Excess malpractice coverage is also available through the PLF.

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INTRODUCTION

Effective 1.1.2019

Throughout this Professional Liability Fund (“PLF”) Primary Coverage Plan (“Plan”): **You** and **Your** refer to the Named Party shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth in the Plan. A List and Index of Defined Terms is attached as an Appendix.

SECTION I – COVERAGE AGREEMENT

Subject to the terms, conditions, definitions, exclusions, and limitations set forth in this Plan and the applicable **Limit of Coverage** and **Claims Expense Allowance**, as defined in Section VII, the coverage provided by this Plan is as follows:

A. Indemnity

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which this **Coverage Period** applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

Legally Obligated to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of **Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the claimant to collect money **Damages** directly from the **Covered Party**.

Damages means monetary compensation a **Covered Party** must pay for harm or loss and does not include:

- a. Fines; penalties, statutorily enhanced damages, or enhanced prevailing fees;
- b. Punitive or exemplary damages;
- c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any **Covered Party** or to any **Law Entity** with which any **Covered Party** was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;
- d. Rescission, injunctions, accountings, restitution, equitable relief;
- e. Any personal profit or advantage to a **Covered Party**;
- f. Any award of attorney fees, costs, or interest arising from any claim referenced in (a) through (e) above, or from any excluded claim.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a Covered Party or court in interpreting the PLF’s intent as to the scope of Damages covered under the Plan:

Example 1: *Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A, which allegedly were excessive. Because this is not a claim for Damages, it is not covered.*

Example 2: *Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill but later sues Attorney B to recover the fees paid. This is not a claim for Damages, as defined in the Plan. Therefore, it is not covered.*

Example 3: Attorney C writes a demand letter to Client for unpaid fees and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under the definition of Damages, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.

Example 4: Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under the definition of Damages, there is no coverage for the claim.

Example 5: Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees, and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under the definition of Damages, there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.

Example 6: Attorney F advises client to sue a third party, charging substantial fees to file and litigate the suit. Client receives a very small recovery and sues Attorney F alleging that Attorney F was negligent in advising Client to sue the third party. Client sues Attorney F to recover the fees and costs Client spent or owes for pursuing the third party claim. Client alleges Attorney F should have realized the cost of pursuing the claim was not justified. This claim is not covered because the amounts sought by Client are not Damages. The same is true if Client claims that Attorney F was negligent for not advising Client that Attorney F, or another attorney, may have agreed to pursue the claim for a contingent fee.

Example 7: Attorney G fails to properly request attorney fees from an opposing party. As a result Client sues Attorney G because Client could have recovered fees if Attorney G had properly pursued them. This claim seeks Damages covered under the Plan.

B. Defense

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

Suit means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures to investigate, prevent, mitigate, review, or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay Claims Expense the PLF incurs.

Claims Expense means: fees and expenses charged by any attorney designated by the PLF; all other fees, costs, and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair, or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 in Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process, and wrongful initiation of civil proceedings, provided such **Claims** arise out of Your **Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

5. The PLF does not have a duty to defend any **Claim**, or the portion of any **Claim**, that is not a **Claim for Damages**, as defined in Section I A. In the event the PLF voluntarily agrees to defend any **Claim**, or any portion of a **Claim**, that does not seek Damages, it will be subject to the **Covered Party's** agreement that the **Covered Party** will cooperate with the PLF's attempt to settle or dismiss any alleged **Claim for Damages** that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.

C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay, or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

D. No Prior Knowledge or Prior Coverage

This Plan applies only to a **Covered Activity** that occurred after the Retroactive Date shown in the Declarations and either: (a) during the **Coverage Period**, or (b) before the **Coverage Period** if (i) on the effective date of this Plan, **You** had no knowledge of any **Claim** having been asserted or of any facts or circumstances that **You** were aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity** and (ii) there is no prior Plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior Plan or policy are sufficient to pay any liability or **Claim**.

E. Coverage Territory

This Plan applies to **Suits** brought in the United States, its territories, or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a judgment rendered in any other such jurisdiction.

SECTION II – WHO IS A COVERED PARTY?

Only the following are **Covered Parties** under this Plan:

A. The Individual Attorney Named in the Declarations

You are a **Covered Party** under this Plan, or in the event of **Your** death, adjudicated incapacity, or bankruptcy, **Your** conservator, guardian, trustee in bankruptcy, or legal or personal representative, when acting in such capacity, is a **Covered Party**, regarding any **Claim** to which this Plan applies, provided, at the time of the error, omission, negligent act, or breach of duty on which such **Claim** is based: (1) **You** were engaged in **Private Practice**; (2) **You** were licensed to practice in Oregon; and (3) **Your Principal Office** was in Oregon.

Private Practice means providing **Professional Legal Services** or **Special Capacity Services** through a **Law Entity**. **Private Practice** does not include:

Your work or conduct as an employee of any entity that is not a **Law Entity**, including but not limited to any private entity or any governmental body, subdivision, or agency, whether or not **You** are employed as a public official or employee, if **You** are subject to the direction and control of the non-**Law Entity** regarding the means and manner of providing services and are paid on a salaried basis, or hourly employee basis, as opposed to being retained as an independent contractor, paid on a fee for service or hourly fee basis; or

Your work or conduct in any other capacity that comes within the defense and indemnity provisions of ORS 30.285 and 30.287, unless the public body rejects any duty to defend and indemnify **You**. If the public body rejects **Your** defense and indemnity, the PLF will provide coverage, provided the **Claim** relates to a **Covered Activity** to which this Plan would otherwise apply, and the PLF will be subrogated to all **Your** rights against the public body.

For purposes of determining the location of **Your Principal Office**, a law office is a location held out to the public as **Your** law office. If **You** have only one law office, then that is the location of **Your Principal Office**. If **You** have two or more law offices and any of them is in Oregon, **Your Principal Office** is in Oregon if the total amount of time **You** spend engaged in **Private Practice** in such Oregon law office locations is greater than 50% of the time **You** engage in **Private Practice** in all law office locations when measured over the course of the 12 months prior to January 1st of each year. If **You** do not have a law office, **Your Principal Office** is in Oregon if: **You** reside in Oregon; or, if **You** reside outside Oregon but are not an active member of the bar of the jurisdiction where **You** reside.

B. Law Entities Legally Liable for Your Covered Activities

A **Law Entity** legally liable for any **Claim** against **You**, based on **Your Covered Activities** is also a **Covered Party** under this Plan. However, in the event the **Claim** also involves claims against other attorneys not covered under a PLF Plan, any defense or indemnity for the **Law Entity** under this Plan is limited to that portion of the **Law Entity's** legal liability that relates to **Your Covered Activities**.

A **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship that engages in the **Private Practice** of law in Oregon.

SECTION III – WHAT IS A COVERED ACTIVITY?

A. What Qualifies as a Covered Activity?

This Plan does not apply to all activities an attorney may engage in while practicing law. To fall within coverage, a **Claim** must arise out of a **Covered Activity**, subject to the following definitions, restrictions, and limitations, and all applicable exclusions in this Plan.

A **Covered Activity** is an error, omission, negligent act, or breach of duty committed in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**, as limited below, by:

- a. **You**;
- b. Another attorney for whose conduct **You** are legally liable, in **Your** capacity as an attorney, but only if the attorney was covered under a PLF Plan at the time of the act, error, omission, negligent act, or breach of duty; or
- c. **Your Non Attorney** employee, for whose conduct **You** are legally liable in **Your** capacity as an attorney, but only to the extent such employee was assisting **You** in providing **Professional Legal Services** or **Special Capacity Services**.

Non Attorney employee includes employees who are not attorneys, as well as employees who have a law degree but are not engaged in the practice of law in Oregon or any other state.

B. What Are Professional Legal Services?

Professional Legal Services are legal services or legal advice provided in a **Covered Party's** capacity as an attorney in **Private Practice**, including services a **Covered Party** provides as a mediator or arbitrator.

Professional Legal Services do not include activities such as, but not limited to, the following:

- a. Any conduct in carrying out the commercial or administrative activities associated with practicing law, including but not limited to activities such as collecting fees or costs, guaranteeing a client will pay third party vendors or service providers such as court reporters, depositing, endorsing, or otherwise transferring negotiable instruments, depositing or withdrawing any money or other instruments into or from trust accounts or other bank accounts, any activities relating to or arising from the receipt, transmittal, or

negotiation of counterfeit or fraudulent checks or instruments, or any activities that require no specialized skill or training, such as paying bills on time or not incurring unnecessary expenses;

- b. Business-related activities or services, including operating, managing, or controlling any property, business property, business, or institution in a manner similar to an owner, officer, director, partner, or shareholder, whether as a trustee or otherwise;
- c. Activities as an officer, director, partner, employee, shareholder, member, or manager of any entity except a **Law Entity**;
- d. Activities on any board, including but not limited to serving on the board of trustees of a charitable, educational, or religious institution, or a real estate or other investment syndication;
- e. Serving as trustee for the liquidation of any business or institution, or as trustee for the control of a union or other institution; or
- f. Non-legal services such as architectural, engineering, accounting, lobbying, marketing, advertising, trade services, public relations, real estate appraisal, real estate development, brokerage services, or other such services.

C. Special Capacity Services

Special Capacity Services provided by a **Covered Party**, arising out of a **Special Capacity Relationship**, are **Covered Activities** but only with respect to a **Claim** made by or for the benefit of a beneficiary of the **Special Capacity Relationship** and provided such **Claim** does not arise as a result of a claim by a third party relating to business activities or services provided by the **Covered Party** in the course of the **Special Capacity Relationship**.

Special Capacity Relationship means the **Covered Party** is formally named or designated to act in the capacity of a Personal Representative, Administrator, Conservator, Executor, Guardian Ad Litem, Special Representative pursuant to ORS 130.120 or a successor statute, or a Trustee administering a formal trust instrument for the benefit of a beneficiary.

Special Capacity Services means certain services commonly provided by an attorney in the course of a **Special Capacity Relationship** for the purposes of administering an estate or trust in accordance with applicable law and/or performing the legally required duties and obligations owed to beneficiaries of **Special Capacity Relationships**. **Special Capacity Services** do not include:

- a. Business-related services, including but not limited to operating, managing, or controlling any property, business property, business, or institution, whether owned by the estate or trust or otherwise, in a manner similar to an owner, officer, director, partner, or shareholder; or
- b. Services provided by a **Covered Party** that generally fall within the scope of services commonly provided by another type of professional such as an accountant, tax professional, financial planner or advisor, appraiser, architect, engineer, surveyor, real estate agent, or other such professional, or by a person in another trade or occupation such as a contractor, landscaper, gardener, caregiver, caretaker, housekeeper, or similar service provider.

SECTION IV – WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed, or an arbitration or alternative dispute resolution proceeding is first initiated against a **Covered Party** under this Plan;

2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
3. The date any **Covered Party** under this Plan first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
4. The date any **Covered Party** under this Plan receives notice of a **Claim**;
5. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan; or
6. If Subsections 1 through 5 do not apply, the date the PLF opens a file in order to take steps and/or make expenditures, for the purpose of investigation, mitigation, review, or prevention of any potential **Claim** against a **Covered Party** under this Plan.

In the case of matters falling only within subsection 6, in the event there is any subsequent **Claim** against a **Covered Party** under this Plan, relating to or arising from such matter, the **Limit of Coverage** and/or **Claims Expense Allowance** for the **Plan Year** applicable to such **Claim** is reduced by the amount the PLF spends on the matter.

B. Special Rule Regarding Coverage Period Applicable to Related Claims Against Associated Attorneys

If any **Claim** against a **Covered Party** under this Plan is **Related** to one or more **Related Claim(s)** against any **Associated Attorney**, the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date any **Covered Party** under this Plan first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
4. The first date any **Associated Attorney** first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
5. The date the PLF received notice of the earliest **Related Claim**;
6. The date any **Covered Party** under this Plan received notice of the earliest **Related Claim**; or
7. The first date any **Associated Attorney** received notice of the earliest **Related Claim**.

Associated Attorney means any attorney who, at the time of the representation, advice, or activity at issue, or during any portion of such representation, advice, or activity: (1) was a member, partner, associate, of counsel, or contract attorney, in the same **Law Entity** with **You**; or (2) worked in association with **You**, or as co-counsel with **You**, regarding the representation, advice, or activity that is the subject of the **Claim(s)**.

If **You** did not have a PLF Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and **You** have no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** against **You** is determined using the method set forth in Section IV A.

The **Plan Year** applicable to **Related Claims** against attorneys who are not **Associated Attorneys** is determined pursuant to Section IV A.

The foregoing provisions regarding **Related Claims** involving **Associated Attorneys** does not increase the \$300,000 total maximum limit applicable to all **Related Claims**, whether against an **Associated Attorney**, or against any other attorney or **Law Entity**.

SECTION V – WHAT ARE RELATED CLAIMS?

A. Related Claims

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus. A **Claim** against **You** may be **Related** to another **Claim(s)** against **You** and/or to a **Claim(s)** against other attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

B. General Examples

General examples of **Related Claims** include, but are not limited to, the following:

1. Secondary or dependent liability. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral are **Related** to the **Claims** on which they are based.
2. Same transaction or occurrence. Multiple **Claims** arising out of the same transaction or occurrence or series of transactions or occurrences are **Related**. However, provided the **Claims** do not also fall within one of the other categories in this Section V B, the PLF will not treat the **Claims** as **Related** if: (a) the participating **Covered Parties** acted independently of one another; (b) they represented different clients or groups of clients whose interests were adverse; and (c) the claimants do not rely on any common theory of liability or damage.
3. Alleged scheme or plan. If claimants tie together different acts as part of an alleged overall scheme or operation, then the **Claims** are **Related**.
4. Actual pattern or practice. Even if a scheme or practice is not alleged, if **Claims** arise from a method, pattern, or practice in fact used or adopted by one or more **Covered Parties** or **Law Entities** representing multiple clients in similar matters, such **Claims** are **Related**.
5. One loss. When successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses, then the **Claims** are **Related**.
6. Class actions. All **Claims** alleged as part of a class action or purported class action are **Related**.

For the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to which **Claims** are considered to be **Related**, and subject to the special rules regarding limits under Section VII C, examples illustrating the PLF's intent, not intended to be exhaustive, are as follows:

Example 1: Secondary or Dependent Liability – Attorney A is an associate in a firm and commits malpractice. **Claims** are made against Attorney A, various attorneys who were partners in the firm at the time of the malpractice, and the firm. Even if Attorney A and some of the other lawyers are at different firms at the time of the **Claim**, all **Claims** are **Related**.

Example 2: Same Transaction, Occurrence, or Series of Transactions or Occurrences – Attorney A writes a tax opinion for an investment offering. Attorneys B and C, with a different law firm, assemble the offering circular. In 2010, Investors 1 and 2 bring **Claims** relating to the offering. Investor 3 brings a **Claim** in 2011. **Claims** against all attorneys and firms, by all three investors, are **Related**.

Example 3: Independent Representation of Adverse Clients Where There Is No Common Theory of Liability or Damage – Attorneys A and B represent husband and wife, respectively, in a divorce. Husband sues A for malpractice in litigating his prenuptial agreement. Wife sues B for not getting her proper custody rights over the children. A's and B's **Claims** are not **Related**.

Example 4: Same Transaction, Occurrence, or Series of Transactions or Occurrences/One Loss – An owner sells his company to its employees by selling shares to two employee benefit plans set up for that purpose. The plans and/or their members sue the company, its outside corporate counsel, its ERISA attorney, the owner and his attorney, and the plans' former attorney, contending there were improprieties in due diligence, the form of the agreements, and the amount and value of shares issued. The defendants file cross-claims. All **Claims** against the four attorneys are **Related** because they arise out of the same transactions or occurrences. The three necessary elements of the exception described in Section V B 2 are not satisfied because the claimants rely on common theories of liability. In addition, the exception may not apply because not all interests were adverse, theories of damages are common, or the attorneys did not act independently of one another. Even if the exception in Section V B 2 did apply, however, the **Claims** would still be **Related** under Section V B 5 because they involve one loss.

Example 5: Claimants Allege Overall Scheme or Operation – Attorney F represents an investment manager for multiple transactions over multiple years in which the manager purchased stocks in Company A on behalf of various groups of investors. Attorneys G and H represent different groups of investors. Attorney J represents Company A. Attorneys F, G, H, and J are all in different firms. They are all sued by the investors for securities violations arising out of this group of transactions. These **Claims** are all **Related** because, as is often the case in securities claims, the claimants have tied together different acts as part of an alleged overall scheme or operation.

Example 6: Actual Pattern or Practice – Attorneys A, B, and C in the same firm represent a large number of asbestos clients over several years' time, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by certain clients for improper evaluation. Plaintiffs do not allege a common scheme or plan, but because the firm in fact operated a firm-wide formula for handling the cases, these **Claims** are **Related** based on the **Covered Parties'** own pattern or practice.

Example 7: Successive or Collective Errors – Attorney C represents a group of clients at trial and commits certain errors. Attorney D of the same firm undertakes the appeal but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice but misses the statute of limitations. Clients sue all three attorneys. All **Claims** are **Related**.

Example 8: Class Action or Purported Class Action – Attorneys A, B, and C in the same firm represent a large banking institution. They are sued by the bank's customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All **Claims** are **Related**.

SECTION VI – WHAT IS EXCLUDED FROM COVERAGE?

1. **Fraudulent Claims.** This Plan does not apply to any **Claim** in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, has participated in any fraud or collusion with respect to the **Claim**.
2. **Wrongful Conduct.** This Plan does not apply to any **Claim** based on or arising out of:
 - a. any criminal act or conduct;
 - b. any knowingly wrongful, dishonest, fraudulent, or malicious act or conduct;
 - c. any intentional tort; or
 - d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

Exclusion 2 applies even if the Covered Party did not intend to cause harm or damages.

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

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

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

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

3. **Disciplinary Proceedings.** This Plan does not apply to any investigation or disciplinary proceeding by the Oregon State Bar or any similar entity.
4. **Punitive Damages, Sanctions, or Certain Fee Awards.** This Plan does not apply to:
 - a. The part of any **Claim** seeking punitive, exemplary, or statutorily enhanced damages against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable;
 - b. Any **Claim** for or arising out of the imposition of attorney fees, costs, fines, penalties, or remedies imposed as sanctions under any federal or state statute, administrative rule, court rule, or case law. However, with respect to any sanction awarded only against the client, this subsection (b) does not apply if: the **Covered Party** establishes that the sanction was caused by mere negligence on the part of the **Covered Party** and on the part of anyone for whose conduct a **Covered Party** is legally liable; and the sanction was not based, in whole or in part, on a finding of bad faith, malicious conduct, dishonest conduct, or misrepresentation on the part of the **Covered Party**, or on the part of anyone for whose conduct a **Covered Party** is legally liable; or
 - c. Any attorney fees or costs owed as a result of any statute making any attorney liable or responsible for fees or costs owed by a client.
5. **Failure to Pay Lien.** This Plan does not apply to any **Claim** based on or arising out of the non-payment of a valid and enforceable lien if actual notice of such lien was provided to any **Covered Party** or to anyone for whose conduct a **Covered Party** is legally liable, prior to the payment of the funds to a client or any person or entity other than the rightful lien-holder.
6. **Business Interests.** This Plan does not apply to any **Claim** by a business enterprise:
 - a. In which **You** have an **Ownership Interest**; or in which **You** are a general partner, managing member, or employee; or in which **You** control, operate or manage, either individually or a fiduciary capacity, any property that is owned, managed or maintained by the business enterprise; or
 - b. At the time of the alleged acts, errors or omissions on which the **Claim** is based: **You** had an **Ownership Interest** in the business enterprise; **You** were a general partner, managing member, or employee of the business enterprise; or **You** controlled, operated or managed, either individually or a fiduciary capacity, any property that was owned, managed or maintained by the business enterprise.

Ownership Interest means either **You**, those controlled by **You**, **Your** spouse, parent, stepparent, child, stepchild, sibling, any member of **Your** household, or those with whom **You** are regularly engaged in the practice of law collectively own more than 10% of the business enterprise or owned more than 10% of the business enterprise at the time of the alleged acts, errors or omissions on which the **Claim** is based.
7. **Partner and Employee Exclusion.** This Plan does not apply to any **Claim** made by:
 - a. A present, former, or prospective law partner, employer, or employee of a **Covered Party**, or of anyone for whose conduct a **Covered Party** is legally liable; or

- b. A present, former, or prospective officer, director, or employee of a professional corporation in which a **Covered Party**, or in which any attorney for whose conduct a **Covered Party** is legally liable, is or was a shareholder.

This Exclusion 7 does not apply if the **Claim** arises solely out of conduct in an attorney-client capacity for a person or entity listed in subsections (a) and (b).

- 8. **Business Transaction with Client.** This Plan does not apply to any **Claim** based on or arising out of any business transaction in which any **Covered Party**, or in which anyone for whose conduct a **Covered Party** is legally liable, participated with a client unless any written disclosure required by ORPC 1.8(a), or its equivalent, was properly executed prior to the transaction.
- 9. **Investment Advice.** This Plan does not apply to any of the following **Claims** or excluded activities, whether or not they are the sole cause, or a contributing cause, of any resulting loss or damage:

- a. Any **Claim** for investment losses, or for any damages arising from or relating to such losses, as a result of any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising any person or entity respecting the value of a particular investment; recommending investing in, purchasing, or selling a particular investment; providing any economic analysis of any investment; inducing any person or entity to make any particular investment; making any warranty or guarantee regarding any investment; or making a financial decision or investment choice on behalf of any other person or entity regarding the purchase or selection of any particular investment.

This subsection (a) does not apply, however, to **Claims** made by a purchaser of securities for losses that arise only from **Professional Legal Services** provided to a seller of securities, provided no **Covered Party**, nor any attorney for whose conduct a **Covered Party** is legally liable, provided any advice or services, or made any representations, falling within this exclusion, directly to such purchaser.

- b. Any **Claim** arising from any **Covered Party**, or any person for whose conduct any **Covered Party** is legally liable: advising or failing to advise any person in connection with the borrowing of any funds or property by any **Covered Party** for the **Covered Party** or for another; acting as a broker for a borrower or a lender; or giving advice of any nature when the compensation for such advice is, in whole or in part, contingent or dependent on the success or failure of a particular investment.
- c. Managing an investment, or buying or selling an investment for another, except to the limited extent such activities fall within the common and ordinary scope of **Special Capacity Services**.

- 10. **Law Practice Business Activities or Benefits Exclusion.** This Plan does not apply to any **Claim**:

Arising from or relating to the negotiation, securing, or collection of fees, costs, or disbursements owed or claimed to be owed to any **Covered Party**, or any **Law Entity** with which any **Covered Party** is now associated, or was associated at the time of the conduct giving rise to the **Claim**.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 10:

***Example 1:** Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A, which allegedly were excessive and negligently incurred by Attorney A. Under subsection (a), there is no coverage for the claim.*

***Example 2:** Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill but later sues Attorney B to recover the fees paid. Under subsection (a), there is no coverage for the claim.*

IMPORTANT NOTE: THIS EXCLUSION WAS AMENDED AS OF 1/1/19 BUT THIS IS NOT AN EXPANSION OF PREVIOUS COVERAGE. PLEASE SEE THE AMENDED DEFINITION OF "DAMAGES" REGARDING CLAIMS INVOLVING ATTORNEY FEES, COSTS, EXPENSES OR DISBURSEMENTS.

11. **Family Member and Ownership Exclusion.** This Plan does not apply to any **Claim** based on or arising from any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having provided or failed to provide:
- Professional Legal Services** to any person or entity that is his or her own **Family Member** or **Family Business** at the time any such services are provided or fail to be provided; or
 - Special Capacity Services** to a trust or estate: (i) if the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate; or (ii) if at the time any such **Special Capacity Services** are provided, or fail to be provided, any **Family Member** or **Family Business** of that **Covered Party**, or of the person for whose conduct a **Covered Party** is legally liable, is a beneficiary of the trust or estate.

Family Member(s) means spouse, parent, adoptive parent, parent-in-law, stepparent, grandparent, child, adopted child, stepchild, grandchild, son-in-law, daughter in-law, sibling, adopted sibling, stepsibling, half sibling, brother-in-law, sister-in-law, or any member of the **Covered Party's** household and, if the household member is a spousal equivalent of the **Covered Party**, the **Family Members** of any such person.

Family Business means a business entity in which the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, and/or the **Family Members** of such **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, collectively or individually, have a controlling interest.

This Exclusion 11 does not apply to **Professional Legal Services** or **Special Capacity Services** an attorney provides to another attorney's **Family Member** or **Family Business**.

12. **Benefit Plan Fiduciary Exclusion.** This Plan does not apply to any **Claim** arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having acted as a fiduciary under any employee retirement, deferred benefit, or other similar plan.
13. **Notary Exclusion.** This Plan does not apply to any **Claim** arising out of any witnessing of a signature or any acknowledgment, verification upon oath or affirmation, or other notarial act without the physical appearance before such witness or notary public.
14. **Loss of Funds or Property/Certain Disbursements.** This Plan does not apply to any **Claim** against any **Covered Party**, or against anyone for whose conduct a **Covered Party** is legally liable, relating to or arising from: conversion of any funds or property; misappropriation of any funds or property; improper commingling; negligent supervision of client funds or trust account property, including loss or reduction in the value of such funds or property; or the disbursement of funds, checks or other similar instruments deposited to a trust, escrow, or other similar account in which the deposit was not irrevocably credited to such account.
15. **General Tortious Conduct.** This Plan does not apply to any **Claim** for:
- Bodily injury, sickness, disease, mental anguish, emotional distress, or death of any person, except to the limited extent any such harm or injury is directly caused by an error, omission, negligent act, or breach of duty in providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or
 - Injury to, loss of, loss of use of, or destruction of any real, personal, tangible, or intangible property of any kind, except to the limited extent the loss or destruction of any such property materially and adversely affects the provision of **Professional Legal Services** or **Special Capacity Services**.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 15:

***Example 1:** Client gives Attorney C important documents relevant to a legal matter being handled by Attorney C. Following the completion of the matter, the documents are lost or destroyed. Client makes a claim for loss of the documents, reconstruction costs, and consequential damages due to future inability to use the documents. There is no coverage for this claim because the loss of documents did not adversely affect the professional services, which had already been completed.*

Example 2: Client gives Attorney B a defective ladder from which Client fell, to be used as critical evidence in his personal injury case. Attorney B loses the ladder and cannot use it as evidence, causing a defense verdict. A claim for the value of the lost personal injury case would not be excluded.

Example 3: A client makes a claim for bodily injury or emotional distress based on allegations that an attorney engaged in sexual contact with the client, the client suffered injury while riding in an attorney's car, or that the client slipped on the floor in an attorney's office. As an initial matter, none of these claims arise out of a **Covered Activity**. They are also excluded by Exclusion 15 a, and may also be subject to other exclusions.

Example 4: An attorney negligently fails to inform a client of a court date in a criminal matter. As a result, the client fails to appear and is arrested, jailed, and injured by another inmate. A claim against the attorney alleging damages arising from bodily injury and emotional distress is not excluded by Exclusion 15 a.

16. **Harassment and Discrimination.** This Plan does not apply to any **Claim** based on or arising out of harassment or discrimination by any **Covered Party** on the basis of race, creed, age, religion, sex, sexual orientation, sexual identity, disability, pregnancy, national origin, marital status, or any basis protected by law.
17. **Patent Exclusion.** This Plan does not apply to any **Claim** based upon or arising out of any **Covered Party**, or anyone for whose conduct a **Covered Party** is legally liable, having prosecuted a patent without being registered with the U.S. Patent and Trademark Office at the time any such services were provided.
18. **Contractual Obligation Exclusion.** This Plan does not apply to any **Claim**:
 - a. Based on or arising out of any bond or any surety, guaranty, warranty, joint control, or similar agreement, or any assumed obligation to indemnify another, whether signed or otherwise agreed to by a **Covered Party** or by someone for whose conduct any **Covered Party** is legally liable, unless the **Claim** arises out of **Special Capacity Services**, and the **Covered Party**, or person for whose conduct a **Covered Party** is legally liable, signed the bond or agreement solely in a representative capacity arising from the **Special Capacity Relationship**;
 - b. For liability based on an agreement or representation, if the **Covered Party** would not have been liable in the absence of the agreement or representation; or
 - c. To the extent the **Claim** is based on an actual or alleged promise to obtain a certain outcome or result if the **Covered Party** would not have been liable in the absence of such a promise.

The following illustrative examples, not intended to be exhaustive, are provided to assist a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 18:

Example 1: Attorney A personally guarantees that a client will secure funding for a real estate development. Any claim against Attorney A arising from the guarantee is not covered.

Example 2: Attorney B enters into an agreement with a client that if there is any dispute arising from the representation, the prevailing party will be able to recover attorney fees. The client sues Attorney C for malpractice and prevails. The contractually based attorney fee award is not covered because it would not exist in the absence of the agreement.

Example 3: Attorney C promises a plaintiff that he will recover at least \$200,000 in a lawsuit but does not achieve this result. To the extent the client bases any claim against Attorney D solely on a promise to obtain a particular outcome, rather than on negligence in failing to meet the applicable standard of care, there is no coverage for the breach of contract claim.

19. **Bankruptcy Trustee Exclusion.** This Plan does not apply to any **Claim** arising out of activity as a bankruptcy trustee.
20. **Confidential or Private Information/Computer Systems.** This Plan does not apply to any **Claim** arising from:
 - a. Any loss of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, or any access or potential access by third parties, disclosure to third parties, or publication of **Personally Identifiable Non-Public Information** or **Third Party Corporate Information**, whether or not such information was in electronic form or in paper form;

- b. Any violation of a federal, state or foreign statute or regulation requiring the protection and/or security of information referenced in subsection (a), including but not limited to failure to report the loss of such information; or
- c. Any loss of, loss of use of, damage to, corruption of, inability to access, inability to manipulate, compromise of, or breach of any electronically stored information or data; the receipt or transmission of malware or malicious code or other harm resulting from transmission by a computer system to the computer system of a third party; or actual or attempted extortion by anyone who has gained or claims to have gained access to or control of any electronic devices, electronic data systems, electronically stored data, or access to or control of any confidential or private information or data, whether or not it is stored electronically.

Personally Identifiable Non-Public Information means any personal information that is not public and that may not be disclosed without proper authorization and/or notice pursuant to any federal, state, or foreign law or regulation, if such information allows an individual to be uniquely and reliably identified or contacted or allows access to the individual's financial account or medical record information. This includes, but is not limited to, certain medical or health care information, driver's license or state identification information, social security numbers, credit information, or financial account information.

Third Party Corporate Information means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report, or other item of information of a third party that is not available to the general public.

This Exclusion 20, however, does not apply to a **Claim** to the limited extent it arises solely out of immediate inability to provide **Professional Legal Services** or **Special Capacity Services** caused by the sudden and unexpected loss of documents or information necessary to such services provided: (i) such loss materially and adversely affected the ability to provide such services; and (ii) following the discovery of any such loss of documents or information, the **Covered Party**, at the **Covered Party's** own expense, took any and all reasonable and necessary steps as were possible to restore, recover, replace, or obtain such documents or information before the time the services had to be provided.

If the PLF agrees to defend a **Suit** that includes a **Claim** falling within this exclusion, and/or a **Claim** falling within the exception set forth in the preceding paragraph, the PLF will not pay any costs such as those relating to privacy notification, credit monitoring, forensic investigation, computer reprogramming, computer security experts, computer services of any kind, call center support costs, public relations costs, or any similar costs

21. **Escrow/Holding Exclusion.** This Plan does not apply to any **Claim** arising from a **Covered Party** entering into an express or implied agreement with two or more parties to a transaction that in order to facilitate the transaction, the **Covered Party** will hold documents, money, instruments, titles, or property of any kind until certain terms and conditions are satisfied, or a specified event occurs. This exclusion does not apply to a **Claim** based on: (a) a **Covered Party's** distribution of settlement funds received from the **Covered Party's** client, or from an opposing party, in order to close a settlement; or (b) a **Covered Party's** distribution of funds pursuant to and consistent with a limited or general judgment in a domestic relations proceeding.

The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of Exclusion 21:

***Example 1:** Lawyer is hired to act as a neutral third party to hold money in a transaction between non-clients. The parties do not provide written instructions, but agree that the lawyer should determine when it is appropriate to release the money and deliver it to one of the parties. **Claims** arising from this engagement are excluded. Even if the parties agreed upon and provided the lawyer with written instructions regarding when the money should be delivered, the claims are excluded.*

***Example 2:** Lawyer represents one party to a transaction with another party and pursuant to instructions from both parties, holds money or other property to disburse in accordance with those instructions. **Claims** arising from this engagement, including the wrongful disbursement or withholding of money or property, are excluded*

***Example 3:** Lawyer represents one party in a dispute and, upon settlement of the dispute, receives settlement proceeds from the adverse party's lawyer with instructions not to distribute the funds until various contingencies*

have occurred. Because of an innocent mistake, Lawyer incorrectly believes all contingencies are satisfied and distributes the settlement funds prematurely. Exclusion 21 does not apply to a claim based on this distribution. (But note that Exclusions 2 and 14 would apply to knowingly wrongful distributions or conversion of settlement funds.)

Example 4: Lawyer represents the trustee of a trust and is holding money to be distributed to the trust beneficiaries pending the payment of debts owed by the trust. After payment of the debts, and distribution to the beneficiaries, one of the beneficiaries claims the lawyer negligently paid a debt that was not owed. This **Claim** is not excluded by Exclusion 21 because the lawyer has not “entered into an express or implied agreement with two or more parties to a transaction” within the intended meaning of Exclusion 21.

SECTION VII – LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE, AND SPECIAL LIMITS REGARDING RELATED CLAIMS

A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this Plan is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this Plan applies. The making of multiple claims or claims against more than one **Covered Party** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this Plan applies:

1. All **Claims Expense** paid by the PLF on behalf of any **Covered Party** under this Plan that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF’s payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments, or any other indemnity payments arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this Plan also provides a separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this Plan, subject to Section VII C below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments, or any other indemnity payments.

C. Special Rules and Limits for Related Claims

If **Your** Plan and one or more other Plans issued by the PLF to other attorneys apply to **Claims** that are **Related**, then regardless of the number of claims, claimants, clients, attorneys, or **Law Entities** involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF Plan regarding all such **Related Claims**. This is subject only to the exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available to **You** cannot exceed the amount of the available remaining limit of **Your** Plan in effect during the **Coverage Period** that applies to the **Related Claim(s)** against **You**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on **Your** behalf, or on behalf of other attorneys or **Law Entities** against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** available to **You** has been exhausted, the PLF is not obligated to investigate, defend, pay, or settle any **Related Claim** against **You**.

Under the following circumstances, the PLF may grant more than one **Claims Expense Allowance** with respect to **Related Claims**: (1) the **Related Claims** allegedly arise from **Covered Activities** by two or more **Law Entities**; (2) the **Law Entities** were separate entities at the time of the alleged errors, omissions, negligent acts, or breaches of duty; and (3) a **Covered Party** requests and, in the sole judgment of the PLF, should be entitled to separate defense counsel. Not more than one separate **Claims Expense Allowance** per **Law Entity**, or group of **Law Entities** practicing together as a single firm, will be granted. Any such separate allowance may be used only for the defense of **Claims** arising from the **Covered Activities** of the **Law Entity** or group of Entities to which the separate allowance applies. If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

For the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the meaning of Section VII C, illustrative examples, not intended to be exhaustive, are as follows:

Example 1: In 2009, Attorney A, with Firm 1, assists a client in setting up an LLC to obtain investors for real estate development projects, also advising the client as to applicable securities laws requirements. In 2011, Attorneys B and C, with Firm 2, assemble information the LLC provides to investors. In 2016, Investor W brings securities claims against Attorneys B and C. The Applicable Plan Year for the **Related Claims** against Attorneys B and C is 2016. The PLF incurs \$50,000 in **Claims Expense** relating to Investor W's **Claims** against Attorneys B and C and settles the **Claims** against them for a total of \$250,000 - \$125,000 for Attorney B and \$125,000 for Attorney C.

In January of 2018, following the settlement of Investor W's **Claims** against Attorneys B and C, Investor X brings a securities claim against Attorneys A, B, and C regarding Investor X's investment in the same LLC. The **Claims** by Investor X are **Related** to the previous **Claims** against Attorneys B and C. Because Attorneys B and C are **Associated Attorneys**, this **Claim** relates back to the 2016 Plans issued to Attorneys B, and C. Therefore, the applicable Plan Year for the claim by Investor X, as it relates to Attorneys B and C, is 2016. However, because Attorney A acted independently of Attorneys B and C, and is not an **Associated Attorney**, the applicable Plan Year for the **Claim** against Attorney A is 2018, the year Investor W first alleged a **Claim** against Attorney A.

There was another completely unrelated **Claim** against Attorney A in 2018, but the PLF successfully defended Attorney A, using his entire \$50,000 **Claims Expense Allowance** for 2018. Although Attorney A has not used his \$300,000 limit for 2018, because the PLF has already spent \$250,000 settling **Related Claims** against Attorneys B and C, all the attorneys collectively, now have a total limit of \$50,000 to respond to the **Claim** by Investor X. Because Attorney A has already used his **Claims Expense Allowance** for 2018, he does not have another **Claims Expense Allowance** for this **Claim**. There is no additional **Claims Expense Allowance** available for Attorneys B and C because they are entitled to only one shared **Claims Expense Allowance** regarding the **Related Claims**, and this was already spent on the **Related Claim** by Investor W.

Example 2: Same facts as in Example 1, except that the previous unrelated 2018 **Claim** against Attorney A was not successfully defended. The PLF spent Attorney A's \$50,000 **Claims Expense Allowance**, plus \$275,000 settling the unrelated 2018 **Claim** against Attorney A. Under this scenario, there is a total maximum limit of \$25,000 for Attorney A to respond to the **Claim** by Investor X. Although the \$50,000 left after settling the **Claim** by Investor W is available collectively to A, B, and C, no more than \$25,000 of this amount can be used for Attorney A because that is all that is remaining of his 2018 limit. Assuming \$25,000 is spent to settle the Investor X **Claim** against Attorney A, there is \$25,000 remaining to defend or indemnify Attorneys B and C against Investor X.

Example 3: Same facts as in Example 1, except that \$200,000 is spent settling Investor W's claim against Attorneys B and C. Attorneys B and C have exhausted their 2016 **Claims Expense Allowance** applicable to this **Related Claim**. Attorney A has already spent \$10,000 of his 2018 **Claims Expense Allowance** to defend an unrelated **Claim**, but he has not spent anything on indemnity in 2018. Attorney A has \$40,000 of his 2018 **Claims Expense Allowance** to defend against the Investor X claim. Attorneys B and C have exhausted their applicable **Claims Expense Allowance**. Collectively, all three Attorneys have \$100,000 for defense and/or indemnity relating to the claim by Investor W.

Example 4: Same facts as Example 1, except the PLF settles Investor W's **Claim** against Attorneys B and C for \$30,000, without incurring any **Claims Expense** for them. Attorney A has used all but \$5,000 of his 2018 limit, as well as his **Claims Expense Allowance**, for an earlier unrelated **Claim**. Under this scenario, there is a maximum total limit of \$270,000 to respond to the **Claim** by Investor X against all three attorneys, but only \$5,000 of this amount is available to Attorney A because that is the limit remaining under his 2018 Plan. Attorney A has no **Claims Expense Allowance** remaining. Attorneys B and C, however, have a shared \$50,000 **Claims Expense Allowance** for their defense against the claim by Investor X.

Example 5: Same facts as Example 1, except Attorney A already spent both his entire 2018 **Claims Expense Allowance**, plus his entire 2018 limit on an unrelated **Claim**. Attorney A has no coverage for the **Claim** by Investor X under the PLF Primary Coverage Plan.

Example 6: Attorney A performed **Covered Activities** for a client while Attorney A was at two different law firms. Client sues A and both firms. Both firms request separate counsel, each one contending most of the alleged errors took place while A was at the other firm. The defendants are collectively entitled to a maximum of one \$300,000 **Limit of Coverage** and two **Claims Expense Allowances**. For purposes of this provision, Attorney A (or, if applicable, her professional corporation) is not a separate **Law Entity** from the firm at which she worked. Accordingly, two, not three, **Claims Expense Allowances** are potentially available.

Example 7: Attorney A is a sole practitioner, practicing as an LLC, but also working of counsel for a partnership of B and C. While working of counsel, A undertook a case that he concluded involved special issues requiring the expertise of Attorney D from another firm. D and C work together in representing the client and commit errors in handling the case. Two **Claims Expense Allowances** are potentially available. There are only two separate firms – the BC partnership and D's firm.

SECTION VIII – DUTIES OF COVERED PARTIES

A. Notice of Claims, Suits, and Circumstances

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Assistance and Cooperation in Defense

As a condition of coverage under this Plan, the **Covered Party** will, without charge to the PLF, cooperate with the PLF and will:

1. Provide to the PLF, within 30 days after written request, narrative statements or sworn statements providing full disclosure concerning any **Claim** or any aspect thereof;
2. Attend and testify when requested by the PLF;
3. Furnish to the PLF, within 30 days after written request, all files, records, papers, and documents that may relate to any **Claim** against the **Covered Party**;
4. Execute authorizations, documents, papers, loan receipts, releases, or waivers when requested by the PLF;

5. Submit to arbitration of any **Claim** when requested by the PLF;
6. Permit the PLF to cooperate and coordinate with any excess or umbrella insurance carrier as to the investigation, defense, and settlement of all **Claims**;
7. Not communicate with any person, other than the PLF or an insurer for the **Covered Party**, regarding any **Claim** that has been made against the **Covered Party**, after notice to the **Covered Party** of such **Claim**, without the PLF's written consent; and
8. Assist, cooperate, and communicate with the PLF in any other way necessary to investigate, defend, repair, settle, or otherwise resolve any **Claim** against the **Covered Party**.

C. No Voluntary Payments, Admissions, or Representations

No **Covered Party** can bind or prejudice the PLF with voluntary payments or admissions or representations. If a **Covered Party**, without the advance written consent of the PLF, voluntarily makes any payment, assumes any obligation or incurs any expense with respect to a **Claim**, makes any representation to a claimant that the claimant will be indemnified, or makes any representation as to the value or potential value of the **Claim**, any payment, obligation, expense, obligation to pay, or obligation to pay the represented amount will be the sole obligation of the **Covered Parties**, to be paid or satisfied at the sole cost and expense of the **Covered Parties**.

D. Protection of Subrogation Rights

To the extent the PLF makes any payment under this Plan, it will be subrogated to any **Covered Party's** rights against third parties to recover all or part of these sums. No **Covered Party** will take any action to destroy, prejudice, or waive any right of subrogation the PLF may have, and will, if requested, assist the PLF in bringing any subrogation action or similar claim. The PLF's subrogation or similar rights will not be asserted against any **Non Attorney** employee of a **Covered Party** who was acting in the course and scope of employment, except for claims arising from intentional, dishonest, fraudulent, or malicious conduct of such person.

E. Assistance and Cooperation in Coverage Issues

1. Any party claiming coverage under this Plan has a duty and obligation to timely provide, upon the request of the PLF, accurate, complete, and truthful information relevant to any claimed right to coverage under this Plan.
2. In the event the PLF proposes, in writing, a settlement to be funded by the PLF but subject to the **Covered Party's** being obligated to reimburse the PLF if it is later determined that the Plan did not cover all or part of the **Claim** settled, the **Covered Party** must advise the PLF in writing that the **Covered Party** either agrees or objects to the PLF's proposal. The written response must be made by the **Covered Party** as soon as practicable and, in any event, must be received by the PLF no later than one business day (and at least 24 hours) before the expiration of any time-limited demand for settlement. A failure to respond, or a response that fails to unequivocally object to the PLF's written proposal, constitutes an agreement to the PLF's proposal. The **Covered Party's** objection to the settlement waives any right to assert that the PLF should have settled the **Claim**.

SECTION IX – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

1. No legal action in connection with this Plan may be brought against the PLF unless all **Covered Parties** have fully complied with all the terms and conditions of the Plan.
2. Absent the PLF's express written consent, the PLF will not be obligated to make any indemnity payments until after the **Covered Party** has been held liable in a **Suit** on the merits, and all applicable coverage issues have been determined by Declaratory Judgment.

3. The bankruptcy or insolvency of a **Covered Party** does not relieve the PLF of its obligations under this Plan, nor deprive the PLF of any of its rights under this Plan.
4. In the event of exceptional circumstances in which the PLF, at the PLF's option, has paid a portion or all of the **Limit of Coverage** toward settlement of a **Claim** before all applicable coverage issues have been finally determined, then resolution of the coverage dispute as set forth in this Section will occur as soon as reasonably practicable following the PLF's payment. In the event it is determined that this Plan is not applicable to the **Claim**, or only partially applicable, then judgment will be entered in Multnomah County Circuit Court in the PLF's favor and against the **Covered Party** (and all others on whose behalf the PLF's payment was made) in the amount of any payment the PLF made on an uncovered portion of the **Claim**, plus interest at the rate applicable to judgments from the date of the PLF's payment. Nothing in this Section creates an obligation by the PLF to pay a portion or all of the PLF's **Limit of Coverage** before all applicable coverage issues have been fully determined.
5. This Plan is governed by the laws of Oregon, regardless of any conflict-of-law principle that would otherwise result in the laws of any other jurisdiction governing this Plan. Any disputes as to the applicability, interpretation, or enforceability of this Plan, or any other issue pertaining to or arising out of any duties or provision of benefits under this Plan, between any **Covered Party** (or anyone claiming through a **Covered Party** or based on any actual or alleged right of direct action) and the PLF, whether any claim against the PLF is based in tort or in contract, is subject to Oregon law and will be tried in the Multnomah County Circuit Court of the State of Oregon, which will have exclusive jurisdiction and venue of such disputes at the trial level.
6. No person or entity may recover consequential damages for the PLF's breach of any provision in this Plan. Any damages recoverable for any such breach are strictly limited to those amounts a court rules would have been payable by the PLF, under the provisions of this Plan, if there had been no such breach.
7. The PLF has a right of subrogation and may bring a legal action to recover from a **Covered Party** under this Plan for damages it has paid regarding a **Claim** against another attorney or entity covered under this or another PLF Plan, subject to the following conditions:
 - a. If not for the PLF's right of subrogation, the **Covered Party** against whom recovery is sought could be responsible for contribution, indemnity, or otherwise to the person or entity on whose behalf the PLF's payment was made; and
 - b. The PLF's right of subrogation can be alleged based on a theory or theories for which there would not be coverage under this Plan for the **Covered Party** against whom recovery is sought.

In the circumstances outlined in this subsection 7, the PLF reserves the right to sue the **Covered Party**, either in the PLF's name or in the name of the person or entity on whose behalf the PLF has paid, to recover such amounts as the PLF determines appropriate, up to the full amount the PLF has paid under one or more other Plans issued by the PLF. However, this subsection will not entitle the PLF to sue the **Covered Party** if the PLF's alleged rights against the **Covered Party** are premised on a theory of recovery that would entitle the **Covered Party** to indemnity under this Plan if the PLF's action were successful.

The following examples, not intended to be exhaustive, illustrate the effect of Section IX 5:

***Example 1:** Attorney A engages in intentionally wrongful conduct in representing Client X. Attorney A's partner, Attorney B, does not know of or acquiesce in Attorney A's wrongful conduct. Client X sues both Attorneys A and B. Attorney A has no coverage for the **Claim** under his Plan, but Attorney B has coverage for her liability under her Plan. If the PLF pays the **Claim** under Attorney B's Plan, it has a right to sue Attorney A for the damages it paid.*

***Example 2:** Same facts as the prior example, except that the PLF lends funds to Attorney B under terms that obligate Attorney B to repay the loan to the extent she recovers damages from Attorney A in an action for indemnity. The PLF has the right, pursuant to such an arrangement with Attorney B, to participate in her action against Attorney A.*

SECTION X – SUPPLEMENTAL ASSESSMENTS

This Coverage Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, **You** agree to pay **Your** supplemental assessment to the PLF within 30 days of request. The PLF is authorized to make additional assessments against **You** for this **Plan Year** until all the PLF's liability for this **Plan Year** is terminated, whether or not **You** are a **Covered Party** under a Plan issued by the PLF at the time the assessment is imposed.

SECTION XI – RELATION OF PLF COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If a **Covered Party** has valid and collectible insurance coverage or other source of indemnification that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under the Plan until the limits of the **Covered Party's** insurance or other source of indemnification, including any applicable deductible, have been exhausted, unless such insurance or other source of indemnification is written only as specific excess coverage over the **Claims Expense Allowance** and **Limit of Coverage** of this Plan.

SECTION XII – WAIVER AND ESTOPPEL

Notice to or knowledge of the PLF's representative, agent, employee, or any other person will not effect a waiver, constitute an estoppel, or be the basis of any change in any part of this Plan, nor will the terms of this Plan be waived or changed except by written endorsement issued and signed by the PLF's authorized representative.

SECTION XIII – AUTOMATIC EXTENDED REPORTING COVERAGE

1. If **You** terminate **Your** PLF coverage during this **Plan Year**, or do not obtain PLF coverage as of the first day of the next year following the expiration of this **Plan Year**, as of **Your** last day of PLF coverage, and until the date specified in subsection 2, **You** will automatically have extended reporting coverage under this Plan for future **Claims** made against **You**, provided such **Claims** are not based on activities that occurred after **Your** last day of PLF coverage. **Your** extended reporting coverage does not provide **You** with a renewed **Limit of Coverage** or **Claims Expense Allowance**. The remaining **Limit of Coverage** and **Claims Expense Allowance** available under this Plan, after subtracting all amounts spent by the PLF regarding any **Claims** or matters to which this Plan applied or applies, as of the date any such future **Claim** is made, will be the maximum amount available for the defense and indemnity of any such **Claim**.
2. If **You** terminate **Your** PLF coverage during this **Plan Year** and return to PLF coverage later in the same year, the extended reporting coverage granted to **You** under subsection 1 will automatically terminate as of the date **You** return to PLF coverage, the coverage provided under this Plan will be reactivated, and **You** will not receive a new **Limit of Coverage** or **Claims Expense Allowance** on **Your** return to coverage.

SECTION XIV – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF, voids any coverage under the Plan.

APPENDIX A – LIST AND INDEX OF DEFINED TERMS

1. **Associated Attorney** means any attorney who, at the time of the representation, advice, or activity at issue, or during any portion of such representation, advice, or activity: (1) was a member, partner, associate, of counsel, or contract attorney, in the same **Law Entity** with **You**; or (2) worked in association with **You**, or as co-counsel with **You**, regarding the representation, advice, or activity that is the subject of the **Claim(s)**. (p. 5)
2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Section I A, p.1)
3. **Claims Expense** has the meaning set forth in Section I B 3. (p. 2)
4. **Claims Expense Allowance** means the separate allowance for aggregate **Claims Expense** for all **Claims** as provided for in Section VII B. (p. 13)
5. **Coverage Period** means the coverage period shown in the Declarations under the heading, “Coverage Period.” (¶1, p. 1)
6. **Covered Activity** has the meaning set forth in Section III A. (p. 3)
7. **Covered Party** means any person or **Law Entity** qualifying as such under Section II. (p. 2)
8. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include:
 - a. Fines; penalties, statutorily enhanced damages, or enhanced prevailing fees;
 - b. Punitive or exemplary damages;
 - c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any **Covered Party** or to any **Law Entity** with which any **Covered Party** was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;
 - d. Rescission, injunctions, accountings, restitution, equitable relief;
 - e. Any personal profit or advantage to a **Covered Party**;
 - f. Any award of attorney fees, costs, or interest arising from any claim referenced in (a) through (e) above, or from any excluded claim. (Section I A, p. 1)
9. **Family Business** has the meaning set forth in Exclusion 11. (p. 10)
10. **Family Member(s)** has the meaning set forth in Exclusion 11. (p. 10)
11. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company, or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Section II B, p. 3)
12. **Legally Obligated** has the meaning set forth in Section I A. (p. 1)
13. **Limit of Coverage** has the meaning set forth under Section VII A. (p. 13)
14. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree but are not engaged in the practice of law in Oregon or any other state. (Section III A, p. 3)
15. **Personally Identifiable Non-Public Information** has the meaning set forth in Exclusion 20. (p. 12)
16. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued. (¶1, p. 1)
17. “PLF” means the Professional Liability Fund of the Oregon State Bar. (¶1, p.1)
18. **Private Practice** has the meaning set forth in Section II A. (p. 2)
19. **Principal Office** has the meaning set forth in Section II A. (p. 3)
20. **Professional Legal Services** has the meaning set forth under Section III B. (p. 4)
21. **Related Claims** has the meaning set forth in Section V. (p. 6)
22. **Special Capacity Relationship** has the meaning set forth in Section III C. (p. 4)
23. **Special Capacity Services** has the meaning set forth in Section III C. (p. 4)
24. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding only if the PLF expressly consents to it. (Section I B, p. 1)
25. **Third Party Corporate Information** has the meaning set forth in exclusion 20. (p. 12)
26. **You** and **Your** refer to the Named Party shown in the Declarations. (¶1, p. 1)



Professional
Liability Fund

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2019

PLF Claims Made
Excess Plan



Professional
Liability Fund

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INTRODUCTION

Effective 1.1.2019

This Professional Liability Fund (“PLF”) Excess Plan is excess coverage over the PLF Primary Plan and is also assessable. Although the coverage provided under both the Primary and Excess Plans is similar, not all terms, conditions, definitions, and exclusions are the same. Coverage under this Plan is more restrictive and differs in some respects. You should read both the Primary and Excess Plans, in their entirety, to understand your coverage.

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A. For the purposes of illustrating the PLF’s intent as to certain provisions in this Plan, Appendix B contains related examples.

Plan Year means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

Subject to the terms, conditions, definitions, exclusions and limitations set forth in this Excess Plan and the applicable **Excess Limit of Coverage**, as set forth in the Declarations, and defined in Section VII, this Plan provides the following coverage:

SECTION I – COVERAGE AGREEMENT

A. Indemnity

The PLF will pay all sums in excess of the **Applicable Underlying Limit** and/or applicable Deductible that a **Covered Party** under this Plan, becomes **Legally Obligated** to pay because of **Claims First Made** against a **Covered Party** during the **Coverage Period**, arising from a **Covered Activity**, to which this Plan applies.

Applicable Underlying Limit means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the Claim for which coverage is sought.

Claim, Damages, and Legally Obligated have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

B. Defense

1. After the **Applicable Underlying Limit** has been exhausted and the applicable Deductible has been satisfied, the PLF will defend any **Suit** against a **Covered Party** seeking **Damages** to which this Plan applies until the **Excess Limit of Coverage** is exhausted. The PLF is not bound by any **Covered Party’s** agreement to resolve a dispute through arbitration or any other alternative dispute proceeding, and has no duty to defend or indemnify regarding any dispute handled or resolved in this manner without its consent.
2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim**, and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based only on projected defense costs or potential liability arising from uncovered claims. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review, or repair any **Claim** or matter that may create the potential for a **Claim**.

3. The PLF will pay all **Claims Expense** it incurs, and all such payments will reduce the **Excess Limit of Coverage**.
4. Notwithstanding Exclusions 2 and 4 of the PLF Primary Plan, incorporated in this Plan by reference, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process, and wrongful initiation of civil proceedings, provided such Claims arise out of **Your Covered Activities** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.

Suit and **Claims Expense** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

5. The PLF does not have a duty to defend any **Claim**, or the portion of any **Claim**, that is not a **Claim for Damages**, as defined in Section I A. In the event the PLF voluntarily agrees to defend any **Claim**, or any portion of a **Claim**, that does not seek Damages, it will be subject to the **Covered Party's** agreement that the **Covered Party** will cooperate with the PLF's attempt to settle or dismiss any alleged **Claim for Damages** that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.

C. Exhaustion of Limit

The PLF is not obligated to investigate, defend, pay, or settle any **Claim** after the applicable **Excess Limit of Coverage** has been exhausted.

D. Coverage Territory

This Plan applies only to **Suits** brought in the United States, its territories, or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

E. Basic Terms of Coverage

This Plan applies to **Claims for Damages** against a **Covered Party** arising from a **Covered Activity**, subject to all definitions, terms, restrictions, limitations, and exclusions applicable to this Plan, and the **Excess Limit of Coverage**, provided all the following terms and conditions of coverage are satisfied:

1. The **Claim** must be **First Made**, as determined by the rules set forth in Section IV, during the **Coverage Period**;
2. The **Covered Activity** on which the **Claim** is based must have been rendered on behalf of the **Firm**;
3. The **Covered Activity** on which the **Claim** is based must have occurred after the Retroactive Date listed in the Declarations, or listed in any endorsement to the Declarations;
4. The **Covered Activity** on which the **Claim** is based must have occurred:
 - a. During the **Coverage Period**; or
 - b. Before the **Coverage Period**, but only provided each of the following conditions are met:
 - (i) the **Firm** circulated its Application for Coverage among all attorneys listed in Section 10 of the Declarations as "Firm Attorneys," and those listed in Section 14 of the Declarations as current "Non Oregon Attorneys";
 - (ii) before the effective date of this Plan, no **Covered Party** had a basis to believe that the error, omission, negligent act, or breach of duty was a breach of the standard of care, or may result in a **Claim**; and

- (iii) there are no prior policy, policies, or agreements to indemnify that provide coverage for such liability or **Claim**, regardless of whether the available limits of any such policy, policies, or agreements to indemnify are subject to different limits, or otherwise differ from this Plan, and regardless of whether the limits of any such policy, policies, or agreements to indemnify are sufficient to pay any liability or **Claim**.

Subsection 4 b (ii) will not apply as to any **Covered Party** who, before the effective date of this Excess Plan, did not have a basis to believe the error, omission, negligent act, or breach of duty was a breach of the standard of care or may result in a **Claim**.

For the purposes of demonstrating the PLF's intent as to how this subsection 4 applies, illustrative examples are set forth in Appendix B of this Plan.

5. There must have been full and timely payment of all assessments relating to this Plan; and
6. There must have been compliance with the Duties of Covered Parties, as set forth in Section IX.

SECTION II – WHO IS A COVERED PARTY UNDER THIS EXCESS PLAN?

Only the following are **Covered Parties**:

A. The Firm

The **Firm** is a **Covered Party** under this Excess Plan but only with respect to liability arising out of the conduct of: an attorney(s) who is not an **Excluded Attorney** and qualifies as a **Covered Party** under Section II B; or a **Non Attorney** employee, subject to the terms and conditions of Section III.

Firm means any **Law Entity** designated in Section 1 or 11 of the Declarations.

Excluded Attorney means an attorney who is designated as such in the Declarations.

Law Entity and **Non Attorney** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

B. Individual Covered Parties

Only the following individuals, not otherwise listed in the Declarations as **Excluded Attorneys**, are **Covered Parties** under this Excess Plan as to any **Claim** to which this Plan applies, and only with respect to **Claims** arising from **Covered Activities** rendered on behalf of the **Firm**, as attorneys in **Private Practice**:

1. Attorneys who are specifically designated in the Declarations as “Firm Attorney,” “Former Attorney,” or “Non Oregon Attorney.”
2. A former partner, shareholder, member, or attorney employee of the **Firm** or any attorney formerly in an “of counsel” relationship to the **Firm** who ceased to be affiliated with the **Firm** more than five (5) years prior to the beginning of the **Coverage Period**, but only with respect to **Claims** arising out of a **Covered Activity** that took place while a PLF Primary Plan issued to that attorney was in effect.
3. An attorney who becomes affiliated with the **Firm** after the beginning of the **Coverage Period** and who has been issued a PLF Primary Plan is automatically a **Covered Party** – unless the attorney becomes affiliated with the **Firm** as a result of one of the changes required to be reported to the PLF and newly underwritten pursuant to Section IX D. In that event, the attorney is not covered under the Plan until and unless coverage for the affiliated attorney is underwritten and specifically accepted by the PLF. (See, *Section IX D.*)

4. In the event of the death, adjudicated incapacity, or bankruptcy of a **Covered Party**, the conservator, guardian, trustee in bankruptcy, or legal or personal representative of the **Covered Party**, when acting in such capacity, is a **Covered Party**.

Private Practice has the meaning set forth in the PLF Primary Plan in effect during this **Plan Year**.

SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Excess Plan, a **Covered Activity** is an error, omission, negligent act, or breach of duty: by a **Covered Party** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services**; or by a **Non Attorney** employee, for whose conduct a **Covered Party** is legally liable, who assists in providing such services, provided:

1. The error, omission, negligent act, or breach of duty, by the **Covered Party**, on which the **Claim** is based, occurred after any applicable Retroactive Date, before such **Covered Party's** applicable Separation Date, specified in the Declarations, and satisfies the conditions of Section I E 4;
2. The error, omission, negligent act, or breach of duty by the **Covered Party**, on which the **Claim** is based, constituted rendering **Professional Legal Services** or **Special Capacity Services** on behalf of the **Firm**, as an attorney in **Private Practice**; and
3. Any error, omission, negligent act, or breach of duty by a **Non Attorney** employee must be directly related to a **Covered Party's** rendering of **Professional Legal Services** or **Special Capacity Services**, on behalf of the **Firm**, that meets the conditions of subsections 1 and 2 above.

Professional Legal Services and **Special Capacity Services** have the meanings set forth in the PLF Primary Plan in effect during this **Plan Year**.

SECTION IV – WHEN IS A CLAIM FIRST MADE?

A. Date of Claim

For the purposes of this Excess Plan, subject to the exception set forth in Section IV B, regarding **Excess-Related Claims**, a **Claim** is **First Made** on the earliest of the following dates:

1. The date a lawsuit is first filed, or an arbitration or alternative dispute resolution proceeding is first initiated against a **Covered Party**;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party**;
3. The date any **Covered Party** receives notice of a **Claim**;
4. The date the PLF receives notice of a **Claim** against a **Covered Party**; or
5. The date a **Covered Party** under this Plan first becomes aware that a claimant intends to make a **Claim**, but the claimant is delaying assertion of the **Claim**, or the **Covered Party** is delaying notice of such intent to make a **Claim**, for the purpose of obtaining coverage under a later Plan.

B. Excess-Related Claims

When a **Claim** is **Excess-Related** to an earlier **Claim** or **Claims** against any **Covered Party** or **Parties** under this Excess Plan, the **Claim** is **First Made** on the date the earliest such **Excess-Related Claim** was **First Made**.

SECTION V – EXCESS-RELATED CLAIMS

A. Definition of Excess-Related Claims

For the purposes of this Excess Plan, two or more **Claims** are **Excess-Related** when the **Claims** are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, **Covered Activities**, damages, liabilities, or the relationships of the people or entities involved (including clients, claimants, attorneys, and/or other advisors) that are logically or causally connected or linked or share a common bond or nexus; and such **Claims** have been asserted, or are asserted, against **Covered Parties** under this Excess Plan.

General examples of **Excess-Related Claims** include, but are not limited to, the following:

1. **Claims** such as those based on vicarious liability, failure to supervise, or negligent referral;
2. Multiple **Claims** arising out of the same transaction, or occurrence, or series of transactions or occurrences;
3. **Claims** in which the claimants tie together different acts as part of an alleged overall scheme or operation;
4. **Claims** that arise from a method, pattern, or practice used or adopted by one or more **Covered Party** or **Law Entities** representing multiple clients in similar matters;
5. **Claims** in which successive or collective errors each cause or contribute to single or multiple clients' and/or claimants' harm, or cumulatively enhance their damages or losses; or
6. **Claims** alleged as part of a class action or purported class action.

Related Claims, as defined in the PLF Primary Plan, against other attorneys or firms not **Covered Parties** under this Plan do not necessarily cause a **Claim** to which this Excess Plan applies to relate back to the same excess **Plan Year** applicable to **Related Claims** under the PLF Primary Plan. Prior knowledge of a **Covered Party** or **Parties** of the potential for a **Claim** before the inception date of this Plan, however, may cause a **Claim** not to be covered under this Plan under the terms of Section I E 4.

*For the purpose of demonstrating the PLF's intent as to what constitutes an **Excess-Related Claim**, illustrative examples are set forth in Appendix B of this Plan.*

B. What Happens When Claims Are Excess-Related?

When **Claims** are **Excess-Related**, they are all considered as having been **First Made** on the date the earliest such **Claim** is **First Made**. This causes all such **Claims** to share the same maximum **Excess Limit of Coverage** that was in effect when the earliest such **Claim** was **First Made**.

SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY PLAN

All Exclusions in the PLF Primary Plan, in effect during this **Plan Year**, except Exclusion 6 (Business Interests) apply equally to the coverage under this Excess Plan. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION VII – EXCESS PLAN ADDITIONAL EXCLUSIONS

1. Business Interests. This Plan does not apply to any **Claim** by a business enterprise:
 - a. In which any **Covered Party** has an **Ownership Interest**; or in which any **Covered Party** is a general partner, managing member, or employee; or in which any **Covered Party** controls, operates or manages, either individually or a fiduciary capacity, any property that is owned, managed or maintained by the business enterprise; or
 - b. At the time of the alleged acts, errors or omissions on which the **Claim** is based: any **Covered Party** had an **Ownership Interest** in the business enterprise; any **Covered Party** was a general partner, managing member, or employee of the business enterprise; or any **Covered Party** controlled, operated, or managed, either individually or a fiduciary capacity, any property that was owned, managed, or maintained by the business enterprise.

Ownership Interest means that any **Covered Party**, those controlled by any **Covered Party**, the spouse, parent, stepparent, child, stepchild, sibling or any member of any **Covered Party's** household, or those with whom any **Covered Party** is regularly engaged in the practice of law collectively owns more than 10% of the business enterprise or owned more than 10% of the business enterprise at the time of the alleged acts, errors or omissions on which the **Claim** is based.
2. Excluded Attorney Exclusion. This Plan does not apply to any **Claim** against any **Covered Party**:
 - a. Arising from or relating to any act, error, or omission of any **Excluded Attorney** in any capacity or context, whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable; or
 - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of or harm caused by any **Excluded Attorney**.
3. Excluded Firm Exclusion. This Plan does not apply to any **Claim** made against a **Covered Party**:
 - a. That arises from or is related to any act, error, or omission of: (i) an **Excluded Firm**, or (ii) a past or present partner, shareholder, associate, attorney, or employee (including any **Covered Party**) of an **Excluded Firm** while employed by, a partner or shareholder of, or in any way associated with an **Excluded Firm**, in any capacity or context, and whether or not the **Covered Party** personally participated in any such act, error, or omission or is vicariously liable therefore; or
 - b. Alleging liability for the failure of a **Covered Party** or any other person or entity to supervise, control, discover, prevent, or mitigate any activities of, or harm caused by, any **Excluded Firm** or any person described in subsection (a)(ii) above.

Excluded Firm means a firm designated as such in the Declarations.
4. Office Sharing Exclusion. This Plan does not apply to any **Claim** alleging the vicarious liability of any **Covered Party** under the doctrine of apparent partnership, partnership by estoppel, or any similar theory, for the acts, errors, or omissions of any attorney, professional corporation, or other entity not listed in the Declarations with whom the **Firm** or attorney **Covered Parties** shared office space or office facilities at the time of any of the alleged acts, errors, or omissions.

SECTION VIII – EXCESS LIMIT OF COVERAGE AND DEDUCTIBLE

A. Excess Limit of Coverage

1. Regardless of the number of **Covered Parties** under this Excess Plan, the number of persons or organizations who sustain damage, or the number of **Claims** made, the PLF's maximum aggregate **Excess Limit of Coverage** for indemnity and **Claims Expense** under this Plan will be limited to the amount shown as the **Excess Limit of Coverage** in the Declarations, less the Deductible listed in the Declarations, if applicable. The making of **Claims** against more than one **Covered Party** does not increase the PLF's **Excess Limit of Coverage**.
2. All **Excess-Related Claims** are considered **First Made** during the **Plan Year** when the first such **Excess-Related Claim** was **First Made**. The single **Excess Limit of Coverage** in effect when the first such **Excess-Related Claim** was **First Made** will apply to all such **Claims**.

B. Deductible

1. The Deductible for **Covered Parties** under this Excess Plan who are not also covered under the PLF Primary Plan is either the maximum limit of liability for indemnity and **Claims Expense** under any insurance policy covering the **Claim** or, if there is no such policy or the insurer is either insolvent, bankrupt, or in liquidation, the amount listed in Section 5 of the Declarations.
2. The **Firm** is obligated to pay any Deductible not covered by insurance. The PLF's obligation to pay any indemnity or **Claims Expense** as a result of a **Claim** for which a Deductible applies is only in excess of the applicable amount of the Deductible. The Deductible applies separately to each **Claim**, except for **Excess-Related Claims**. The Deductible amount must be paid by the **Firm** as **Claims Expenses** are incurred or a payment of indemnity is made. At the PLF's option, it may pay such **Claims Expenses** or indemnity, and the **Firm** will be obligated to reimburse the PLF for the Deductible within ten (10) days after written demand from the PLF.

SECTION IX – DUTIES OF COVERED PARTIES

A. Timely Notice of Claims, Suits, or Circumstances

1. The **Firm** must, as a condition precedent to the right of protection afforded any **Covered Party** by this coverage, give the PLF, at the address shown in the Declarations, written notice of any **Claim** that is reasonably likely to involve any coverage under this Excess Plan.
2. In the event a **Suit** is brought against any **Covered Party** that is reasonably likely to involve any coverage under this Excess Plan, the **Firm** must immediately notify and deliver to the PLF, at the address shown in the Declarations, every demand, notice, summons, or other process received by the **Covered Party** or the **Covered Party's** representatives.
3. If during the **Coverage Period**, any **Covered Party** becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Excess Plan, the **Firm** must give written notice to the PLF as soon as practicable during the **Coverage Period** of: the specific act, error, or omission; the injury or damage that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
4. If the PLF opens a suspense or claim file involving a **Claim** or potential **Claim** that otherwise would require notice from the **Covered Party** under subsections 1 through 3 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Other Duties of Cooperation

As a condition of coverage under this Excess Plan, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Plan. These conditions are incorporated in this Plan by reference, and have the same force and effect as if fully set forth in this Plan.

C. Duty of Full Disclosure in Application

A copy of the Application the **Firm** submitted to the PLF in seeking coverage under this Excess Plan is attached to and shall be deemed a part of this Excess Plan. All statements and descriptions in the Application are deemed to be representations to the PLF upon which it has relied in agreeing to provide the **Firm** with coverage under this Excess Plan. Any misrepresentations, omissions, concealments of fact, or incorrect statements in the Application will negate coverage and prevent recovery under this Excess Plan if the misrepresentations, omissions, concealments of fact, or incorrect statements:

- (1) are contained in the Application;
- (2) are material and have been relied upon by the PLF; and
- (3) are either: (a) fraudulent; or (b) material either to the acceptance of the risk or to the hazard assumed by the PLF.

Without limiting the foregoing, any misrepresentation, omission, concealment of fact, or incorrect statement that causes the PLF to charge a lower premium than would otherwise have been charged is material to the acceptance of the risk or to the hazard assumed by the PLF.

D. Duty to Notify the PLF of Certain Changes in Risk

The **Firm** must notify the PLF if, after the start of the **Coverage Period**, any of the following events or circumstances occur: (1) the number of **Firm Attorneys** increases by more than 100 percent; (2) there is a firm merger or split; (3) an attorney joins or leaves a branch office of the **Firm** outside Oregon; (4) a new branch office is established outside Oregon; (5) the **Firm** or a current attorney with the **Firm** enters into an “of counsel” relationship with another firm or with an attorney who was not listed as a current attorney at the start of the **Coverage Period**; or (6) the **Firm** hires an attorney who is not eligible to participate in the PLF’s Primary Coverage Plan.

Upon the occurrence of any of the foregoing events or circumstances, the **Firm’s** coverage will again be subject to underwriting, and a prorated adjustment may be made to the **Firm’s** excess assessment.

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES OR OTHERS

The provisions of Section IX of the PLF Primary Plan, applicable to this **Plan Year**, are incorporated into this Plan by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XI – CANCELLATION AND TERMINATION

A. Cancellation by the Firm or the PLF

The **Firm** may cancel this Excess Plan, before the expiration of the **Coverage Period**, by mailing or delivering prior written notice to the PLF stating the date when the cancellation will become effective.

The PLF may cancel this Excess Plan, before the expiration of the **Coverage Period**, for any of the following reasons:

- (1) Failure by the **Firm** to pay an assessment when due;
- (2) Material misrepresentation by any **Covered Party**;
- (3) Substantial breaches of contractual duties, conditions, or warranties by any **Covered Party**; or
- (4) Revocation, suspension, or surrender of any **Covered Party's** license or right to practice law.

The PLF's cancellation of this Plan, for any of the foregoing reasons, is made by mailing or delivering written notice of cancellation to the **Firm**, stating the effective date of cancellation, to occur within no less than ten (10) days after the date notice of cancellation is mailed or delivered.

The last and final day of the **Coverage Period** will be the date preceding the effective date of cancellation stated in the cancellation notice sent by the **Firm** or the PLF. Coverage will expire at 11:59 p.m. on the date preceding the specified date of cancellation. If the PLF cancels this Plan, assessments shall be computed and refunded to the **Firm** pro rata. Assessment adjustment may be made either at the time cancellation is effected or as soon as practicable thereafter. If the **Firm** cancels this Plan, the PLF will retain the assessment on a pro rata basis.

B. Termination

This Excess Plan terminates on the date and time shown as the end of the **Coverage Period** in the Declarations, unless canceled by the PLF or by the **Firm** in accordance with the provisions of this Plan before such date and time. There is no automatic renewal.

SECTION XII – SUPPLEMENTAL ASSESSMENTS

This Excess Plan is assessable. Each **Plan Year** is accounted for and assessable using reasonable accounting standards and methods of assessment. If the PLF determines in its discretion that a supplemental assessment is necessary to pay for **Claims, Claims Expense**, or other expenses arising from or incurred during either this **Plan Year** or a previous **Plan Year**, the **Firm** agrees to pay its supplemental assessment to the PLF within thirty (30) days of request. The **Firm** further agrees that liability for such supplemental assessments shall be joint and several among the **Firm** and the partners, shareholders, and professional corporations listed as Firm Attorneys in the Declarations.

The PLF is authorized to make additional assessments for this **Plan Year** until all its liability for this **Plan Year** is terminated, whether or not any **Covered Party** maintains coverage under an Excess Plan issued by the PLF at the time assessments are imposed.

SECTION XIII – RELATION OF THE PLF'S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Excess Plan, the PLF will not be liable under this Excess Plan until the limits of the **Covered Party's** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Excess Limit of Coverage** of this Excess Plan.

SECTION XIV – WAIVER AND ESTOPPEL

The provisions of Section XII of the PLF Primary Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XV – EXTENDED REPORTING COVERAGE

After twenty-four (24) months of continuous excess coverage with the PLF, upon termination or cancellation of this Excess Plan by either the **Firm** or the PLF, the **Firm** may be eligible to purchase an extended reporting endorsement. This endorsement extends the period within which a **Claim** may be **First Made** under this Excess Plan, but does not otherwise change the terms of this Plan. Eligibility to purchase an extended reporting endorsement, the amount of the additional assessment for such coverage and the period during which **Claims** may be **First Made** under the endorsement are determined by the PLF's underwriting department based on the **Firm's** claims experience and other underwriting factors.

SECTION XVI – ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment, without the express written consent of the PLF, voids any coverage under this Plan.

APPENDIX A – LIST AND INDEX OF DEFINED TERMS

1. **Applicable Underlying Limit** means the aggregate total of: (1) the amount of coverage afforded by the PLF Plans issued to all persons qualifying as **Covered Parties** under the terms of this Plan; plus (2) the amount of any other coverage available to any **Covered Party** with respect to the **Claim** for which coverage is sought. (Excess Plan, p. 1)
2. **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**. (Primary Plan, p. 1)
3. **Claims Expense** has the meaning set forth in Section I B 3 of the Primary Plan. (Primary Plan, p. 2)
4. **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.” (Excess Plan, p. 1)
5. **Covered Activity** has the meaning set forth in Section III of this Plan. (Excess Plan, p. 4)
6. **Covered Party** means any person or **Law Entity** qualifying as such under Section II of this Plan. (Excess Plan, pp. 3-4)
7. **Damages** means monetary compensation a **Covered Party** must pay for harm or loss and does not include:
 - a. Fines; penalties, statutorily enhanced damages, or enhanced prevailing fees;
 - b. Punitive or exemplary damages;
 - c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any **Covered Party** or to any **Law Entity** with which any **Covered Party** was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;
 - d. Rescission, injunctions, accountings, restitution, equitable relief;
 - e. Any personal profit or advantage to a **Covered Party**;
 - f. Any award of attorney fees, costs, or interest arising from any claim referenced in (a) through (e) above, or from any excluded claim. (Section I A, p. 1)
8. **Excess Limit of Coverage** has the meaning set forth in Section VIII of this Plan. (Excess Plan, p. 7)
9. **Excess-Related** has the meaning set forth in Section V of this Plan. (Excess Plan, pp. 5-6)
10. **Excluded Attorney** means an attorney who is designated as such in the Declarations. (Excess Plan, p. 3)
11. **Excluded Firm** means a firm designated as such in the Declarations. (Excess Plan, p. 7)
12. **Firm** means any **Law Entity** designated in Section 1 or 11 of the Declarations. (Excess Plan, p. 3)
13. **First Made** has the meaning set forth in Section IV of this Plan. (Excess Plan, p. 5)
14. **Law Entity** means a professional corporation, partnership, limited liability partnership, limited liability company or sole proprietorship that engages in the **Private Practice** of law in Oregon. (Primary Plan, p. 3)
15. **Legally Obligated** has the meaning set forth in Section I A of the Primary Plan. (Primary Plan, p. 1)
16. **Non Attorney** employee includes employees who are not attorneys, as well as employees who have a law degree, but are not engaged in the practice of law in Oregon, or any other state. (Primary Plan, p. 4)
17. **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Excess Plan was issued. (Excess Plan, p. 1)
18. “PLF” means the Professional Liability Fund of the Oregon State Bar. (Excess Plan, p. 1)
19. **Private Practice** has the meaning set forth in Section II A of the Primary Plan. (Primary Plan, p. 3)
20. **Professional Legal Services** has the meaning set forth under Section III B of the Primary Plan. (Primary Plan, pp. 4 and 5)
21. **Special Capacity Relationship** has the meaning set forth in Section III C of the Primary Plan. (Primary Plan, p. 5)
22. **Special Capacity Services** has the meaning set forth in Section III C of the Primary Plan. (Primary Plan, p. 5)
23. **Suit** means a civil lawsuit. **Suit** also includes an arbitration or alternative dispute resolution proceeding, but only if the PLF expressly consents to it. (Primary Plan, p. 1)

APPENDIX B – EXCESS PLAN ILLUSTRATIVE EXAMPLES

For the purpose of assisting a **Covered Party** or Court in interpreting the PLF's intent as to the meaning of certain Excess Plan provisions, the PLF provides the following illustrative examples, not intended to be exhaustive regarding Section I E 4 and Section V – **Excess-Related Claims**:

1. Section I E 4:

- a. Law firm A maintains excess malpractice coverage with Carrier X in Year 1. The firm knows of a potential malpractice claim in September of that year. Nevertheless, it does not report the matter to Carrier X in Year 1. Law firm A obtains excess coverage from the PLF in Year 2, and the potential claim is actually asserted in April of Year 2. Whether or not the PLF has imposed a Retroactive Date for the firm's Year 2 coverage, there is no coverage for the claim under the firm's Year 2 PLF Excess Plan. This is true whether or not Carrier X provides coverage for the claim.
- b. Attorneys A, B, and C practice in a partnership. In Year 1, Attorney C knows of a potential claim arising from his activities but does not tell the PLF or Attorneys A or B. Attorney A completes a Year 2 PLF excess program application on behalf of the firm but does not reveal the potential claim because it is unknown to her. Attorney A does not circulate the application to attorneys B and C before submitting it to the PLF. The PLF issues an Excess Plan to the firm for Year 2, and the potential claim known to Attorney C in Year 1 is actually made against Attorneys A, B, and C and the firm in June of Year 2. Because the potential claim was known to a **Covered Party** (i.e., Attorney C) prior to the beginning of the **Coverage Period**, and because the firm did not circulate its application among the Firm Attorneys and Current Non-Oregon Attorneys before submitting it to the PLF, the claim is not within the Coverage Grant. There is no coverage under the Year 2 Excess Plan for Attorneys A, B, or C or for the firm even though Attorneys A and B did not know of the potential claim in Year 1.
- c. Same facts as prior example, except that Attorney A did circulate the application to Attorneys B and C before submitting it to the PLF. Section I E 4 will not be applied to deny coverage for the claim as to Attorneys A and B and the Firm. However, there will be no coverage for Attorney C because the claim falls outside the coverage grant under the terms of Section I E 4, and because Attorney C made a material misrepresentation to the PLF in the application.

2. Section V – Excess-Related Claims:

- a. Related Under the PLF Primary Plan vs. Excess-Related: Firm G, and one of its members, Attorney A, are sued by a claimant in 2014. The **Claim** is covered under Attorney A's 2014 PLF Primary Plan. Claimant amends the Complaint in 2015 and, for the first time, asserts the same **Claim** also against Firm H and one of its members, Attorney B, also covered under the PLF Primary Plan. Under the terms of the PLF Primary Plan, the firms and attorneys all share a single primary Limit of Coverage under the 2014 PLF Primary Plan. This is because the **Claims** are **Related**, for primary purposes, and the earliest **Related Claim** was made in 2014.

Firm H purchased PLF Excess Coverage in 2015 but was previously covered for excess liability in 2014 by Carrier X. Neither Firm H nor Attorney B were aware of the potential **Claim** in 2014, and therefore did not give notice of a potential **Claim** against Attorney B or Firm H to the PLF or Carrier X until 2015. Carrier X denies coverage for the claim because Firm H did not give notice of the claim to Carrier X in 2014 and

Firm H did not purchase tail coverage from Carrier X. Under this scenario, any PLF excess coverage would be under the 2015 PLF Excess Plan because no **Claim** was made against the **Covered Parties** until 2015. (If, however, Firm G and Attorney B did have a basis to believe that the act, error, omission, or breach of duty to which the **Claim** relates was a breach of the standard of care or may result in a **Claim** before the PLF Excess Plan was issued, there would not be coverage for the **Claim** under the 2015 PLF Excess Plan. Also, if they had previously given notice to Carrier X or purchased applicable tail coverage, there would not be coverage under the PLF 2015 Excess Plan, because other insurance would apply.)

- b. Secondary or Dependent Liability – Firm A has Excess coverage with the PLF between 2013 and 2015. Attorney X, while an associate in the Firm A, commits malpractice in 2012 and then leaves to work with another firm in 2014. He is listed as a Former Attorney in the Declarations of the PLF Excess Plan. **Claims** are alleged only against Attorney A in 2014, and in 2015, a lawsuit is filed also alleging **Claims** against various attorneys who are partners in Firm A and the Firm itself based on vicarious liability for Attorney X’s malpractice. The **Claims** are **Excess-Related** and, therefore, were **First Made** in 2014.
- c. Same Transaction, Occurrence, or Series of Transactions or Occurrences – Attorney A, a partner in a **Firm** with PLF excess coverage between 2007 and the present, writes a tax opinion in 2008 for an investment offering. Attorneys B and C, with a different law firm, then assemble the offering circular in 2007. In 2010, Investors 1 and 2 bring **Claims** against all three attorneys relating to the offering. In 2011, Investor 3 also brings a **Claim** against all three attorneys. Under the PLF Primary Plan, **Claims** against all attorneys and firms, by all three investors, are **Related**, and all attorneys and firms share one Primary Limit of Coverage, applicable to all three claims. For the purpose of Attorney A’s PLF Excess Plan, however, the **Claims** against B and C are not **Excess-Related**. Therefore, the **Claims** against Attorney A are **First Made** in 2010, and Attorney A has a separate 2010 Excess Limit that applies to all three investor **Claims**.
- d. Actual Pattern or Practice – Attorneys A, B, and C, who are all members of a **Firm** covered under the PLF Excess Plan for the past twelve (12) years, represent a large number of asbestos clients over several years, using a firm-wide formula for evaluating large numbers of cases with minimum effort. They are sued by various clients in 2014 for improper evaluation and by other clients making similar allegations in 2015. Plaintiffs do not allege a common scheme or plan, but because the **Firm** in fact operated a firm-wide formula for handling the cases, all claims are **Excess-Related, First Made** in 2014, and subject to the Limit of the 2014 Excess Plan.
- e. Successive or Collective Errors – Attorney C, an associate at a **Firm** covered under the PLF Excess Plan during all relevant periods, represents a group of clients at trial and commits certain errors. Attorney D, a partner at the **Firm**, undertakes the appeal but fails to file the notice of appeal on time. Attorney E is hired by clients to sue Attorneys C and D for malpractice but misses the statute of limitations. Clients sue all three attorneys. Under the PLF Primary Plan, all three **Claims** are **Related** and share a single primary limit. Only the **Claims** against Attorneys C and D, however, are **Excess-Related**.
- f. Class Action or Purported Class Action – Attorneys A, B, and C, all at a **Firm** covered under the Excess Plan during the relevant periods, represent a large banking institution. They are sued by the bank’s customers in a class action lawsuit for their part in advising the bank on allegedly improper banking practices. All the class action **Claims** are **Excess-Related** and subject to the Excess Limit that was in place at the time the class action **Claim** was **First Made**.



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PROFESSIONAL LIABILITY FUND

2019 PRO BONO PLAN

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INTRODUCTION

The Professional Liability Fund (“PLF”) provides limited coverage regarding Oregon attorneys who claim exemption from PLF Primary coverage and who volunteer their time for Pro Bono Programs jointly certified by the Oregon State Bar and the Professional Liability Fund. Because this coverage is provided at no cost, it is intended to apply only to claims based on or arising from the actual or alleged conduct of volunteer attorneys when there is no other plan or insurance coverage that would apply to any such claim. The coverage provided under this Plan is not the same, in some respects, as the coverage provided under the PLF Primary Coverage Plan. The Pro Bono Program and its volunteers should review this Plan carefully in order to understand its restrictions, limitations, exclusions, conditions, and the applicable limit of coverage.

Throughout this PLF Pro Bono Coverage Plan (“Plan”), issued to the Pro Bono Program, identified in the Declarations: **Pro Bono Program** refers to the Named Program shown in the Declarations; **Plan Year** means the period of January 1 through December 31 of the calendar year for which this Plan was issued; and **Coverage Period** means the coverage period shown in the Declarations under the heading “Coverage Period.”

When terms appear in bold, with the first letter capitalized, they have the defined meanings set forth, or referenced, in this Plan. Certain definitions and provisions of the PLF Primary Coverage Plan are incorporated in this Plan, by reference. A List and Index of Defined Terms is attached as Appendix A.

SECTION I – COVERAGE AGREEMENT

Subject to the terms, conditions, definitions, exclusions, and limitations set forth in this Plan and the applicable **Limit of Coverage** and **Claims Expense Allowance** as these are defined and described in Section VIII, the coverage provided by this Plan is as follows:

A. Indemnity

The PLF will pay all sums a **Covered Party** is **Legally Obligated** to pay as **Damages** as a result of a **Claim** arising from a **Covered Activity** to which the **Coverage Period** of this Plan applies, as determined by the rules set forth in Section IV.

A **Claim** means a demand for **Damages**, or written notice to a **Covered Party** of an intent to hold a **Covered Party** liable as a result of a **Covered Activity**, if such notice might reasonably be expected to result in an assertion of a right to **Damages**.

Legally Obligated to pay **Damages** means a **Covered Party** is required to make actual payment of monetary **Damages** and is not protected or absolved from actual payment of **Damages** by reason of any covenant not to execute, other contractual agreement of any kind, or a court order, preventing the ability of the Claimant to collect money **Damages** directly from the **Covered Party**.

Damages means monetary compensation a **Covered Party** must pay for loss and does not include:

- a. Fines, penalties, statutorily enhanced damages, or enhanced prevailing fees;
- b. Punitive or exemplary damages;
- c. The return, forfeiture, disgorgement, restitution, reduction, or offset of any fees, costs, expenses or disbursements paid to, charged by, or owed to any **Covered Party** or to any **Law Entity** with which any **Covered Party** was associated at the time any such fees, costs, expenses or disbursements were paid, charged, or incurred, including but not limited to fees, costs, expenses or disbursements alleged

to be excessive, not earned, unnecessary, ill-advised, or caused, in whole or in part, by any alleged negligent advice;

- d. Rescission, injunctions, accountings, restitution, equitable relief;
- e. Any personal profit or advantage to a **Covered Party**;
- f. Any award of attorney fees, costs, or interest arising from any claim referenced in (a) through (e) above, or from any excluded claim.

*The following illustrative examples, not intended to be exhaustive, are provided for the purpose of assisting a **Covered Party** or court in interpreting the PLF's intent as to the scope of **Damages** covered under the Plan:*

Example 1: *Attorney A sues Client for unpaid fees; Client counterclaims for the return of fees already paid to Attorney A, which allegedly were excessive. Because this is not a claim for **Damages**, it is not covered.*

Example 2: *Attorney B allows a default to be taken against Client, and bills an additional \$2,500 in attorney fees incurred by Attorney B in his successful effort to get the default set aside. Client pays the bill but later sues Attorney B to recover the fees paid. This is not a claim for **Damages**, as defined in the Plan. Therefore, it is not covered.*

Example 3: *Attorney C writes a demand letter to Client for unpaid fees and then files a lawsuit for collection of the fees. Client counterclaims for unlawful debt collection. Under the definition of **Damages**, there is no coverage for the claim. The same is true if Client is the plaintiff and sues for unlawful debt collection in response to the demand letter from Attorney C.*

Example 4: *Attorney D negotiates a fee and security agreement with Client on behalf of Attorney D's own firm. Other firm members, not Attorney D, represent Client. Attorney D later leaves the firm, Client disputes the fee and security agreement, and the firm sues Attorney D for negligence in representing the firm. Under the definition of **Damages**, there is no coverage for the claim.*

Example 5: *Attorney E takes a security interest in stock belonging to Client as security for fees. Client fails to pay the fees, and Attorney E executes on the stock and becomes the owner. Client sues for recovery of the stock and damages. Under the definition of **Damages**, there is no coverage for the claim. The same is true if Attorney E receives the stock as a fee and is sued later for recovery of the stock or damages.*

Example 6: *Attorney F advises client to sue a third party, charging substantial fees to file and litigate the suit. Client receives a very small recovery and sues Attorney F alleging that Attorney F was negligent in advising Client to sue the third party. Client sues Attorney F to recover the fees and costs Client spent or owes for pursuing the third party claim. Client alleges Attorney F should have realized the cost of pursuing the claim was not justified. This claim is not covered because the amounts sought by Client are not **Damages**. The same is true if Client claims that Attorney F was negligent for not advising Client that Attorney F, or another attorney, may have agreed to pursue the claim for a contingent fee.*

Example 7: *Attorney G fails to properly request attorney fees from an opposing party. As a result Client sues Attorney G because Client could have recovered fees if Attorney G had properly pursued them. This claim seeks **Damages** covered under the Plan.*

B. Defense

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

Suit means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. The PLF has the sole right to select and appoint defense counsel, to control the defense and investigation of a **Claim** and, in its discretion, to settle any **Claim** to which this Plan applies. The PLF has no duty to contribute to the settlement of a **Claim** based on projected defense costs or on potential liability arising from uncovered **Claims**. Subject to its sole discretion, the PLF may also elect to take steps, or make expenditures, to investigate, prevent, mitigate, review, or repair any **Claim** or matter that may create the potential for a **Claim**.
3. The PLF will pay **Claims Expense** the PLF incurs.

Claims Expense means: fees and expenses charged by any attorney designated by the PLF; all other fees, costs and expenses incurred by the PLF resulting from its investigation, adjustment, defense, prevention, mitigation, review, repair, or appeal of a **Claim**, or any matter that may create the potential for a **Claim**; or fees charged by any attorney designated by the **Covered Party** with the PLF's written consent. The PLF's costs for compensation of its regular employees are not considered **Claims Expense** and do not reduce the available **Limit of Coverage**.

4. Notwithstanding Exclusions 2 and 4 incorporated in this Plan by Section VI, the PLF will defend **Claims** for which coverage is excluded under Exclusion 4, and **Claims** for malicious prosecution, abuse of process and wrongful initiation of civil proceedings, provided such **Claims** arise out of a **Covered Activity** and are not otherwise excluded by other applicable exclusions in this Plan. The PLF, however, will not have any duty to indemnify regarding any matter it defends pursuant to this provision.
5. The PLF does not have a duty to defend any **Claim**, or the portion of any **Claim**, that is not a **Claim** for **Damages**, as defined in Section I A. In the event the PLF voluntarily agrees to defend any **Claim**, or any portion of a **Claim**, that does not seek **Damages**, it will be subject to the **Covered Party's** agreement that the **Covered Party** will cooperate with the PLF's attempt to settle or dismiss any alleged **Claim** for **Damages** that may also be alleged. Following any such dismissal or settlement the PLF will have the right to withdraw from the defense of any remaining claim.

C. Exhaustion of Limits

The PLF is not obligated to investigate, defend, pay, or settle any **Claim** after the applicable **Limit of Coverage** and **Claims Expense Allowance** have been exhausted.

D. No Prior Knowledge or Prior Coverage

This Plan applies only to a **Covered Activity** that occurred either: (a) during the **Coverage Period**; or (b) before the **Coverage Period** if (i) on the effective date of this Plan, the **Covered Party** had no knowledge of any **Claim** having been asserted or of any facts or circumstances of which the **Covered Party** was aware, or reasonably should have been aware, could reasonably result in a **Claim** arising out of the **Covered Activity**; (ii) the actual or alleged error, omission negligent act or breach of duty on which the **Claim** is based occurred during a period in which a previous PLF Pro Bono Plan applied to the **Pro Bono Program**; and (iii) there is no prior plan or policy that provides coverage for such liability or **Claim**, whether or not the available limits of such prior plan or policy are sufficient to pay any liability or **Claim**.

E. Coverage Territory

This Plan applies to **Suits** brought in the United States, its territories or possessions, within the jurisdiction of any Indian tribe in the United States, or to any **Suit** brought in Canada. It does not apply to **Suits** in any other jurisdiction, or to any **Suit** to enforce a Judgment rendered in any other such jurisdiction.

SECTION II – WHO IS A COVERED PARTY UNDER THIS PRO BONO PLAN?

Only the following are **Covered Parties** under this Plan:

A. Individual Volunteer Attorneys

An individual **Volunteer Attorney** is a **Covered Party**, but only with respect to a **Claim** arising from **Covered Activities** rendered on behalf of the **Pro Bono Program**, and only if there is no other plan or insurance coverage that applies to such **Claim**.

Volunteer Attorney means an Oregon attorney who: (1) is not otherwise covered under a PLF Primary Coverage Plan; (2) provided pro bono **Professional Legal Services** or **Special Capacity Services** to clients of the **Pro Bono Program**; (3) is not employed or compensated in any way by the **Pro Bono Program**; and (4) was eligible to provide voluntary **Professional Legal Services** or **Special Capacity Services** under the applicable rules of the Oregon State Bar at the time such services were provided.

Pro Bono Program means the **Pro Bono Program** named in the Declarations.

B. The Pro Bono Program

The **Pro Bono Program** is also a **Covered Party** under this Plan, but only to the limited extent it is legally liable for any **Claim** based on or arising from a **Volunteer Attorney's Covered Activities**, and only provided the **Pro Bono Program** has no other applicable plan or insurance coverage for any such liability. In the event any **Claim** against a **Volunteer Attorney** also involves **Claims** against employees of the **Pro Bono Program**, any defense or indemnity under this Plan is limited to that portion of the **Pro Bono Program's** legal liability that relates to a **Volunteer Attorney's Covered Activities**.

SECTION III – WHAT IS A COVERED ACTIVITY?

For the purposes of this Plan, a **Covered Activity** is an error, omission, negligent act, or breach of duty by a **Volunteer Attorney** in the course of providing or failing to provide **Professional Legal Services** or **Special Capacity Services** to a client or clients of the **Pro Bono Program**, but only if such services are within the scope of duties assigned to the **Volunteer Attorney** by the **Pro Bono Program**.

Professional Legal Services and **Special Capacity Services** have the meanings set forth in the PLF Primary Coverage Plan in effect during this **Plan Year** and are subject to all the same limitations and conditions set forth in subsections B and C of Section III of the PLF Primary Coverage Plan for this **Plan Year**.

SECTION IV – WHAT IS THE APPLICABLE COVERAGE PERIOD?

A. Date of Claim

Subject to Subsection IV B, the **Coverage Period** in effect on the earliest of the following dates applies to a **Claim** or matter:

1. The date a lawsuit is first filed or an arbitration or alternative dispute resolution proceeding is first initiated against a **Covered Party** under this Plan;
2. The date the PLF first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
3. The date any **Covered Party** under this Plan first becomes aware of a matter involving facts or circumstances that could reasonably result in a **Claim** against a **Covered Party** under this Plan;
4. The date any **Covered Party** under this Plan receives notice of a **Claim**;
5. The date the PLF receives notice of a **Claim** against a **Covered Party** under this Plan; or
6. If subsections 1 through 5 do not apply, the date the PLF opens a file in order to take steps and/or make expenditures, for the purpose of investigation, mitigation, review, or prevention of any potential **Claim** against a **Covered Party** under this Plan.

In the case of matters falling only within subsection 6, in the event there is any subsequent **Claim** against a **Covered Party** under this Plan, relating to or arising from such matter, the **Limit of Coverage** and/or **Claims Expense Allowance** for the **Plan Year** applicable to such **Claim** is reduced by the amount the PLF spends on the matter.

B. Special Rule Regarding Coverage Period Applicable to Related Claims Against Associated Attorneys

If any **Claim** against a **Covered Party** under this Plan is **Related** to one or more **Related Claim(s)** against any **Associated Attorney** the **Coverage Period** in effect on the earliest of the following dates applies to the **Claim**:

1. The date a lawsuit was first filed, or an arbitration or alternative dispute resolution proceeding was initiated with respect to the earliest of the **Related Claims**;
2. The date the PLF first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
3. The date any **Covered Party** under this Plan first became aware of facts or circumstances that could reasonably result in the earliest of the **Related Claims**;
4. The first date any **Associated Attorney** first became aware of facts or circumstances that could result in the earliest of the **Related Claims**;
5. The date the PLF received notice of the earliest **Related Claim**;
6. The date any **Covered Party** under this Plan received notice of the earliest **Related Claim**; or
7. The first date any **Associated Attorney** received notice of the earliest **Related Claim**.

Associated Attorney means any attorney who, at the time of the representation, advice, or activity at issue, or during any portion of such representation, advice, or activity: (1) was working with or for the **Pro Bono Program**;

or (2) worked in association or as co-counsel with any **Covered Party** under this Plan regarding the representation, advice, or activity that is the subject of the **Claim(s)**.

However, if the **Pro Bono Program** did not have a PLF Pro Bono Plan in effect on the date applicable to the earliest **Related Claim** pursuant to this subsection IV B, and the **Pro Bono Program** has no other insurance from any source that is applicable to the **Claim**, regardless of whether the available limits of such policy are sufficient to cover liability for the **Claim**, any applicable **Coverage Period** for the **Related Claim** is determined using the method set forth in Section IV A.

SECTION V – RELATED CLAIMS

Two or more **Claims** are **Related** when they are based on or arise out of facts, practices, circumstances, situations, transactions, occurrences, activities covered under this or any other PLF Plan, or damages, liabilities or the relationship of the people or entities involved (including clients, Claimants, attorneys and/or other advisors) that are logically or causally connected or share a common bond or nexus. A **Claim** against a **Covered Party** under this Plan may be **Related** to another **Claim** against the same **Covered Party** and/or to a **Claim(s)** against other **Covered Parties**, or attorneys covered under other PLF Plans. If **Claims** are **Related**, special rules, set forth in Section VIII C, govern the total amount the PLF will pay in defense and indemnity of all such **Claims**.

SECTION VI – APPLICABLE EXCLUSIONS IN PLF PRIMARY COVERAGE PLAN

All Exclusions in the PLF Primary Coverage Plan, in effect during this **Plan Year**, except Exclusion 6, apply equally to the coverage under this Plan. These exclusions are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION VII – PRO BONO PLAN ADDITIONAL EXCLUSIONS

1. Activities outside **Pro Bono Program** Exclusion. This Plan does not apply to any **Claim** against a **Covered Party** arising from or related to work or services beyond the scope of activities assigned to the **Volunteer Attorney** by the **Pro Bono Program**.
2. Business Interests. This Plan does not apply to any **Claim** by a business enterprise:
 - a. In which any **Covered Party** has an **Ownership Interest**; or in which any **Covered Party** is a general partner, managing member, or employee; or in which any **Covered Party** controls, operates or manages, either individually or a fiduciary capacity, any property that is owned, managed or maintained by the business enterprise; or
 - b. At the time of the alleged acts, errors or omissions on which the **Claim** is based: any **Covered Party** had an **Ownership Interest** in the business enterprise; any **Covered Party** was a general partner, managing member, or employee of the business enterprise; or any **Covered Party** controlled, operated, or managed, either individually or a fiduciary capacity, any property that was owned, managed, or maintained by the business enterprise.

Ownership Interest means that any **Covered Party**, those controlled by any **Covered Party**, the spouse, parent, stepparent, child, stepchild, sibling, or any member of any **Covered Party's** household, or those with whom any **Covered Party** is regularly engaged in the practice of law, collectively owns more than 10% of the business enterprise or owned more than 10% of the business enterprise at the time of the alleged acts, errors or omissions on which the **Claim** is based.

SECTION VIII – LIMIT OF COVERAGE, CLAIMS EXPENSE ALLOWANCE, AND SPECIAL LIMITS REGARDING RELATED CLAIMS

A. Limit of Coverage

The **Limit of Coverage** for the **Coverage Period** of this Plan is \$300,000. This is a maximum aggregate limit applicable to any and all **Claims** or matters to which this Plan applies. The making of multiple **Claims** against any **Covered Party** or against multiple **Covered Parties** will not increase the **Limit of Coverage**, which is reduced by the following payments arising from **Claims** or matters to which the **Coverage Period** of this Plan applies:

1. All **Claims Expense** paid by the PLF, on behalf of any **Covered Party** under this Plan, that is in excess of any applicable **Claims Expense Allowance**; and
2. The PLF's payment, on behalf of any **Covered Party** under this Plan, of any and all amounts relating to settlements, judgments or any other indemnity payments based on or arising from any and all **Claims**, or matters that may have the potential to create or result in **Claims**, against any **Covered Party** under this Plan.

The shared single \$300,000 **Limit of Coverage** under this Plan applies both to **Claims** against any and all **Volunteer Attorneys** to whom this Plan applies and to **Claims** against the **Pro Bono Program** for any and all **Claims** based on or arising from the actual or alleged conduct of any and all such **Volunteer Attorneys**. **Multiple Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this \$300,000 single **Limit of Coverage**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Limit of Coverage** under this Plan, there is either no further coverage under this Plan for any **Covered Party**, or a reduced **Limit of Coverage**. This **Limit of Coverage** is also subject to Section VII C below regarding **Related Claims**.

B. Claims Expense Allowance

In addition to the **Limit of Coverage**, this Plan also provides a single separate **Claims Expense Allowance**, meaning an additional allowance in the maximum aggregate amount of \$50,000, applicable to the investigation and/or defense of any and all **Claims** against all **Covered Parties** under this Plan subject to Section VIII C below. The **Claims Expense Allowance** may be applied only to **Claims Expenses**, and not to any settlements, judgments or any other indemnity payments.

The shared single \$50,000 **Claims Expense Allowance** under this Plan applies both to **Claims** against any and all **Volunteer Attorneys** to whom this Plan applies and/or to **Claims** against the **Pro Bono Program**. Multiple **Claims** against the **Pro Bono Program** and/or against any **Volunteer Attorney(s)** will not increase this single \$50,000 **Claims Expense Allowance**. If, for example, there is a **Claim** based on the conduct of one **Volunteer Attorney** that consumes or reduces the **Claims Expense Allowance**, there is either no further **Claims Expense Allowance** under this Plan for any **Covered Party**, or a reduced **Claims Expense Allowance**.

C. Special Rules and Limits for Related Claims

If a **Claim** against a **Covered Party** is **Related** to another **Claim** against that **Covered Party**, to any **Claim** against any other **Covered Party** under this Plan, or to a **Claim** against any other attorney, law entity, or **Pro Bono Program** covered by the PLF under this or any other PLF Plan, then regardless of the number of **Claims**, **Claimants**, clients,

attorneys, volunteer attorneys, pro bono programs or law entities involved, the PLF will not pay more than a maximum total of \$300,000, plus a maximum of one \$50,000 **Claims Expense Allowance** to defend and/or indemnify all parties covered under this or any other PLF Plan regarding all such **Related Claims**. This is subject only to the discretionary exception stated below regarding **Claims Expense Allowances**. In addition, the portion of this total maximum **Related Claim** limit available for any **Claim** based on or arising from the actual or alleged conduct of a **Covered Party** cannot exceed the amount of the remaining limit available under this Plan for the applicable **Coverage Period**.

The total maximum limit applicable to **Related Claims** is reduced as the PLF makes expenditures on **Related Claims**, whether on behalf of any **Covered Party** under this Plan, or on behalf of any other parties covered under any other PLF Plans against whom **Related Claims** are made. After the total applicable limit for **Related Claims** and any **Claims Expense Allowance** has been exhausted, the PLF is not obligated to investigate, defend, pay or settle any **Related Claim** against any **Covered Party**.

Only one **Claims Expense Allowance** applies regarding **Related Claims** against any and all **Covered Parties** under this Plan and against any parties covered under any other PLF Plan. In the sole discretion of the PLF, however, it may grant separate **Claims Expense Allowances** when there are **Related Claims** against other parties covered under other PLF Plans.

If the **Claims Expense Allowance** for the applicable **Coverage Period** has already been depleted or exhausted by other **Claims** or matters, the amount of the **Claims Expense Allowance** will be limited to whatever remains of the **Claims Expense Allowance** for that **Coverage Period**.

SECTION IX – DUTIES OF COVERED PARTIES

A. Notice of Claims, Suits, and Circumstances

As a condition precedent to any right of protection afforded by this Plan, the **Covered Party** must give the PLF, at the address shown in the **Declarations**, timely written notice of any **Claim, Suit**, or circumstances, as follows:

1. The **Covered Party** must immediately notify the PLF of any **Suit** filed against the **Covered Party** and deliver to the PLF every demand, notice, summons, or other process received.
2. If the **Covered Party** receives notice of a **Claim**, or becomes aware of facts or circumstances that reasonably could be expected to be the basis of a **Claim** for which coverage may be provided under this Plan, the **Covered Party** must give written notice to the PLF as soon as practicable of: the specific act, error, or omission; any damages or other injury that has resulted or may result; and the circumstances by which the **Covered Party** first became aware of such act, error, or omission.
3. If the PLF opens a suspense or **Claim** file involving a **Claim** or potential **Claim** which otherwise would require notice from the **Covered Party** under subsection 1 or 2 above, the **Covered Party's** obligations under those subsections will be considered satisfied for that **Claim** or potential **Claim**.

B. Other Duties of Cooperation

As a condition of coverage under this Plan, every **Covered Party** must satisfy the duties of cooperation as set forth in Section VIII B through E of the PLF Primary Coverage Plan. These conditions are incorporated in this Plan by reference, and have the same force and effect as if fully set forth in this Plan.

SECTION X – ACTIONS BETWEEN THE PLF AND COVERED PARTIES

The provisions of Section IX of the PLF Primary Coverage Plan, applicable to this **Plan Year**, are incorporated into this Plan by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XI – RELATION OF THE PLF’S COVERAGE TO INSURANCE COVERAGE OR OTHER COVERAGE

If any **Covered Party** has valid and collectible insurance coverage or other obligation to indemnify, including but not limited to self-insured retentions, deductibles, or self-insurance, that also applies to any loss or **Claim** covered by this Plan, the PLF will not be liable under this Plan until the limits of the **Covered Party’s** insurance or other obligation to indemnify, including any applicable deductible, have been exhausted, unless such insurance or other obligation to indemnify is written only as specific excess coverage over the **Limit of Coverage** of this Plan.

SECTION XII – WAIVER AND ESTOPPEL

The provisions of Section XII of the PLF Primary Coverage Plan, applicable to this **Plan Year** are incorporated by reference and have the same force and effect as if fully set forth in this Plan.

SECTION XIII — ASSIGNMENT

Any interest of any **Covered Party** under this Plan is not assignable. Any such assignment or attempted assignment without the express written consent of the PLF voids any coverage under the Plan.

SECTION XIV — TERMINATION

This Plan will terminate immediately and automatically in the event the **Pro Bono Program** is no longer certified as a **Pro Bono Program** by the Oregon State Bar.



OREGON STATE BAR

Board of Governors Agenda

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

Action Recommended

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

1. Amendment of the Defense Provision

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

B. Defense

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

Suit means a civil lawsuit. **Suit** also includes an arbitration or other alternative dispute resolution proceeding only if the PLF expressly consents to it.

2. Amendment of Exclusion 2 – Wrongful Conduct

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

2. **Wrongful Conduct.** This Plan does not apply to any **Claim** based on or arising out of:
- a. any criminal act or conduct;
 - b. any knowingly wrongful, dishonest, fraudulent or malicious act or conduct;
 - c. any intentional tort; or
 - d. any knowing or intentional violation of the Oregon Rules of Professional Conduct (ORPC) or other applicable code of ethics.

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

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

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

- (1) committed or participated in any acts or conduct set forth in subsections (a) through (d); or

- (2) had knowledge of any such acts and acquiesced in them or failed to take, or attempt to take, corrective action.

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

3. Amendment of Exclusion 6 – Business Interests

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

6. **Business Interests.** ~~This Plan does not apply to any Claim relating to or arising out of any business enterprise:~~
- a. ~~In which **You** are a general partner, managing member, or employee, or in which **You** were a general partner, managing member, or employee at the time of the alleged acts, errors, or omissions on which the **Claim** is based;~~
 - b. ~~That is controlled, operated, or managed by **You**, either individually or in a fiduciary capacity, including the ownership, maintenance, or use of any property in connection therewith, or was so controlled, operated, or managed by **You** at the time of the alleged acts, errors, or omissions on which the **Claim** is based; or~~
 - c. ~~In which **You** either have an ownership interest, or had an ownership interest at the time of the alleged acts, errors, or omissions on which the **Claim** is based unless: (i) such interest is solely a passive investment; and (ii) **You**, those controlled by **You**, **Your** spouse, parent, stepparent, child, sibling, or any member of **Your** household, and those with whom **You** are regularly engaged in the practice of law, collectively own, or previously owned, an interest in the business enterprise of less than 10%.~~
6. **Business Interests.** This Plan does not apply to any **Claim** by a business enterprise:

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

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

4. Amendment of Exclusion 16 – Harassment and Discrimination

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

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



OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 15-17, 2018
Memo Date: October 26, 2018
From: PLF Board of Directors
Re: PLF Policy 2.300

Action Recommended

Approve amendment of PLF Policy 2.300 to include the following language:

2.300 Committees

...(7) Long Range Planning/ Communications: Develops issues for discussion by the Board of Directors at periodic annual long range planning meeting and presents the issues at the meeting.

(8) Loss Prevention: Makes recommendations regarding loss prevention programming and practices.

...

Background

The PLF Board of Directors would like to have a committee of the Board devoted to Loss Prevention, which would include advising the Loss Prevention staff and CEO on matters ranging from policy decisions to resource priorities.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Legal Ethics Committee
Re: Withdraw OSB Formal Ethics Op Nos 2005-127 and 2005-100;
Approve amendments to OSB Formal Ethics Op Nos 2005-2, 2005-3, 2005-35,
2005-73, 2005-79, 2005-112, 2005-129, 2005-130, and 2005-175

Issue

The Board of Governors must decide whether to withdraw OSB Formal Op No 2005-127 and OSB Formal Ethics Op No 2005-100 as recommended by the Legal Ethics Committee.

In addition, the Board must decide whether to approve amendments to OSB Formal Ethics Op Nos. 2005-2, 2005-3, 2005-35, 2005-73, 2005-79, 2005-112, 2005-129, 2005-130, and 2005-175.

Discussion

In 2017, the Oregon Supreme Court adopted amendments to Oregon Rule of Professional Conduct 7.3, so that it now reads as follows:

RULE 7.3 SOLICITATION OF CLIENTS

A lawyer shall not solicit professional employment by any means when:

- (a) the lawyer knows or reasonably should know that the physical, emotional or mental state of the subject of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;**
- (b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or**
- (c) the solicitation involves coercion, duress or harassment.**

In response to this rule amendment, the Legal Ethics Committee undertook a review of the formal ethics opinions to ensure they accurately reflect the current rules and case law. They now recommend a number of amendments to the formal opinions, including swapping out the relevant prior rule with the amended rule and providing additional explanation of the new rule to the extent necessary.

With respect to OSB Formal Op Nos 2005-127 and 2005-100, the Legal Ethics Committee recommends withdrawal of the opinions because they are based almost entirely on former RPC 7.3 and no longer offer any useful guidance. Further, the LEC is working on a new opinion that will discuss in detail the parameters around solicitation under the new RPC 7.3.

Attachments: OSB Formal Ethics Op Nos 2005-2, 2005-3, 2005-35, 2005-73, 2005-79, 2005-100, 2005-112, 2005-127, 2005-129, 2005-130, and 2005-175 with proposed edits in redline.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 15-17, 2018
Memo Date: October 23, 2018
From: Public Service Advisory Committee
Eric McClendon, Referral & Information Services Manager
Kay Pulju, Communications & Public Services Director
Re: Refugee Civil Assistance Panel Proposal

Actions Recommended

1. Approve the creation of a pro bono panel that will provide civil assistance to refugees, asylees and immigrants.

Background

Oregon Women Lawyers and Catholic Charities representatives presented this proposal to the Public Service Advisory Committee (PSAC) at its September 2018 meeting. They asked the PSAC to recommend to the Board of Governors (BOG) the implementation of a pro bono panel to assist the refugee and immigrant communities of Oregon, which experience enormous barriers accessing justice in the state.

According to the Census Bureau's 2017 American Community Survey (ACS), 408,718 Oregonians were foreign born, nearly 10% of Oregon's population.¹ These individuals often struggle to find representation due to a variety of barriers, including financial and language difficulty. The ACS found that nearly 44% of foreign-born Oregonians report not speaking English "very well", compared to just 1% of native-born Oregonians, while 27% of foreign-born residents lack a high-school education, compared to 7% of native-born residents. These factors contribute to a higher poverty rate for foreign-born households (16% compared to 13%) and a median income that is over \$7,000 less than for native-born residents (\$54,000 compared to \$61,000). The educational and income inequality is even greater for foreign-born non-citizens.

In addition to these barriers, asylees are often victims of abuse, and many have minor children. While immigration concerns are crucial to these individuals, they frequently face a variety of other civil concerns that are not being addressed. For example, an asylee may be the victim of domestic violence and need assistance obtaining a FAPA restraining order. Without the ability to quickly obtain legal assistance, these individuals may be at extreme risk of being further victimized and, in turn, losing their homes, jobs, or access to social supports.

After discussing the issues and current pro bono service models at OSB, the PSAC voted to approve the concept of a pro bono assistance panel and ask the BOG to expedite consideration of this proposal due to the immediate need for legal assistance in the refugee community.

¹ U.S. Census Bureau, American Community Survey (2017), S0501.

The proposal is for a referral panel similar to the Military Assistance Panel, a pro bono project offered through RIS. It would pair immigration lawyers with lawyers in other subject matters to ensure consideration of the special legal needs of these populations. Other panel guidelines and information are as follows:

Advisory Panel – An Advisory Panel of experts would be tapped to conduct training sessions and build FAQ sheets for attorneys and participants.

Screeners – As with the other pro bono programs administered by RIS, staff would screen potential clients. RIS staff are already trained to identify potential issues and areas of law in order to create a referral. Adding this additional panel would require no additional staff and would utilize current department infrastructure.

Volunteer Panelists – Attorney volunteers would commit to offering up to two hours of advice and guidance. Any additional services or time would need to be negotiated between the lawyers and clients. Attorney volunteers would work in teams to communicate and advise the clients after mutual consultation. Approximately X number of attorneys have indicated they are eager to volunteer as panelists.

Interpretation services – Interpretation services will be available to the clients at every stage of the process.

Areas of Law – Based on the recommendations received by the PSAC, the following areas of law would be offered. Each referral would include one immigration attorney along with a panelist for the particular civil need identified by RIS staff.

Landlord/tenant

Public benefits (social services, social security, disability)

Victims' Rights

Family law

Juvenile

Criminal defense

Wills, estates, trusts, elder abuse

Business and Nonprofits

Employment

Certified Pro Bono Status – If the panel is approved, staff will apply to the Professional Liability Fund for certified pro bono status, allowing more attorneys to participate. Open recruitment, along with the limited scope of the volunteer commitment, have proven successful strategies for our other RIS pro bono programs.

RIS staff in consultation with PSAC will have the ability to modify the program based on experience and to be responsive to both referred individuals and attorneys feedback on the program.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 17, 2018
From: Amber Hollister, General Counsel
Re: CSF Claimants Requests for Review

Action Recommended

Review the CSF Committee's denials of the following applications for reimbursement, as timely requested by the claimants, and take the following action:

1. Deny CSF Claim No. 2017-05 Denyse Schwengels-Loe (Jeffrey Milstein);
2. Deny CSF Claim No. 2017-10 Justin Frazier (Jeffrey Milstein);
3. Grant CSF Claim No. 2017-48 Stefan Yovan (Jefferson Campbell Jr.); and
4. Stay consideration on the appeal of CSF Claim No. 2017-29 Gustavo Vega-Flores (Theodore C. Coran), pending the outcome of bar complaint.

Background

1. CSF Claim No 2017-05 Denyse Schwengels-Loe (Jeffrey Milstein)

Denyse Schwengels-Loe seeks reimbursement of \$4,600 she asserts she paid to Jeffrey Milstein to represent her in seeking recovery for injuries sustained in a dissolution/custody case as well as a motor vehicle accident claim. She was referred to Milstein by the OSB Modest Means Program.

In January 2015, the claimant hired Milstein. He represented her during 2015. In August 2016, Milstein was suspended pursuant to BR 7.1 for failure to respond to a pending disciplinary matter. He resigned Form B effective November 3, 2016.

CSF Investigator Rich Baum investigated the clam and determined that Milstein provided substantial services in the dissolution matter in return for the funds provided. Court records demonstrate that Milstein appeared in the dissolution matter in February 2015. Opposing counsel, Salem attorney Virgil Royer, reported that Milstein appeared at every court hearing, engaged in motions practice, filed a trial memorandum and appeared at trial. He explained that Milstein's performance in the dissolution/custody case was quirky, but adequate.

It is unclear what steps Milstein took to represent claimant in the MVA matter. The claimant alleges that an insurance company sent Milstein a letter accepting fault for the accident, and Milstein lost the letter. In any event, no case was filed. After Milstein's suspension, claimant ultimately retained attorney Hala Gores to represent her. Ms. Gores filed suit and obtained a settlement on claimant's behalf. Claimant seeks recovery of \$200,000 in consequential damages the MVA claim.

Based on the investigation, the CSF Committee unanimously determined that the claimant did not qualify for reimbursement under CSF Rule 2.2, because Milstein provided more than minimal or insignificant legal services for the funds paid, and the claimant was seeking to recover damages beyond the amount paid. CSF Rule 2.2 provides:

“Reimbursement of a legal fee will be allowed only if: (i) the lawyer provided no legal services to the client in the engagement; or (ii) the legal services that the lawyer actually provided were, in the Committee’s judgment, minimal or insignificant; or (iii) the claim is supported by a determination of a court, a fee arbitration panel, or an accounting or other evidence acceptable to the Committee that establishes that the client is owed a refund of a legal fee. No award reimbursing a legal fee may exceed the actual fee that the client paid the lawyer.”

The Committee also concluded that even if a refund of some amount was due, there was no clear record of what that should be. The claimant was only able to provide \$600 in receipts of payments to Milstein; she explained that she paid the remaining amount to him in cash.

If the BOG agrees with the Committee’s conclusion that Milstein provided significant work for Schwengels-Loe that ends the analysis. Otherwise, if the BOG concludes that Milstein’s work was *de minimis* or insignificant, Schwengels-Loe would be entitled to a refund of, arguably, the entire \$4,600 or some lesser portion the BOG deems appropriate.

Staff recommends that the BOG deny the claim pursuant to CSF Rule 2.2, based on the significant services provided by Milstein.

2. CSF Claim No. 2017-10 Justin Frazier (Jeffrey Milstein)

Claimant Justin Frazier seeks recovery of \$3,500 in legal fees he asserts he paid to Milstein to represent him in pending criminal matters. In August 2016, Milstein was suspended pursuant to BR 7.1 for failure to respond to a pending disciplinary matter. He resigned Form B effective November 3, 2016.

CSF Committee member Doug Stamm investigated the claim. He found that after claimant was picked up on an outstanding warrant, Milstein failed to appear in court on his behalf, and the court appointed counsel to represent claimant. Claimant’s court-appointed counsel resolved claimant’s criminal matters. The investigation uncovered no evidence that Milstein performed any work for claimant.

However, the investigation uncovered no evidence supporting claimant’s assertion he paid Milstein \$3,500. Instead, financial records show Claimant’s grandmother Julia Wicht paid Milstein \$2,500. After the CSF Claim was filed, Ms. Wicht filed a small claims case against Milstein to recover her \$2,500. Ms. Wicht obtained a judgment for in her favor for the amount of \$2,500 plus attorney fees in the amount of \$2,500.

The Committee denied claimant’s claim under CSF Rule 2.3, because he received equivalent legal services at no cost from court appointed counsel in his criminal matters. Rule 2.3 provides:

“In the event that a client is provided equivalent legal services by another attorney without cost to the client, the legal fee paid to the predecessor lawyer will not be eligible for reimbursement, except in extraordinary circumstances.”

The Committee also determined that claimant was not entitled to reimbursement because there was no evidence that he paid any legal fees to Milstein; instead, all funds were paid by his Grandmother Ms. Wicht. Therefore, the Committee determined that claimant did not suffer a “loss.” CSF Rule 2.1.2 (requiring the client experience a “loss” caused by the lawyer’s dishonest conduct). The CSF Rules allow a client to direct payment to a third party who paid fees, but claimant is adamant that he should be paid directly.

Ms. Wicht, through her attorney Katelyn Skinner of Buckley Law, has requested that the CSF Committee directly reimburse her client \$2,500 for the legal fee she paid to Milstein. The Committee determined it did not have discretion to pay Ms. Wicht directly, because only clients may make claims for a loss of money. CSF Rule 2.1.1 provides that a claim must be “made by the injured client or the client’s conservator, personal representative, guardian ad litem, trustee, or attorney in fact.” Ms. Wicht is none of these; instead, she is Milstein’s judgment creditor.

The Committee has discussed the possibility of revisiting its rules on third-party payment in the next calendar year, given the circumstances presented in this case.

Staff recommends that the board deny claimant’s claim for reimbursement pursuant to CSF Rules 2.1.2 and 2.3.

3. CSF Claim No. 2017-48 Stefan Yovan (Jefferson Campbell Jr.)

Claimant Stefan Shawn Yovan seeks recovery of \$17,607.18 in settlement funds taken by his former attorney Jefferson Campbell Jr. Mr. Campbell was suspended in April 2016 for failure to pay PLF, and resigned Form B effective July 14, 2016.

The facts of this claim span nearly a decade. CSF Committee Member Ann Ledgerwood reports that claimant retained Campbell in 1999 to defend him in a civil lawsuit brought by Lithia Medford, Inc. to rescind his purchase of a car from dealer. Claimant brought a counterclaim for violation of the Oregon Unlawful Debt Collection Practice Act. The case was tried to a jury and Yovan was awarded \$500 in noneconomic damages and \$100,000 in punitive damages. The punitive damages award was affirmed on appeal. *Lithia Medford, Inc. v. Yovan*, 254 Or App 307 (2012). After payment of Campbell’s attorney fees and a payment to ODOJ for a child support lien, \$32,928 was placed in Campbell’s trust account, awaiting the outcome of a dispute with ODOJ regarding remaining child support obligations.

In July 2015, Campbell filed an interpleader action to settle the dispute over the remaining funds in trust. *Campbell v. Yovan and State of Oregon, Jackson County Circuit Court Case No. 15CV20146*. In January 2016, Campbell reached an agreement with the ODOJ and records show that Campbell disbursed all but \$17,607.18 to ODOJ to settle its claims. Claimant submits he was unaware that Campbell filed an interpleader action, and court records show he was never served.

As of March 2018, Campbell's trust account was empty. When CSF Committee Ledgerwood reached Campbell by phone, he admitted to improperly taking \$17,607.18 from his trust account. He rationalized the taking by asserting that he was never paid for bringing the interpleader action. He did not have a fee agreement in place with his client for that work, and it does not appear Campbell took direction from his client on the interpleader action or the final settlement.

After learning that Campbell had resigned from the practice of law, claimant repeatedly called Campbell. Hearing no response, he traveled to Medford to seek return of funds. After several months, claimant obtained another phone number for Campbell and repeatedly called him. When Campbell returned his call, he verbally agreed to pay claimant back in full, plus 9% interest on a payment plan; while he sent claimant three checks for approximately \$200 each, all three checks he wrote to claimant bounced.

The Committee found that the claimant had established that Campbell engaged in defalcation of the \$17,607.18, but found that the claimant had made insufficient efforts to obtain relief. CSF Rule 2.1.7 provides that in order to be eligible for reimbursement claimant must show, "[a] good faith effort has been made by the claimant to collect the amount claimed, to no avail."

Further, the Committee found that claimant had failed to meet the requirements of CSF Rule 2.1.6, which provides:

"As a result of the dishonest conduct, either: (i) the lawyer was found guilty of a crime; (ii) a civil judgment was entered against the lawyer, which remains unsatisfied; (iii) the claimant holds an allowed claim against the lawyer's probate or bankruptcy estate, which remains unsatisfied; or (iv) in the case of a claimed loss of \$5,000 or less, the lawyer was disbarred, suspended, or reprimanded in disciplinary proceedings, or the lawyer resigned from the Bar."

Claimant has not met any of the conditions outlined in CSF Rule 2.1.6 (i)-(iii). Because his claim is greater than \$5,000, the fact that Campbell resigned from the Bar as outlined in CSF Rule 2.1.6(iv) is insufficient. The Committee declined to waive the requirement of CSF Rule 2.1.6. for extreme hardship, as provided in CSF Rule 2.6, in part because claimant still has outstanding child support liens.

After receiving news of the Committee's denial of his claim and the reason for the denial, claimant filed suit in Jackson County Circuit Court against Campbell, seeking recovery of the full amount at issue. On that basis, Claimant seeks review of the Committee's denial, or in the alternative, a stay of the board's decision while he pursues a civil suit against Campbell.

If the BOG determines based on claimant's additional efforts that claimant has made a good faith effort to collect the amount claimed, it still must evaluate whether to waive the requirement to obtain a civil judgment or other relief in CSF Rule 2.1.6. While claimant has now filed a suit for civil relief, it is unclear whether his suit will succeed. As he notes in his appeal, he is proceeding pro se and does not have the funds to retain counsel. To date, he has not served Campbell.

Staff recommends that the board grant claimant's claim in the amount of \$17,607.18 on the basis that he has made a good faith effort to recover against Campbell, and that Campbell admitted to improperly taking claimant's funds. To reach this result, board would need to find the existence of extreme hardship and waive the requirements of CSF Rule 2.1.6. The fact that claimant has outstanding child support liens does not excuse Campbell's defalcation.

4. CSF Claim No. 2017-29 Gustavo Vega-Flores (Theodore C. Coran)

Claimant Gustavo Vega-Flores seeks recovery of \$10,000 in legal fees he paid to Theodore C. Coran.

CSF Committee member Raymond Young investigated the claim. The Marion County Circuit Court appointed Coran to represent the claimant on February 14, 2015 on criminal charges. On May 9, 2015, claimant's family paid Coran \$10,000 to represent him. Coran's records show that several payments were made by claimant's family. In November of 2015, claimant pled guilty.

Claimant asserts that he should be entitled to a return of the legal fees paid because Coran was court appointed to represent him. A disciplinary matter is currently pending asserting that Coran acted improperly in accepting payment from claimant after he was court appointed to represent him.

A prior bar complaint filed by District Attorney Brad Berry in 2015 was dismissed, in part, by disciplinary counsel in 2016. In late 2016, Coran was suspended for 120 days based on conflicts and improperly advancing financial assistance to clients. In May 2017, claimant filed a new complaint that was referred to disciplinary counsel for investigation based on additional facts.

Claimant asserts that he has repeatedly asked Coran for a return of his funds. He explains that because he is incarcerated and indigent, aside from filing a bar complaint, he has been unable to take further steps to seek recovery of his funds.

The CSF Committee denied claimant's claim based on a finding that there was no evidence of dishonesty, and the alleged dishonest conduct did not result in a civil or criminal judgment against Coran. See CSF Rules 2.1.2 and 2.1.6.

The Committee's conclusion, however, was entirely based upon the bar's prior dismissal of DA Berry's 2015 bar complaint. A new disciplinary matter alleging misconduct by Coran is currently pending in Disciplinary Counsel's Office. In the pending disciplinary matter, Coran has maintained that claimant paid the \$10,000 of his own accord, even though he was told that he would receive the same level of representation as a court appointed client. In his defense, Coran has submitted a "Memorandum of Understanding" which he alleges he drafted and claimant signed, containing a version of facts very favorable to Coran.

The claimant's version of facts differs from Coran's. Claimant asserts in his appeal that Coran "coerced" him to sign the memorandum. Records also reflect that Coran represented himself as court appointed after he had accepted claimant's retainer, and that he did not inform the Court of the retainer until November 2015, months after he was retained. In sum, it is unclear what the result of the pending disciplinary matter will be.

Given the new disciplinary matter pending and the additional evidence submitted, it does not appear that the dismissal of DA Berry's 2015 bar complaint is dispositive on the question of Coran's dishonesty.

Because the disciplinary matter against Coran is still pending, staff recommends that the board stay consideration of Vega-Flores's claim until after the disciplinary proceeding has concluded.

Attachments: Schwengels-Loe Request for BOG Review & Application for Reimbursement
Frazier Request for BOG Review & Application for Reimbursement
Frazier Letter from Counsel for Julia Wicht, Attaching Judgment
Yovan Request for BOG Review & Application for Reimbursement
Vega-Flores Request for Board Review & Application for Reimbursement

Oregon State Bar
Meeting of the Board of Governors
November 17, 2018
Executive Session Minutes

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h), to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or that would defeat the purpose of the executive session

A. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

Update on pending litigation.

DRAFT

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: January 11, 2019
From: Amber Hollister, General Counsel
Re: CSF Claim 2018-54 DEVENY (Hamell)

Action Requested

Consider Client Security Fund Committee's recommendations that the board grant claimant Kevin Hamell's claim for reimbursement of \$50,000 in CSF Case No. *2018-54 Lori Deveny (Kevin Hamell)*.

Discussion

Kevin Hamell was involved in a serious auto accident in April of 2016. On May 5, 2016, he hired Ms. Deveny to represent him. The contingent fee agreement provided that Ms. Deveny would receive 33-1/3% payment upon any recovery.

In February 2017, Ms. Deveny settled Mr. Hamell's claim with Progressive Insurance for policy limits (\$25,000), without his knowledge. In March 2017, Ms. Deveny appears to have forged Mr. Hamell's signature on the settlement check and on a release. In May 2017, Ms. Deveny settled Mr. Hamell's UIM claim with Safeco Insurance Company for \$100,000, again without his knowledge. That same month, Ms. Deveny appears to have forged Mr. Hamell's signature on the settlement check and on a release. Ms. Deveny cashed both settlement checks, without notifying Mr. Hamell. She continued to provide Mr. Hamell with excuses about why his case was not settled.

In early July 2018, Mr. Hamell inquired into the status of his cases and discovered that both cases had been settled by insurance companies and the settlement checks sent to Ms. Deveny. Ms. Deveny resigned Form B, effective July 26, 2018, while numerous disciplinary cases were pending. Ms. Deveny has failed to respond to any inquiries from Mr. Hamell. Mr. Hamell reports he is working with the Portland Police Department regarding Ms. Deveny's theft.

To date, Mr. Hamell has approximately \$29,728 in outstanding medical bills related to the motor vehicle that have not been paid.

At most, Ms. Deveny was entitled to \$41,662.50 of the unauthorized settlement. Accordingly, Mr. Hamell's loss was approximately \$83,337.50. Pursuant to CSF Rule 4.7, any reimbursement is limited to \$50,000.

At its December 8, 2018 meeting, the Client Security Fund Committee reviewed Mr. Hamell's claim and unanimously voted to recommend that the Board reimburse him for \$50,000 of his loss. Mr. Hamell's claim would not ordinarily be eligible for reimbursement at

this time, pursuant CSF Rule 2.1.6, because Ms. Deveny has not been found guilty of a crime and Mr. Hamell has not obtained a civil judgment against her. The Committee, however, voted to waive the requirement of CSF Rule 2.1.6 based on extreme hardship under CSF Rule 2.6, based upon his circumstances and the available evidence.

Attachments:

Application for Reimbursement
Investigator's Report

Client Security Fund
Application for Reimbursement

CSF Claim # 2018-54

Return completed form to:

Oregon State Bar
Client Security Fund
PO Box 231935
Tigard, OR 97281-1935

Payments from the Client Security Fund are entirely within the discretion of the Oregon State Bar.
Submission of this claim does not guarantee payment.
The Oregon State Bar is not responsible for the acts of individual lawyers.

*Please note that this form and all documents received in connection with your claim are public records.
Please attach additional sheets if necessary to give a full explanation.*

1. Information about the client(s) making the claim:

- a. Full Name: Kevin Micheal Hamell
- b. Street Address: [REDACTED]
- c. City, State, Zip: [REDACTED]
- d. Phone: (Home) _____ (Cell) [REDACTED]
(Work) _____ (Other) _____
- e. Email: [REDACTED]

2. Information about the lawyer whose conduct caused your claim (also check box 10A on page 3):

- a. Lawyer's Name Lori E Deveny
- b. Firm Name Lori E Deveny Attorney at Law
- c. Street Address: 1020 se Taylor Suite 690
- d. City, State, Zip: Portland Or, 97205
- d. Phone: 503-225-0440
- e. Email: LeDeveny@att.net

3. Information about the representation:

- a. When did you hire the lawyer? About May 5, 2016
- b. What did you hire the lawyer to do? Represent Kevin for a MVA that happen on April 10, 2016
- c. What was your agreement for payment of fees to the lawyer? (attach a copy of any written fee agreement)
30% Lori was going to email copies of agreement but never got them.
- d. Did anyone else pay the lawyer to represent you? NO
- e. If yes, explain the circumstances (and complete item 10B on page 3):

- f. How much was actually paid to the lawyer? (please attach proof of payment, if any) Nothing
- g. What services did the lawyer perform? Lori got some records for past injuries. And then got settlement before all medical bills where paid.

h. Was there any other relationship (personal, family, business or other) between you and the lawyer?

No

4. Information about your loss:

a. When did your loss occur? May 23, 2017

b. When did you discover the loss? July 3, 2018

c. Please describe what the lawyer did that caused your loss Lori took my settlement check and forged my name on the check and release before all bills were paid

d. Total amount of your loss \$99728.00 after Lori's part is taken out

e. How did you calculate your loss? \$100,000 check minus 30% plus \$29,728 For medical bills

f. Amount you are requesting to be reimbursed \$99728.00

5. Information about your efforts to recover your loss:

a. Have you been reimbursed for any part of your loss? *If yes, please explain:* No

b. Do you have any insurance, indemnity or a bond that might cover your loss? *If yes, please explain:* NO

c. Have you made demand on the lawyer to repay your loss? When? *Please attach a copy of any written demand.*
No

d. Has the lawyer admitted that he or she owes you money or has he or she agreed to repay you? *If yes, please explain:* NO

e. Have you sued the lawyer or made any other claim? *If yes, please provide the name of the court and a copy of the complaint.* I have sent email, and certified letter to Lori demanding the money.

f. Have you obtained a judgment? *If yes, please provide a copy* No

g. Have you made attempts to locate assets or recover on a judgment? *If yes, please explain what you found:* Yes i have sent email and Certified letters to Lori demanding money and paperwork returned to me.

I have not heard from Lori.

6. Information about where you have reported your loss:

District attorney

Police

Oregon State Bar Professional Liability Fund

Client Security Fund Claim in Another State — *If yes, list state(s):* _____

If yes to any of the above, please provide copies of your complaint and any decisions, if available.

Oregon State Bar Client Assistance Office or Disciplinary Counsel

7. Did you hire another lawyer to complete any of the work? *If yes, please provide the name and telephone number of the new lawyer:* Not at this time.

8. Please give the name and the telephone number of any other person who may have information about this claim: _____

9. Agreement and Understanding

The claimant agrees that, in exchange for any award from the Oregon State Bar Client Security Fund (OSB CSF), the claimant will:

- a. Transfer to the Oregon State Bar all rights the claimant has against the lawyer or anyone else responsible for the claimant's loss, up to the amount of the CSF award.
- b. Cooperate with the OSB CSF in its efforts to collect from the lawyer, including providing information and testimony in any legal proceeding initiated by the OSB CSF.
- c. Notify the OSB CSF if the claimant receives notice that the lawyer has filed for bankruptcy relief.
- d. Notify the OSB CSF if the claimant receives any payment from or otherwise recovers any portion of the loss from the lawyer or any other person on entity and reimburse the OSB CSF to the extent of such payment.

10. Claimant's Authorization

- a. Release of Files: I hereby authorize the release to the OSB Client Security Fund, upon request, of any records or files relating to the representation of me by the lawyer named in Question 2.
- b. Payment to Third Party: I hereby authorize the OSB Client Security Fund to pay all amounts awarded to me to:

Name: _____

Address: _____

Phone: _____

11. Claimant's Signature and Verification

(Each claimant must have a notarized signature page. Please photocopy this page for each person listed in question 1.)

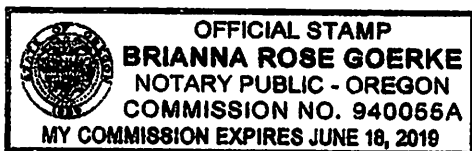
State of OREGON)
 County of MULTNOMAH) ss

Upon oath or affirmation, I certify the following to be true:

I have reviewed the Rules of the Client Security Fund and the foregoing Application for Reimbursement; and submit this claim subject to the conditions stated therein; and the information which I have provided in this Application is complete and true, to the best of my knowledge and belief.

Karen M. Hornum
 Claimant's Signature

Signed and sworn (or affirmed) before me this 25th day of JULY, 2018.



Notary's Signature Bgoerke
 Notary Public for OREGON
 My Commission Expires JUNE 18, 2019

Please complete page 4 if an attorney is representing you for this claim.

Lori Deveny

I am writing you to request all paperwork that pertains to Kevin Hamell case to be returned to Kevin. Safeco (Claim #504493226039). And to forward a check for \$100,000 which is the settlement check from my insurance (Safeco)

And also all of Rhonda Hamell's paperwork returned to Rhonda (Safeco Claim #586806156002)

You have not done this yet and you gave up your license on May 25, 2017. You have had more than adequate time. And was suspended by Supreme Court Order on April 30, 2018

This is from the Oregon state bar web site.

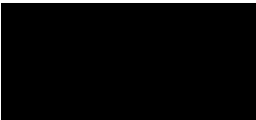
Your lawyer must give you adequate notice and an opportunity to find a new lawyer before withdrawing from the case. Your lawyer must also: promptly return all your papers and property; refund any unearned portions of the retainer deposit and any unused advances for expenses and costs; and comply with all applicable laws and rules.

Records show an unauthorized settlement was mailed to you Lori Deveny on May 23, 2017. You had stated on a phone call on or about May 23, 2018 to me (Kevin Hamell), the Craig Allmen's (other driver causing my motor vehicle accident on April 10, 2016) didn't have adequate insurance and you would go after my insurance (Safeco) for settlement. And will take 6-12 months.

I still have on going issues from this MVA. The big one is the accident site is within a ½ mile from my house and I have to drive by it to get home. And it is causing a lot of pain when I drive by. My left foot is still numb even after the surgery. And you Lori had no authorization from me (Kevin) to sign a release on my medical. This was done by you lori on May 30, 2017 and the bill for my the back surgery that I had about March 18, 2017. Which you told me to go ahead and do and you Lori would take it to court to have Safeco to pay it. Which you never did.

I am requesting you, Lori Deveny send a check for the full amount received and all paperwork within 10 days to Kevin Hamell. From when this letter has been received, By you Lori.

Kevin Hamell



Law Offices of Lori E. Deveny

1020 SW Taylor, Suite 690

Portland, OR 97205

503-225-0440

Fax: 503-225-0445

FAX COVER SHEET

FAX NUMBER TRANSMITTED TO: 1-888-268-8840

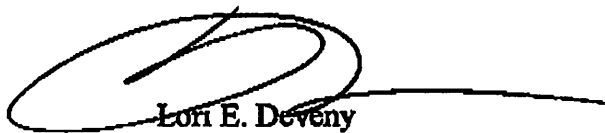
To: John Clements
Of: Safeco Insurance
From: Lori E. Deveny
Client/Matter: Kevin M. Hamell, claim number 504493226039
Date: June 28, 2017

Dear John:

So sorry for the delay! I had a fall and was taken out for a bit.

I enjoyed working with you.

Sincerely,



Lori E. Deveny
Attorney at Law

Enclosure (2 pages)

*** NOT COUNTING COVER SHEET. IF YOU DO NOT RECEIVE ALL PAGES, PLEASE TELEPHONE US IMMEDIATELY AT 503-225-0440.**

December 5, 2018

**CLIENT SECURITY FUND
INVESTIGATION REPORT**

RE : Client Security Fund Claim No. 2018-54
Claimant : Kevin Hamell
Attorney : Lori Deveny
Investigator : Rod M. Jones

INVESTIGATOR'S RECOMMENDATION

Recommend payment in the amount of \$50,000.00.

STATEMENT OF CLAIM

Mr. Hamell was involved in an auto accident that occurred on April 10, 2016. On or around May 5, 2016, he retained Lori Deveny to represent him regarding his claim for personal injuries. Mr. Hamell indicated in his application for reimbursement that he signed a contingent fee agreement, providing for a 30% contingent fee to be paid to Ms. Deveny. (On December 5, 2018, Mr. Hamell confirmed that he had just located a copy of the contingent fee agreement with Ms. Deveny. The contingent fee agreement provided for a 33-1/3% payment to Ms. Deveny upon any recovery.)

On February 28, 2017, Progressive Insurance Company, the insurer for the third party, issued a settlement check for the underlying policy limits of \$25,000.00. The check was made payable to "Lori E. Deveny and Kevin Hamell," and endorsed by Ms. Deveny, and supposedly endorsed by Mr. Hamell. (Exhibit 1) On March 3, 2017, a Release for the \$25,000.00 settlement was supposedly signed by Kevin Hamell and "approved as to form and content" and signed by Lori Deveny. (Exhibit 2) Mr. Hamell did not become aware of this underlying settlement and Release until November of 2018. He did not endorse the settlement check, nor did he sign the Release.

On May 23, 2017, Safeco Insurance Company issued a check in the amount of \$100,000.00 payable to "Law Offices of Lori Deveny Trust Account FBO Kevin Hamell." The check was endorsed by Lori Deveny and supposedly endorsed by Kevin Hamell. (Exhibit 3) On May 30, 2017, a UM/UIM Release for payment in the amount of \$100,000.00 was supposedly signed by Kevin Hamell and signed by Lori Deveny. (Exhibit 4)

After Ms. Deveny cashed both settlement checks, she continued to correspond with Mr.

Hamell without notifying him of either settlement, and continued to give him varying excuses and explanations regarding the status of his case.

In early July of 2018, a friend of Mr. Hamell's, who is also a client of Ms. Deveny, suggested that he look further into the status of his case and inquire about the status of Ms. Deveny's license to practice law. On July 3, 2018, Mr. Hamell discovered that a \$100,000 settlement with Safeco had been reached almost a year earlier.

Immediately upon learning of the settlement with Safeco, Mr. Hamell made written demand upon Ms. Deveny for \$100,000.00. (Exhibit 5) He did not receive any response to this demand and subsequently filed his claim with the Client Security Fund on or about July 25, 2018.

On April 30, 2018, the Oregon Supreme Court issued an interim suspension for Ms. Deveny. Ms. Deveny subsequently filed a Form B Resignation from the Oregon State Bar on July 26, 2018.

Ms. Deveny has failed to respond to any inquiries regarding this claim and has failed to provide any paperwork or documentation regarding this claim.

Mr. Hamell has been cooperating with the Portland Police Bureau regarding the loss of his settlement proceeds and the anticipated prosecution of Ms. Deveny.

FINDINGS

1. Claimant Hamell entered into a 33-1/3% contingent fee agreement with Attorney Lori Deveny in which she was retained to represent him for all claims relating to his auto accident of April 10, 2016.
2. The accused, Lori Deveny, was an active attorney and member of the Oregon State Bar at the time of the alleged loss.
3. Ms. Deveny settled the uninsured/underinsured motorist claim with Safeco Insurance Company for \$100,000.00 without the knowledge or consent of Mr. Hamell. Ms. Deveny apparently endorsed the check and signed the Release without Mr. Hamell's authorization or knowledge, again, most likely forging the client's signature.
4. Upon obtaining knowledge of the loss relating to the \$100,000 settlement, the claimant immediately requested reimbursement from the subject attorney, notified the Portland Police Bureau, and filed his claim with the Client Security Fund.
5. The accused attorney has not provided any response to the inquiries made regarding this claim.

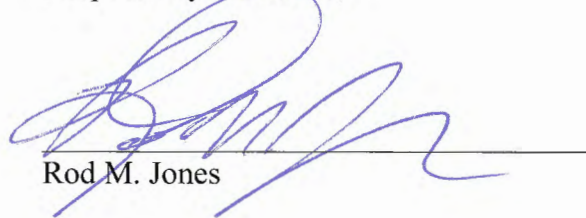
ANALYSIS

This loss arises out of defalcation on the part of Ms. Deveny. It is apparent that she settled both the underlying third-party claim and the subsequent underinsured claim without the knowledge of the claimant. Ms. Deveny apparently forged the claimant's signatures on the settlement checks, and on both Releases. It is apparent that Ms. Deveny misappropriated the claimant's portion of the settlement proceeds.

The claimant made a total claim for reimbursement in the amount of \$99,728 ("\$100,000 check minus 30%, plus \$29,728 for medical bills"). Based upon the 33-1/3% contingent fee agreement, the claimant was probably entitled to \$66,666.67 out of the \$100,000 settlement proceeds. Unfortunately, a CSF payment on this claim is capped at \$50,000.

I recommend payment on this claim in the amount of \$50,000.00, incurred as a result of the defalcation relating to the \$100,000.00 settlement.¹

Respectfully submitted,



Rod M. Jones

¹While obtaining documents that I had requested, the claimant became aware of the underlying settlement of \$25,000, that had actually occurred prior to the \$100,000 settlement. It is my understanding that he will be submitting a separate claim for that loss, which appears to be an independent act of defalcation by Ms. Deveny.

OREGON STATE BAR

Board of Governors

Meeting Date: January 11, 2019
From: Eric Foster, Public Affairs Committee Chair
Re: 2019 OSB Legislative Priorities and Legislative Session Guidelines

Action Recommended

The Public Affairs Committee recommends adoption of its 2019 Legislative Priorities and Legislative Session Guidelines. The Priorities and Guidelines are tools that the Public Affairs Department uses to guide the Bar's legislative efforts to advance the policy goals set forth by the Board.

Background

Oregon State Bar 2019 Legislative Priorities

Support adequate funding for Oregon's courts.

- Citizens Campaign for Court Funding. Support the statewide coalition of citizens, business and community groups formed to ensure adequate and stable court funding.
- Court Facilities Funding. Work with the legislature and the courts to make critical improvements to Oregon's court facilities.
- Judicial and Staff Resources. Support the request for additional judges and staff to ensure access to justice.

Support legal services for low-income Oregonians.

- Civil Legal Services. Increase the current funding level for low-income legal services.
- Indigent Defense. Work with the Public Defense Service Commission and other stakeholders in Oregon's criminal and juvenile justice systems to:
 - Ensure funding sufficient to support adequate compensation for publicly funded attorneys in the criminal and juvenile justice systems.
 - Support reduced caseloads for court appointed attorneys representing parents and children.
 - Support efforts to ensure the right to counsel for adults at the trial level in Oregon.

Support 2019 OSB Law Improvement Package and continue to engage with ongoing legislative work groups and task force proposals.

OSB Public Affairs Committee
2019 Legislative Session Guidelines

The Public Affairs Committee is committed to advancing the bar's mission to protect the public, improve the administration of justice, promote respect for the rule of law and increase access to justice. To that end, the Public Affairs Committee supports the following legislative goals:

1. Protect the public, the administration of justice and the rule of law.
2. Create meaningful access to justice and provide information about the law, legal issues, and the civil and criminal justice system.
3. Make Oregon laws more consistent and more uniform.
4. Improve the ability of attorneys to competently serve the interests of the citizens of the state.
5. Support a fair and effective criminal justice system.
6. Ensure efficient, competent and ethical delivery of legal services.
7. Promote the protection of privileged and confidential information while promoting access and education regarding public records.
8. Provide appropriate information and assistance regarding ethical issues to legislators, especially legally-trained legislators.
9. Improve the juvenile justice system and encourage better coordination between the different components of the system.
10. Foster diversity, equity and inclusion among legal service providers and in the justice system.