

Oregon State Bar

Legal Services Program

Standards and Guidelines

May 29, 1998

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I. Mission Statement

It is the mission of the Oregon State Bar Legal Services Program:

To fund an integrated, statewide system of legal services centered on the needs of the client community as identified in the Mission Statement of the OSB Civil Legal Services Task Force Final Report, May 1996;

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high-quality legal services to low-income Oregonians; and

To work to eliminate barriers to the efficient and effective delivery of legal services caused by maintaining legal and physical separation between providers of general legal services to low-income Oregonians in the same geographical area, while maintaining Providers' ability to offer the broadest range of legal services required to serve the needs of clients.

OSB Civil Legal Services Task Force Final Report, May 1996, Appendix I, Page 1 & 2

“Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon’s statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- *Protect the individual rights of low income clients;*
- *Promote the interest of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;*
- *Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and*

- *Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.”*

II. Governing Structure

A. Statutory Authority

On September 24, 1997, the Oregon State Bar Legal Services Program (OSB LSP) was established by the Board of Bar Governors as directed by ORS 9.572 to 9.578 (*Appendix A1*). The OSB LSP is charged with: the administration of funds appropriated to the OSB by ORS 9.577, ORS 98.386 (2), ORS 9.241 (3) and ORCP 32 O (*Appendix A2*) for funding legal services programs; the establishment of standards and guidelines for the funded legal services programs (Providers); and the development of evaluation methods to provide oversight of the Providers.

B. Governing Committee

1. **Purpose:** The Board of Governors has created the Governing Committee (OSB LSP Committee) pursuant to ORS 9.572(3) to advise the bar in the operation of the Legal Services Program, as outlined in these Standards and Guidelines, ORS 9.572(1). The OSB LSP Committee receives direction from the Board of Governors.
2. **Relationship to the Legal Services Program Director:** The Legal Services Program Director appointed by the bar, pursuant to ORS 9.572(2), is charged with periodically reviewing legal service providers who receive funding from the Legal Services Program, ORS 9.576(1). The OSB LSP Committee is charged to assist and advise the LSP Director in carrying out the LSP program review among other duties to assist and advise.
3. **Duties to the OSB Board of Governors:** The OSB LSP Committee will be responsible for reviewing and reporting to or making recommendations to the OSB Board of Governors on the following:
 - The Standards and Guidelines for the OSB LSP and their periodic review
 - Applications for funding to the OSB LSP
 - Disbursement of funds and annual OSB LSP budget
 - Assessment of Provider Programs
 - Annual reporting by the Providers
 - Legislative issues involving the civil legal aid funds
 - Complaints and grievances about Providers
 - Additional work of the OSB LSP
4. **Membership**
 - a. **Appointment:** Appointment of members to the OSB LSP Committee shall be made by the Oregon State Bar Board of Governors.

b. Membership: The OSB LSP Committee will consist of 9 members: 7 licensees, in good standing, of the Oregon State Bar; and 2 public members. The membership should be representative of the statewide aspect of the OSB LSP and should reflect the diversity of the service areas. No more than 3 attorney licensees should be from the Portland metropolitan area. The following criteria should be considered in selecting members:

- 1) Commitment to the basic principles of access to justice
 - 2) Ability to advance the mission of the OSB LSP
 - 3) Knowledge and understanding of providing quality legal services to low-income people.
 - 4) History of support for legal services providers
 - 5) Representation of a geographic area with special attention given to practice area specialties.
5. **Term of Appointment:** Appointments will be made for 3-year terms with the exception of the initial attorney appointments. To stagger vacancies on the OSB LSP Committee and to provide continuity, the initial appointments will be: 3 attorneys appointed for 3 years; 2 attorneys appointed for 2 years, and 2 attorneys appointed for 1 year.
6. **Liaisons to Committee:** The Oregon Law Foundation and the Campaign for Equal Justice are invited and encouraged to each have a liaison to the OSB LSP.
7. **Meetings:** The OSB LSP Committee will meet as needed. The Chair can call Special Meetings as needed. Meeting notices and agendas will be sent out according to public meeting law. Members can participate by telephone.
8. **Quorum:** Five members constitute a quorum for voting purposes.
9. **Subcommittees:** The OSB LSP Committee Chair has the authority to appoint additional subcommittees to make recommendations on specific issues as needed.

C. Program Staff

1. **Director of Legal Services Program:** The OSB Director of Legal Services Program (OSB LSP Director) is hired and supervised by the Executive Director of the Oregon State Bar. The OSB LSP Director staffs the OSB LSP Committee and receives advice and assistance from the OSB LSP Committee when conducting Legal Services Program Review. The OSB LSP Director may also support other work assigned by the Board of Governors to the LSP Committee.

- a.** The LSP Director will be responsible for monitoring, reviewing, reporting and making recommendations to the OSB LSP Committee on the following:
- These Standards and Guidelines and their periodic review
 - Applications for funding
 - Disbursement of funds and Annual OSB LSP budget
 - Assessment of Provider Programs
 - Annual Reporting by the Providers
 - Legislative Issues regarding civil legal aid funds
 - Complaints and grievances about Providers
 - Additional work of the OSB LSP
- b.** The LSP Director will be responsible for providing technical assistance to Providers to ensure compliance with these Standards and Guidelines.

III. Standards and Guidelines for Providers

The following standards and guidelines shall apply to all programs who receive funding from the Oregon State Bar Legal Services Program (OSB LSP) pursuant to ORS 9.572 *et seq.* Except where it is explicitly noted, the standards and guidelines apply equally to all funded Providers.

A. Statement of Goal

It is the goal of the OSB LSP that all Providers shall be an integral part of an integrated delivery system for civil legal services which incorporates the Mission, Values and Core Capacities set forth in the OSB Civil Legal Services Task Force Final Report, May 1996 (*Appendix C*). The Task Force Report determined that filing fee money should be used to fund providers in an integrated system designed to provide relatively equal levels of high-quality client representation throughout the state of Oregon and designed to address the core capacities identified in the OSB Legal Services Task Force Report. The integrated delivery system should be structured to eliminate the legal and physical separation of offices serving the same geographical area, avoid duplication of administrative functions and costs, reduce the burdens on staff and clients, and minimize other barriers to the efficient delivery of legal services described in the Declaration of Angel Lopez and Charles Williamson authorized by the Board of Bar Governors in January 2002 (*Appendix D*), while maintaining the Provider's ability to offer a broad array of high quality legal services consistent with the Mission Statement.

B. Providers

In 1998, the OSB LSP initiated fiscal and regulatory oversight of an integrated statewide network of civil legal aid Providers, hereinafter "Statewide and integrated Civil Legal Aid Providers."

In 2022, the OSB LSP initiated fiscal and regulatory oversight of immigration legal service providers (hereinafter "Immigration Legal Services Providers") through the Equity Corps of Oregon program and, subsequently, the Senate Bill 1543 (or Universal Representation) Program.

C. Provider Structure

- 1. Non Profit:** A Provider shall be an Oregon nonprofit corporation, incorporated as a public benefit corporation under ORS Chapter 65, and be recognized as tax exempt under section 501(c)(3) of the Internal Revenue Code.

2. Board of Directors:¹

a. Statewide and Integrated Civil Legal Aid Providers

- 1) Statewide and Integrated Civil Legal Aid Providers shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served, and which consists of members, each of whom has an interest in, and knowledge of, the delivery of quality legal services to the poor. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
- 2) A majority of the directors should be active or active pro bono licensees of the Oregon State Bar, appointed by the county bar association(s) in the Provider's service area, or by the Oregon State Bar.
- 3) At least one-third of the directors should be persons who are eligible to be clients, but are not current clients, when appointed. The directors who are eligible clients should be appointed by a variety of appropriate groups designated by the program that may include, but are not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

b. Immigration Legal Services Providers

- 1) Immigration Legal Services Providers shall have a Board of Directors which reasonably reflects the interests of the eligible clients in the area served. Appointments to the Board of Directors shall be made so as to ensure that the members reasonably reflect the diversity of the legal community and the population of the areas served by the Provider including race, ethnicity, gender, and similar factors.
- 2) Board membership should strive to include active or active pro bono licensees of the Oregon State Bar.
- 3) Board membership should strive to include persons presently or formerly impacted by the immigration system and/or those who are eligible to be clients, but are not current clients when appointed. Providers should actively

¹ See ABA Standards for the Provision of Civil Legal Aid, Section 1: Standards for Governance

recruit from community organizations including, but not limited to, client and neighborhood associations and community-based organizations which advocate for or deliver services or resources to the client community served by the Provider.

3. Staff Attorney Model:

- a. Statewide and Integrated Civil Legal Aid Providers shall have at least one active licensee of the Oregon State Bar on staff.
- b. Immigration Legal Services Providers shall have
 - i. at least one active licensee of one state bar association, or
 - ii. be actively recognized through the US Department of Justice’s Recognition and Accreditation Program, have at least one Accredited staff member, and maintain access to the services of a consulting attorney who is an active licensee of one state bar association.

Immigration Legal Services Providers should aspire to have at least one active licensee of the Oregon State Bar on staff.

4. Pro Bono Program:

- a. Statewide and Integrated Civil Legal Aid Providers shall maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to [Chapter 12 of the Oregon State Bar Policies](#) (Appendix B), as a part of its system of delivery of legal services.
- b. Immigration Legal Services Providers shall aspire to maintain a Pro Bono Program, certified by the Oregon State Bar pursuant to [Chapter 12 of the Oregon State Bar Policies](#), as a part of its system of delivery of legal services.

- 5. Efficient Use of Resources:**² A provider should, to the maximum extent practicable, integrate its operations and staff into existing programs that provide general legal services to low-income Oregonians in the same geographical area and meet the criteria set out in paragraphs B.1 – B.4, rather than maintain organizations that are legally and physically separate. If separate organizations currently exist, the Provider should take whatever actions are required to achieve program integration that will eliminate unnecessary, costly, and inefficient duplication without compromising the Provider’s

² See ABA Standards for the Provision of Civil Legal Aid, Section 3: Standards Regarding Organization Effectiveness – General Requirements and Section 4: Standards Regarding Organization Effectiveness – Delivery Structure and Methods.

ability to offer the full range of legal services contemplated by these Standards and Guidelines including, but not limited to, challenging federal restrictions that impede such integration.

C. Provider Use of Funds and Eligibility Guidelines

- 1. Use of Funds:** A Provider shall use funds received pursuant to ORS 9.572 et seq. only for the provision of civil legal services to the poor.

The use of funds from the OSB LSP or compliance with these Standards and Guidelines is a matter between the Provider and the OSB. Nothing in these rules shall be construed to provide a basis to challenge the representation of a client. The sole remedy for non-compliance with these Standards and Guidelines is found in the procedures under non-compliance in ORS 9.572 and in these rules, Section V.E. & F.

- 2. Eligibility Guidelines:** The Board of Directors of a Provider shall adopt income and asset guidelines, indexed to the Federal poverty guidelines, for determining the eligibility of individuals seeking legal assistance from the program. A copy of the income and asset guidelines shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.
- 3. Payment of Costs:** Eligible clients shall not be charged fees for legal services provided by a Provider with funds pursuant to ORS 9.572 et seq. However, a Provider may require clients to pay court filing fees or similar administrative costs associated with legal representation.
- 4. Recovery of Attorney Fees:** A Provider may also recover and retain attorney fees from opposing parties as permitted by law.

D. Procedures for Priorities and Policy for Avoiding Competition with Private Bar

- 1. Procedures for Establishing Priorities:** A Provider shall adopt procedures for establishing priorities for the use of all of its resources, including funds from the OSB LSP. The Board of Directors shall adopt a written statement of priorities, pursuant to those procedures, that determines cases and matters which may be undertaken by the Provider. The statement of priorities shall be reviewed annually by the Board.
 - a.** The procedures adopted shall include an effective appraisal of the needs of eligible clients in the geographic area served by the recipient, and their relative importance, based on information received from potential or current eligible clients that is solicited in a manner reasonably calculated to obtain the views of all significant segments of the client population. The appraisal shall also include and be based on information from the Provider's employees, Board of Directors, local bar, and other interested persons. The appraisal should address the need for outreach, training of the program's employees, and support services.

- b. In addition to the appraisal described in paragraph a, of this section, the following factors shall be among those considered by the Provider in establishing priorities.
- 1) The population of eligible clients in the geographic area served by the Provider, including all segments of that population with special legal problems or special difficulties of access to legal services;
 - 2) The resources of the Provider;
 - 3) The availability of free or low-cost legal assistance in a particular category of cases or matters;
 - 4) The availability of other sources of training, support, and outreach services;
 - 5) The relative importance of particular legal problems to the individual clients of the Provider;
 - 6) The susceptibility of particular problems to solution through legal processes;
 - 7) Whether legal efforts by the Provider will complement other efforts to solve particular problems in the areas served;
 - 8) Whether legal efforts will result in efficient and economic delivery of legal services; and
 - 9) Whether there is a need to establish different priorities in different parts of the Provider's service area.

- 2. Avoidance of Competition with Private Bar:** The Board of Directors of a Provider shall adopt a written policy to avoid using funds received from the OSB LSP to provide representation in the types of cases where private attorneys will provide representation to low-income clients without charge in advance as with contingency fee cases. A copy of the policy shall be provided as a part of the application for these funds and shall be consistent with the Provider's mission and written priorities.

E. Provider Grievance Committee and Process

1. Grievance Committee:

- a. The Board of Directors of a Statewide and Integrated Civil Legal Aid Provider shall establish a grievance committee, composed of lawyer and client members in approximately the same proportion as the makeup of the Board.
- b. The Board of Directors of an Immigration Legal Services Provider shall establish a grievance committee or grievance review process that incorporates meaningful input from members of the Board.

2. Grievance Process: The Provider shall establish procedures for determining the validity of a complaint about the manner or quality of legal assistance that has been rendered, or about the denial of legal assistance due to a determination that a potential client is financially ineligible.

a. The procedures shall minimally provide:

- 1) Information to a client at the time of the initial visit about how to make a complaint;
- 2) Prompt consideration of each complaint by the director of the program, or the director's designee; and
- 3) If the director is unable to resolve the matter, an opportunity for a complainant to submit an oral and written statement to the grievance committee.

F. Additional Standards for Providers

A Provider shall conduct all of its operations, including provision of legal services, law office management, and operation of the pro bono program in conformity with the following recognized standards, as applicable:

- [American Bar Association Standards for the Provision of Civil Legal Aid, August 2021.](#)
- ["Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means," as adopted by the American Bar Association House of Delegates, August 2013.](#)
- [Legal Services Corporation Performance Criteria, 2007.](#)
- [Oregon Rules of Professional Conduct.](#)

Immigration Legal Services Providers should also conduct their practices and operations in conformity with the Oregon State Bar Immigration Practice and Performance Standards and Guidelines.

IV. Cooperative Collaboration by Providers

A. Mechanism for Cooperation:

Providers will create a mechanism for cooperation among themselves and other programs providing services to low-income Oregonians:

- To facilitate additional communication between organizations;
- To coordinate and integrate key functions across program lines;
- To create a forum for identifying client needs;
- To collaborate and strategize how best to meet the needs of the client community;
- To discuss funding needs and potential funding mechanisms;
- To work with the court system, the legislature, the OSB, local bars, and licensees working in the private bar to create a broad network to develop better access to the justice system.
- To eliminate the legal and physical separation among the programs in order to minimize the duplication of administrative and other costs of delivering legal services to low-income Oregonians.

V. Oversight by OSB Legal Services Program

A. Funding of Statewide Civil Legal Aid Providers

OSB LSP will continue distributing stable funding for programs providing basic civil legal assistance to low-income Oregonians. In 1997 and 2003, the increases in court fees were calculated to replace decreased funding by other sources to legal services in Oregon and to enhance the broad-based, full range of advocacy approaches and services to clients.

1. **Presumptive Funding:** To maintain the current statewide level of service the OSB LSP will continue to fund those legal services providers receiving filing fees at the enactment of 1997 Oregon Laws Chapter 801 Section 73 and the 2003 legislative increase in filing fee funds. These providers will receive the funds from the OSB LSP after administrative fees, up to 5.1 million dollars (2003 filing fee level adjusted for inflation increased by the 1.6-million-dollar gap to meet the legal needs of the poor assessed in 2003) with an annual cost-of-living increase. The increase in the presumptive funding level meets the 1997 and 2003 legislative intent to provide additional funding for legal services to the poor at the same time continuing the approach adopted by the Interim Civil Legal Services Task Force who developed the Standards and Guidelines in 1998.

- a. **Initial Funding:** Providers will be required to complete the Initial Compliance Determination Application. Providers must complete the application and demonstrate compliance with these Standards and Guidelines within two months after this document becomes effective to qualify for funding under the OSB LSP beginning September 1998.

Funding will continue under presumptive funding until:

- 1) Provider is found not in compliance at which point Section V.F. will be implemented
 - 2) Provider discontinues provision of services at which point Section V. F. 5. will be implemented; or
 - 3) OSB LSP no longer receives funding under ORS 9.572 et seq.
- b. **Distribution of Funds:** Presumptive funding will be based on the same distribution formula that was in effect at the enactment of 1997 Oregon Laws Chapter 801 Section 73. The Providers will be encouraged to utilize provisions c. and d. of this Section to modify grants and subcontract to meet unmet needs, to provide services

to the under-served populations and to encourage a full range of services throughout Oregon.

- c. **Modification of Grants:** A Provider receiving presumptive funding may request that the OSB LSP transfer funds allocated to it to another Provider receiving presumptive funding in order to maintain the existing statewide level of service or to improve the statewide availability of services. The OSB LSP will consider the request and submit its recommendation to the BOG.
- d. **Subcontracting of Funds:** Providers may subcontract with others to provide specific services or to enhance services under the following conditions:
 - 1) The subcontract is for no more than one year;
 - 2) All subcontracts must be approved by the OSB when the aggregate total of the subcontracts for the year or when any one subcontract equals or exceeds \$50,000 or is greater than 25% of the Provider's annualized grant;
 - 3) The subcontract is for services within the parameters of these Standards and Guidelines;
 - 4) The subcontract includes language insuring compliance with Sections III. C. 1, 3, 4 and III. F. of these Standards and Guidelines if the subcontract is with an organization, other than a current Provider, providing legal services to low-income people, or with a law firm or attorney;
 - 5) The Provider must include provisions to obtain the needed information on the services performed by subcontract for inclusion in its annual report; and
 - 6) For all subcontracts, the Provider must give the OSB LSP 30 days' notice of intent to subcontract along with a copy of the proposed subcontract.

- 2. **Additional Funds:** If there are funds over those allocated for presumptive funding, the OSB LSP may award those funds to current Providers or applicants who demonstrate the ability to provide services that address the unmet needs and emerging needs of low-income Oregonians and the needs of the uncounted and under-served, low-income populations. The OSB LSP will determine the process for application for those funds.

B. Performance Evaluation of Providers

The OSB LSP has the responsibility to ensure that funds are effectively being used to provide high-quality legal services to low-income Oregonians. The Annual Reporting Requirements and the Accountability Process are designed to provide the OSB LSP with the information necessary for the oversight required by Statute and not to be unduly burdensome on Providers.

All oversight activities shall be conducted in accordance with the American Bar Association's Standards for Monitoring and Oversight of Civil Legal Services Programs.

C. Annual Reporting Requirements

- 1. Annual Audit:** All Providers shall annually undergo a financial audit by an independent auditor, which meets generally acceptable accounting practices. A copy of the final audit report shall be submitted to the OSB LSP.
- 2. Annual Report:** Each Provider shall annually file with the OSB LSP a report detailing its activities in the previous year. The report will be due by the first day of October and needs to contain the following information in the requested format:
 - a.** The numbers and types of cases and matters in which legal services were delivered;
 - b.** A listing of the Provider's staff and Governing Body;
 - c.** A copy of its budget;
 - d.** A narrative description of the Provider's operations, including a description of its needs assessment, priority setting, and grievance processes, which is sufficient to demonstrate that the Provider is in compliance with these Standards and Guidelines.

A Provider may comply with this requirement by submitting copies of reports or applications to the Legal Services Corporation, the Oregon Law Foundation or other funding agencies that provide the requested information.

D. Accountability Process

- 1. Process:** The process will focus on the effectiveness of the providers in meeting the needs of individual clients and the larger client community, and in the development and use of resources. The goals of the review are to assure compliance with OSB LSP Standards and Guidelines; assure accountability to clients, the public and funders; and to assist with provider's self-assessment and improvement.

The process has three components:

- a.** A periodic self-assessment report submitted by providers, including a narrative portion and a statistical/financial portion;
- b.** A periodic accountability report provided by the OSB LSP to the OSB Board of Governors and other stakeholders summarizing the information from the providers' self-assessment reports and other information including ongoing contacts with providers by OSB LSP staff and annual program financial audits; and

- c. Ongoing evaluation activities by the OSB LSP including peer reviews, desk reviews, ongoing contacts and other evaluation activities consistent with the OSB LSP Standards and Guidelines.

E. Complaint Procedure

1. Complaints about Legal Services Providers

- a. Each Provider under the OSB LSP is required to have a written internal grievance procedure to address complaints about the manner or quality of legal assistance provided in individual cases or about the denial of legal assistance in individual cases. Any such complaint received by the OSB LSP will be directed to the Providers' internal process except when there appears to be a pattern to the complaints or when the complaint falls into one of the categories listed below. Providers will furnish the OSB LSP with the resolutions to the referred complaints.
 - (1) Ethics complaints and malpractice claims will be referred to the appropriate department of the Bar.
 - (2) Complaints that Providers are acting outside the scope of the statute, ORS 9.574, not in compliance with these Standards and Guidelines, or misusing funds will be addressed by the OSB LSP's Committee or Grievance Committee through the Director of the OSB LSP.
 - (3) Complaints regarding the overall quality of legal assistance or the performance of the Provider will be addressed by the OSB LSP Committee or Grievance Committee through the Director of the OSB LSP.
 - b. The OSB LSP Committee, the Executive Director of the Bar, and the General Counsel of the Bar will be notified of the complaints against Providers. A listing of all complaints, which will include synopses and resolutions, will be kept by the OSB LSP Program Director.
 - c. Each complaint will be investigated (except ethics and malpractice complaints which will be referred to the appropriate body) and responded to timely. If a Provider is found not to be in compliance with these Standards and Guidelines, the procedure under Non-Compliance by Provider (F of this section) will be implemented.
- 2. Complaints from Applicants to the OSB LSP:** Applicants who are not granted funds by the OSB LSP may make a written presentation to the Board of Governors during the OSB LSP Committee's funding recommendation.

F. Non-Compliance by Provider

- 1. Informal Negotiation:** When it is found that a Provider is not in substantial compliance with these Standards and Guidelines, the OSB LSP Director (the Director) will negotiate

and work with the Provider to assist it in coming into compliance. This period of negotiation will last no more than 60 days and no less than 15 days.

The Director will notify the OSB LSP Committee and the OSB Executive Director that the Provider is out of compliance prior to formal notice being given.

- 2. Formal 30 Day Notice:** If the Provider continues to be out of substantial compliance, the Provider and the Provider's Board Chair will be given a formal 30 day written notice that details how it is out of compliance and the steps necessary to achieve compliance. The Director will continue to assist the Provider in resolving the problem.
- 3. Mediation:** If after 30 days from the receipt of the formal notice, the Provider still has not demonstrated compliance, the Director will immediately send a second notice to the Provider and the Provider's Board Chair, pursuant to ORS 9.576(2). The second notice will list three names of mediators and give the Provider 15 days from receipt of the second notice to agree to one of the mediators or suggest another mediator. If the Provider and the Director cannot agree on a mediator within the 15 day period, the Director will petition the presiding judge for a judicial district to appoint a mediator.

In the mediation, the OSB LSP will be represented by the Director or by the Chair of the OSB LSP Committee. The Provider will be represented by its Executive Director or Board Chair. Within one week of the mediation, a written decision will be forwarded to the OSB LSP Committee, the OSB Executive Director, the OSB Board of Governors and the Provider's Board Chair.

- 4. Hearing:** If the mediation fails to produce a resolution in the matter, the Director shall give the Provider and Provider's Board Chair a written notice of hearing pursuant to ORS 9.576(3). The hearing will be held no sooner than 30 days after Provider's receipt of notice of hearing.

The Provider will have the opportunity to present evidence that it has come into compliance or is making satisfactory progress towards compliance. The OSB LSP Committee will make up the hearing panel. Prior to suspension of funding, a written report will be presented to the OSB Board of Governors and OSB Executive Director within 5 days after the hearing is held which outlines the facts and decision. If after the hearing, the OSB LSP Director determines that based upon the written report, the provider is not in compliance with these Standards and Guidelines and that the provider has failed to show satisfactory progress toward achieving compliance, the OSB LSP Director shall suspend further funding of the program until such time that the provider makes a showing of compliance. ORS 9.576(3).

- 5. Suspension of Funding:** If the report indicates that the Provider is still not in compliance and is not making satisfactory progress towards compliance based on the decision of the hearing, the Director shall suspend funding until the Provider is able to demonstrate

compliance. Notice of suspension shall be served on the Provider in person or by certified mail and will be effective immediately upon service.

The OSB LSP Director, in consultation with the OSB LSP Committee, the OSB Executive Director and the OSB General Counsel, will determine if during the suspension all or part of the suspended funds should be used to contract with another Provider for legal services. If the Provider continues to provide legal services as defined under the funding agreement during the suspension, any unused funds accrued during the suspension will be paid to the Provider.

- 6. Termination of Services:** If the Provider terminates its provision of legal services as defined under these Standards and Guidelines, funding will cease and all unexpended funds shall revert back to the OSB LSP. The OSB LSP Committee will meet to determine the reallocation of those funds to other Providers or to new applicants.

Appendix A1 – Statutory Authority – Program

Legal Services Program

9.572 Bar to establish Legal Services Program; director; advisory and technical committees.

- (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.
- (2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.
- (3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program.

[1997 c.801 §73; 2011 c.595 §99]

9.574 [1997 c.801 §72; 2003 c.737 §98; repealed by 2011 c.595 §97a]

9.576 Review of providers; mediation; hearing; suspension of funding.

- (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.
- (2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator. If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.
- (3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the

Oregon State Bar Legal Services Program

Standards and Guidelines – Appendix A1

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provider is not in compliance with the standards and guidelines of the program and that the provider has failed to show satisfactory progress toward achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance.

[1997 c.801 §74; 2011 c.595 §100]

9.578 Other funding sources.

The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of establishing or funding legal service programs in Oregon.

[1997 c.801 §75]

Appendix A2 – Statutory Authority – Funding

State Budgetary Appropriations

2019 Oregon Law 691 Section 8

- (1) In addition to and not in lieu of any other appropriation, there is appropriated to the Judicial Department, for the biennium beginning July 1, 2019, out of the General Fund, the amount of \$12,257,000 for the purpose of funding the Legal Services Program described in ORS 9.572.
- (2) The Chief Justice of the Supreme Court shall distribute all moneys appropriated under this section to the Oregon State Bar in eight quarterly installments of equal amount.

Unclaimed Lawyer Trust Account Funds

98.386 Deposit of funds.

- (1) Except as provided in subsection (2) of this section, all funds received under ORS 98.302 to 98.436 and 98.992, including the proceeds from the sale of unclaimed property under ORS 98.382, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer. Before making the deposit the department shall record the name and last-known address of each person appearing from the holders' reports to be entitled to the unclaimed property and the name and last-known address of each insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation, and the amount due.
- (2) Any amounts identified as lawyer trust account funds in the report required by ORS 98.352 shall be paid or delivered by the person holding the amounts to the Oregon State Bar along with a copy of the report. All amounts paid or delivered to the Oregon State Bar under this section are continuously appropriated to the Oregon State Bar, and may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572, the payment of claims allowed under ORS 98.392 (2) and the payment of expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.
- (3) Before making a deposit to the credit of the Common School Fund Account, the department may deduct:
 - (a) Any costs in connection with sale of unclaimed property;
 - (b) Any costs of mailing and publication in connection with efforts to locate owners of unclaimed property as prescribed by rule; and

(c) Reasonable service charges.

[1957 c.670 §20; 1983 c.716 §16; 1989 c.183 §2; 1993 c.694 §15; 2009 c.462 §2]

Pro Hac Vice Fees

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee.

- (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.
- (2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis, including performing transactional or prelitigation work.
- (3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection.

[1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]

Cy-près Awards

ORCP 32 O – Payment of damages.

As part of the settlement or judgment in a class action, the court may approve a process for the payment of damages. The process may include the use of claim forms. If any amount awarded as damages is not claimed within the time specified by the court, or if the court finds that payment of all or part of the damages to class members is not practicable, the court shall order that:

- (1) At least 50 percent of the amount not paid to class members be paid or delivered to the Oregon State Bar for the funding of legal services provided through the Legal Services Program established under ORS 9.572; and

- (2) The remainder of the amount not paid to class members be paid to any entity for purposes that the court determines are directly related to the class action or directly beneficial to the interests of class members.

[§O added by 2015 c.2 §3]

Immigration Legal Services Funding

Enrolled Senate Bill 1543 (SB 1543-A)

- (1) The Chief Justice of the Supreme Court shall transfer funds...to the Oregon State Bar for use by the Legal Services Program established under ORS 9.572 to provide legal services to individuals on immigration matters and related matters, including but not limited to the provision of general legal information and legal referral services designed to increase access to the justice system.

- (2) In addition to and not in lieu of any other appropriation, there is appropriated to the Judicial Department, for the biennium ending June 30, 2023, out of the General Fund, the amount of \$4,500,000, for the purposes of implementing section 2 (4) of this 2022 Act.

Appendix B – OSB Civil Legal Services Task Force May, 1996

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996



**This Appendix Contains the Key Findings and Recommendations from the
Report. For a Full Copy of the Report
Please call the OSB at 620 0222 - Ext. 323**

**OSB CIVIL LEGAL SERVICES TASK FORCE
FINAL REPORT**

May, 1996

Chair: Stephen S. Walters, Portland
Members: Hon. David V. Brewer, Eugene
Hon. Neil R. Bryant, Bend
Edward L. Clark, Jr., Salem
Michael E. Haglund, Portland
Hon. Jack L. Landau, Salem
James T. Massey, Sisters
Katherine A. McDowell, Portland
Katherine H. O'Neil, Portland
Lawrence B. Rew, Pendleton
Martha L. Walters, Eugene

BOG Liaison: Barrie Herbold
Legal Services Program Liaison: Ira Zarov
OSB Staff Liaison/Reporter: Ann Bartsch

OSB CIVIL LEGAL SERVICES TASK FORCE FINAL REPORT

Stephen S. Walters, Chair
May 24, 1996

Introduction; Task Force Charge

In the summer of 1995 Oregon, like every state in the United States, faced a crisis in its delivery of civil legal services to low-income residents. The new Congress was considering legislation which would ultimately eliminate the Legal Services Corporation, the federal entity which provides funding to local legal services programs (including four programs in Oregon). At the very least, it appeared inevitable that 1996 federal funding for legal services would be reduced by as much as 35% from 1995 levels. Congress was also prepared to impose severe restrictions on the activities of all programs receiving LSC funding, which would have a serious impact upon the ability of LSC program attorneys to provide a full range of high quality legal services to their clients.

In response to this crisis, OSB President Judy Henry, in consultation with Chief Justice Wallace P. Carson, appointed the OSB Civil Legal Services Task Force. Stating that "the organized bar has an important role to play in assisting our programs in planning for the future and in assuring the continuing availability of legal assistance to all of the people of our state," the OSB gave the Task Force the general charge to "develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources." Steve Walters of Portland was appointed Chair of the Task Force; its members were Judge David Brewer, Neil Bryant, Ned Clark, Mike Haglund, Judge Jack Landau, Jim Massey, Katherine McDowell, Katherine O'Neil, Larry Rew, and Martha Walters. Barrie Herbold served as liaison to the BOG. Ann Bartsch was the OSB staff liaison and reporter. Ira Zarov of Oregon Legal Services served as the liaison to the legal services programs.

Following its initial meeting in September, the Task Force organized itself into four subcommittees, each with a separate charge. Each subcommittee was asked to invite participation and otherwise to secure information from other interested persons, including program board and staff, representatives of the Multnomah Bar Association, and the OSB Low Income Legal Services Committee. (A complete list of all participants is attached to this report as Appendix 5.) The full Task Force met periodically to review the recommendations as they were developed by the subcommittees.

Task Force participants contributed hundreds of volunteer hours to the consideration and final drafting of the reports and recommendations which follow. Complete reports from all of the Task Force subcommittees are included as appendices to this report. The following is a digested description of each subcommittee's activities, along with a listing of its key findings

and recommendations.

Subcommittee 1: Client Need/Priorities; Delivery System

This subcommittee was chaired by Judge David Brewer of Eugene. The subcommittee was asked to gather information on Oregon's existing civil legal services delivery system, for use by the other subcommittees, addressing the following questions:

What legal needs of client community are programs currently addressing? Are there any areas of need which are not being addressed, and which should be incorporated into Oregon's legal services delivery system?

What delivery systems are in place in Oregon to meet these needs? What systems could be developed or expanded?

The subcommittee was also asked to develop an overall mission statement for Oregon's civil legal services delivery system, for adoption by the full Task Force and ultimately by the Board of Governors, as well as by other entities concerned with civil legal services (e.g. the Oregon Law Foundation).

The subcommittee's initial report and Mission Statement were presented to the full Task Force in December and to the Board of Governors in January, 1996. That document is attached as Appendix 1 to this report. The Mission Statement was also adopted by the Board of Directors of the Oregon Law Foundation in February.

Key Findings:

1. Not more than one third of the legal needs of Oregon's low income population were being addressed by legal services programs before the funding cuts.
2. However, as of December, 1995, Oregon did have in place a legal services delivery system capable of providing a full range of civil legal services to low income Oregonians. Key components of that system were federally funded LSC programs and a network of locally based volunteer attorney programs providing supplemental services to the staffed offices. That system will be undercut by the adoption of pending federal legislation providing for severe funding cuts to LSC programs, and for severe restrictions on the activities of those programs which were inconsistent with the Task Force's mission statement for civil legal services.

Subcommittee 2: Structure and Organization

This subcommittee was chaired by Jim Massey of Sisters. It was asked to address the following questions:

Will existing legal entities and organizations be able to perform or facilitate the performance of the work identified by the previous working group? Are there opportunities for resource savings through reconfiguration of existing programs? If the existing structure will not be able to perform the work, what other entities can be developed to perform it?

This subcommittee met five times in the fall and winter of 1995-96. It invited board and staff representatives of Oregon's existing, and developing, legal aid and volunteer attorney programs to meet with the full Task Force to share their plans for necessary restructuring in light of the anticipated LSC funding cuts and restrictions on program activities. The subcommittee made no recommendations on questions it considered to be internal to the programs and their boards of directors, e.g. whether particular programs should or should not merge. However, subcommittee members did participate in ongoing discussions which were taking place among the programs, and the subcommittee's meetings provided an opportunity for strategizing and planning among the programs, bringing in the expertise of the broader legal community.

The subcommittee's full report is attached as Appendix 2. Its key findings and recommendations are as follows.

Key Findings:

1. In late April, 1996, Congress enacted HR 3019, the fiscal year 1996 appropriations bill which includes funds for the Legal Services Corporation. The legislation incorporated a long-anticipated series of restrictions on activities of LSC funded programs, including prohibition of most legislative and administrative advocacy, participation in class actions or welfare reform litigation, and representation of undocumented aliens (including undocumented migrant workers). The legislation further provides that LSC recipient programs may not use non-LSC funds, including state generated funds, to undertake any of these activities.

The 1996 restrictions on LSC funding and substantive work threaten the historic commitment to key Oregon legal services delivery system values.

2. Oregon's four LSC funded programs (Oregon Legal Services, Multnomah County Legal Aid Service, Marion-Polk Legal Aid, and Lane County Legal Aid) will continue to receive LSC funding, and will comply with the new restrictions in conducting their work on behalf of low-income Oregonians.

Consistent with the Task Force's mission statement for Oregon's civil legal services delivery system, Oregon's legal community must take responsibility for developing and nurturing other non-LSC entities capable of providing services which fill in the gaps

which the new Congressional restrictions will otherwise impose.

3. As of the date of this report, the following structural changes have been made (or are in the process of being made) in Oregon's civil legal services delivery system.

Organization of Full Service Law Centers In response to the imposition of restrictions on programs which receive Legal Services Corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated in Portland and will receive funding from OLF and other sources. The Lane County Law and Advocacy Center has been established in Eugene. A similar "Full Service Law Center" may be established to serve Marion and Polk counties.

MCLAS/OLS Reconfiguration Effective May 13, 1996, Oregon Legal Services' Central Support Office and Multnomah County Legal Aid Service are sharing office space (at the former MCLAS office), resulting in an estimated savings of about \$100,000 per year. The two programs are discussing possible merger later this year. **Marion-Polk** There have been no structural changes so far at Marion-Polk Legal Aid, although the question of merger with other entities is on the table. One attorney position has been lost because of resource limitations.

Jackson County There have been no structural changes so far in Jackson County (Center for Non-Profit Legal Services). A ballot measure which would have provided county funding for the Center and other social service agencies, was defeated by the voters on May 21. It appears that it will be necessary for the program to continue to receive LSC funding as a subgrantee of Oregon Legal Services for its private attorney involvement program.

Campaign for Equal Justice The Campaign for Equal Justice is now separately incorporated, free-standing 501(c)(3) corporation.

Volunteer Lawyers Project The Volunteer Lawyers Project in Multnomah County considered a merger with Multnomah County Legal Aid, but declined to do so in light of the restrictions which would be placed on its activities. It now appears that parts of VLP's program will be taken up by MCLAS (along with financial support from the Multnomah Bar Association), and others will pass to the newly organized Oregon Law Center.

Staffing losses Programs report various levels of staff attrition in the wake of the Congressional action. So far, one local office -- Oregon Legal Services' branch office in Klamath Falls -- has been closed. Most full-time staff at Multnomah County Legal Aid Service have been reduced to 80% time.

Key Recommendations:

1. Three fundamental premises should drive organizational and structural issues:

A. Quality and Independence

Legal services delivery in Oregon should not be driven by or be dependent on LSC funding or mandates. Legal services programs will continue to be an important and vital resource – of many – for providing access to the justice system for low income Oregonians.

B. Preservation of Funding Allocation

Funding levels for service to low-income client groups no longer eligible for LSC funded services, and for all other restricted forms of legal services representation, including welfare reform, class litigation, legislative and administrative advocacy, group representation and client education and training, must be maintained at levels sufficient to provide adequate representation to low-income clients.

C. Independence and Access

Planning and selection of substantive work, and prioritization of delivery to particular client groups or populations, should be based upon sound commitment to principles of equal access to justice consistent with DR 7-101 and EC 2-26, 27 and 28 of the Code of Professional Responsibility, and without regard to the disfavored social, political or economic status of any eligible client.

2. Consortium for Delivery of Services

There should be an ongoing independent consortium of Oregon legal aid providers. Membership would be open to any organization providing legal services to low income Oregonians, as well as any organization which sponsors the delivery of such services (e.g. the MBA). The consortium would provide a forum for ongoing identification of unmet client needs to which resources should be targeted, while avoiding duplication of efforts by member programs. The consortium would allow for coordination and integration of key functions across program lines, and facilitate communication among program funding sources.

The consortium should include:

Current LSC recipient programs
Non-profit legal centers
Public Interest Law Firms
Law school clinics
Campaign for Equal Justice
Bars, particularly OSB and MBA

3. Reorganization/Restructuring for Efficiency of Delivery

The existing legal services programs should continue the ongoing process of internal evaluation to identify means of streamlining, reducing costs and gaining new efficiencies. The programs should continue to evaluate, within the consortium context, whether program mergers, consolidation or sharing of particular functions or services or development of new means or methods of access and delivery are appropriate. Areas of continued discussion and evaluation should be:

- Merger;
- Consolidation of programs/services/shared systems; and
- Appropriate use of technology.
- Intake and referral improvements;
- Coordination among programs with the Bar;
- Coordination with ADR programs.

The various programs should continue to inform and advise one another as this process continues.

4. Development of Non-Restricted Entities

In response to the imposition of restrictions (on and after April 26, 1996) on programs which receive Legal Services corporation funding, new entities have been and are being organized to provide critically important services to clients, which LSC recipients will no longer be able to provide. Oregon Law Center has been incorporated and will receive funding from OLF and other sources; the Lane County Law and Advocacy Center has been established in Eugene. The Task Force makes the following recommendations regarding these "Full Service Law Centers:"

Should be an entity or entities capable of performing legislative and

administrative advocacy.

Should be an entity or entities capable of providing representation to underserved populations with cultural barriers, language barriers, or local access programs, e.g. migrant workers. Should be capable of providing services all over the state.

Should develop pro bono capacities of the bar statewide -- not just as supplement (to take individual cases overflowing from legal services programs), but in such areas as class actions, legislative advocacy, policy development, low income housing development, etc.

Should include all LSC restricted work, particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.

As indicated above, the question whether there should ultimately be one such program, with branch offices in key locations (e.g. Salem) was left for study by the OSB legal aid oversight group.

5. **Development/Expansion of New Resources**

The Subcommittee recommends development and expansion of new and non-legal services resources to complement consortium activities:

There are currently some regional hotlines operated by all legal services programs. Development of additional hotlines could be beneficial; a prime topic would be a (statewide) Child Support hotline.

Local and statewide bar groups should expand their pro bono efforts, working in cooperation with offices statewide. As a corollary, all programs should consider using emeritus attorneys in their area, on the model of the "ELVIS" program in Marion-Polk Legal Aid Service.

There should be strategic, thoughtful reassignment of OLF funding, filing fee surcharge resources, and other available funds to provider programs.

Courts, Bar and OLF should continue to support efforts to increase ADR resources (e.g. farmworker mediation program) and self help mechanisms (Oregon Family Law Task Force is investigating the Maricopa County model).

The OSB should expand its existing Tel-Law program to cover new topics.

The OSB Order Desk/Pamphlet distribution efforts could include legal aid brochures, which are already available from the programs.

OSB should expand its Modest Means program as far as possible.

6. OSB Oversight and Support

The Oregon State Bar should take on an expanded role in oversight and provision of technical assistance to legal aid programs. This oversight/technical assistance role should be assigned to a small group (not more than five persons) who would be directly accountable to the Board of Governors. Members of the group should be OSB members who are knowledgeable in the areas of law office management and legal services/pro bono delivery, and who are independent of the programs. The group should develop defined standards for ongoing assessment of the programs' operations based on existing national standards (e.g. ABA's SCLAIID standards, LSC Performance Criteria, Code of Professional Responsibility). Their assessments should concentrate on outcomes, with the emphasis on achieving quality results for clients.

If the Oregon legislature is willing to delegate allocation of filing fee surcharge revenues to the Oregon State Bar Board of Governors, this group would be an appropriate entity to take on this task, or at least, to evaluate and make recommendations to the BOG. (A significant minority of Task Force members believe that, while it is critically important that the OSB assume an oversight/technical assistance role with respect to civil legal services programs, this role should be separated from that of allocation of actual amounts of filing fee surcharge funding.)

Subcommittee 3: Funding

This subcommittee was chaired by Katherine O'Neil of Portland. The subcommittee was asked to address the following questions:

What current funding sources are in place to support legal services delivery in Oregon?
How can they be expanded to meet future needs? What new financial resources can be developed to support a reconfigured delivery system?

The subcommittee gathered information from each of the programs on their present financial base -- components and amounts, short term and long term financial prospects. The subcommittee gathered similar information from the major non-LSC funding sources for legal services and volunteer attorney programs in Oregon, specifically the Campaign for Equal Justice, the Oregon Law Foundation, the Multnomah Bar Association, and the legislature (the source of the filing fee surcharge legislation). Members of the group also researched funding mechanisms which have had success in other states, using information supplied by the American Bar Association's PERLS (Project to Expand Resources for Legal Services) Project. The goal was to develop insights for the BOG on how the organized bar could best step in and help alleviate the anticipated shortfalls.

The subcommittee's full report is attached as Appendix 3. Its key findings and recommendations are as follows.

Key Findings:

1. In FY 1996, funding to the Legal Services Corporation (the federal agency which funds local legal services programs across the country, was cut by approximately 30 percent, to a total of \$278 million. This translates into a loss of approximately \$1 million (of total 1995 funding of approximately \$6 million from all sources) for Oregon's civil legal services programs. There are proposals in the current Congress to reduce LSC funding to \$141 million in FY 1997 (\$1.5 million shortfall for Oregon) and to eliminate it entirely by FY '98. If these proposals are successful, states like Oregon will be charged with all responsibility for providing civil legal services for their low income residents.

2. Oregon programs report the following projected shortfalls in their geographic service areas for 1996:

Jackson County (Center for Nonprofit Legal Services): \$70,000

Lane County (Lane County Legal Aid Service, Lane County Law and Advocacy Center): \$125,000

Marion and Polk Counties (Marion-Polk Legal Aid): \$125,000

Multnomah County (Multnomah County Legal Aid Service): \$440,000

Remaining Oregon counties (Oregon Legal Services): \$210,000

3. Oregon is relatively fortunate in having developed significant sources of non-federal funding for civil legal services at the state and local level. Non-federal funding constituted approximately 51% of the resources available to the legal aid/volunteer attorney programs in 1995. The most significant sources of in-state funding are:

Campaign for Equal Justice Now incorporated as an independent 501(c)(3) entity, the Campaign solicits contributions from Oregon attorneys and law firms, and solicits grants and other assistance from a wide variety of private sector sources, on behalf of legal services programs. In 1995, a total of \$322,000 was raised.

Filing Fee Surcharge Pursuant to ORS 21.480-.490 (appendix 3A to this report), circuit and district courts collect a surcharge on filing fees paid by moving parties in civil suits, which is paid to the legal aid program in that county by the State Court Administrator. This mechanism produces approximately \$1.5 million annually.

Oregon Law Foundation/IOLTA Programs providing civil legal services to low

income Oregonians have been (and should continue to be) the major recipients of funding from OLF's IOLTA (Interest on Lawyers Trust Accounts) program. In 1996, OLF will make a total of \$599,000 in grants, with approximately \$496,000 going to programs in the legal services category.

Without assistance from the Oregon State Bar, the courts, and the legal community generally, these funding sources will not be able to make up the shortfall in federal funding in the foreseeable future.

Key Recommendations:

1. **Filing Fees surcharge** Oregon's circuit and district courts will be consolidated effective January 15, 1998. Currently, legal services programs receive a surcharge on each filing fee paid into circuit court in the amount of \$22.00. In cases currently being filed in district court, the surcharge is \$8.50.

The BOG should urge Chief Justice Carson to exercise his discretion to maintain the \$22 filing fee for all courts after merger of Circuit and District courts in January, 1998.

Alternately, the BOG should make its #1 Legislative agenda for the '97 Legislature a revision in the laws related to filing fees with the fees going to the OSB for distribution.

2. **OSB dues assessment** The FY '96 shortfall could be met by a \$100 per attorney contribution made with the annual OSB dues. Subsequent Congressional cuts would require a greater per attorney contribution.

The BOG should exercise its leadership and chose a method of per capita contribution among the following:

- a. Voluntary contribution collected with OSB dues: "\$100 or other."
- b. Voluntary first year or so and then make it compulsory: "\$100".
- c. Compulsory contribution collected with OSB dues: "\$100" FY '97, "\$250" in subsequent years to make up for continued cuts in Congressional funding. With an option to do 40 hours (or another figure) of pro bono work in an OSB certified pro bono program.

Any compulsory contribution should first be approved by the new OSB House of Delegates with a referral to the general membership following the meeting at which it is approved.

3. **Greater OSB/local bar support for Campaign for Equal Justice** The CEJ would greatly benefit from open, public, frequent support for CEJ from the BOG and other bar leaders. The BOG members can mention the campaign in stump speeches, write about it in all publications. Make CEJ the "lawyers' charity," a part of the legal culture. If BOG members and the county bar presidents did an hour of intake at a legal aid office, they would gain a perspective that would fire their support of the CEJ.
4. **Increase income to OLF/IOLTA** The Oregon Law Foundation should be asked to pursue various mechanisms, for which national models exist, to increase IOLTA income. These include "sweep" accounts for IOLTA funds (cash management or sweep account which sweeps all or part of the IOLTA balance that is over a specified threshold amount from low-yield checking accounts into an investment in Treasury backed securities on a daily basis, producing higher yields for the IOLTA account); ongoing negotiations with banks for higher interest rates, and lower service charges, paid on IOLTA accounts.

The Oregon State Bar should assist OLF in investigating mechanisms for increasing income to the Foundation through legislation providing for, among other possibilities: direction of interest on funds in the hands of title insurance companies to OLF; direction of a portion of state abandoned property funds to OLF; direction of unclaimed client trust funds to OLF.

5. **Potential funding sources for consideration by legal services programs** include implementation of sliding scale fees for service to clients in the moderate income range (125% - 200% of poverty guidelines); local and county bond issue funding (Jackson County example); retainer contracts with Indian tribes and social service agencies; and gaming revenues.

Subcommittee 4: Ethical Responsibility/Quality Assurance/Transition

This subcommittee was chaired by Judge Jack Landau of the Court of Appeals. It was asked to consider how the bar could best assist the LSC programs' attorneys in meeting their ethical responsibilities to clients in light of the restrictions imposed by Congress.

The subcommittee also reviewed a memorandum from James N. Gardner of Portland, outlining a potential 10th Amendment challenge to the conditions and restrictions imposed on the Legal Services Corporation and its grantees by Congress.

The subcommittee's full report is attached as Appendix 4. Its key findings and recommendations are as follows.

Key Findings:

1. **ABA Formal Opinion 96-399** In February, 1996, the American Bar Association Standing Committee on Ethics and Professional Responsibility released Formal Opinion 96-399, "Ethical Obligations of Lawyers Whose Employers Receive Funds for the Legal Services Corporation to their Existing and Future Clients When such Funding Is Reduced and When Remaining Funding Is Subject to Restrictive Conditions." At approximately the same time, Oregon Legal Services prepared its own proposed response to the anticipated funding and practice restrictions. Rather than duplicate the foregoing efforts, the subcommittee focused on a review of the analysis and recommendations of the ABA Standing Committee and OLS.

In general, the OLS policy appears to follow from, and is entirely consistent with, the formal opinion of the ABA Standing Committee.

Copies of ABA Formal Opinion 96-399, and of OLS' internal memorandum "Implementing New Restrictions," are attached to the full subcommittee report at Appendices 4A and 4B.

Key Recommendations

1. The ABA Standing Committee's formal opinion is, of necessity, based on the Model Rules and not on the rules of professional responsibility governing any particular jurisdiction. So far as the Task Force is aware, however, the Oregon Code of Professional Responsibility is consistent with the Model Rules in all respects material to the questions before the ABA Standing Committee. The Task Force has little reason to believe that the ethical obligations of Oregon legal services lawyers will be substantially different under the Oregon Code and, therefore, regards the ABA Standing Committee's formal opinion as a useful source of advice to legal services lawyers in this state. Nevertheless, the Task Force believes that it may be of value to Oregon lawyers to have the Oregon State Bar Legal Ethics Committee review the ABA Standing Committee's formal opinion in the light of the particular requirements of the Oregon Code, to determine the extent to which the obligations of Oregon legal services attorneys are anticipated to be different than those of lawyers generally in the context of the Model Rules. Accordingly, the Task Force has prepared an opinion request to that effect.
2. The Task Force has considered, at least preliminarily, the possibility of other responses to the anticipated funding and practice restrictions than accommodation through modification of legal services policies and practices. Of particular note is the suggestion that the constitutionality of the restrictions be challenged in federal court. Although the Task Force expresses no opinion on the likelihood of success of such a challenge, it does recommend that the option be explored by the appropriate authorities.

In essence, the theory of the proposed lawsuit is that the imposition of federal restrictions on the provision of legal services violates the Tenth Amendment to the federal Constitution. The major premise of the argument is that the operation of state /court systems is at the core of powers reserved to the states by the Tenth Amendment and that the operation of state court systems includes the promulgation and enforcement of rules of professional responsibility. The minor premise of the argument is that the anticipated restrictions on legal services practice will necessitate a modification of such rules of professional responsibility. The key, of course, is the minor premise, namely, whether the expected practice restrictions actually require a modification of state professional responsibility rules or other matters properly regarded as core areas of state sovereignty.

Assuming the potential viability of a Tenth Amendment claim, the question arises: Who would be the proper plaintiff(s)? In all likelihood, the proper party plaintiff would be the State of Oregon, or the Chief Justice, or both; in all events, the matter would be subject to the advice and representation of the Attorney General. The Task Force recommends that the Attorney General be requested to evaluate the possibility of initiating a lawsuit to challenge the constitutionality of the anticipated funding and practice restrictions.

Conclusion

Hundreds of hours of volunteer effort, energy, and emotion have gone into the creation of this final report. The issues with which the Task Force has wrestled with are critically important to the future of access to justice for low-income Oregonians, both in the short and the long term. The Task Force members urge the Board of Governors to put these issues at the head of the bar's agenda for this year and the years to come. As the BOG's original charge to the Task Force stated, the organized bar has a critically important role to play in assuring the continuing availability of legal assistance to all of the people of our state. We urge the Board to take up this work.

Appendix C – Declaration of Angel Lopez and Charles Williamson

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NEW YORK

<p>CARMEN VELAZQUEZ, <i>et al.</i>, Plaintiffs, v. LEGAL SERVICES CORPORATION, <i>et al.</i>, Defendants.</p>	<p>97 Civ. 00182 (FB)</p>
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<p>DAVID F. DOBBINS, <i>et al.</i>, Plaintiffs, v. LEGAL SERVICES CORPORATION, Defendant.</p>	<p>01 Civ. 8371 (FB)</p>
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DECLARATION OF ANGEL LOPEZ AND CHARLES WILLIAMSON

Angel Lopez and Charles Williamson, declare as follows:

1. I, Angel Lopez, am the President of the Oregon State Bar ("OSB").

2. I, Charles Williamson, am the President Elect of the Oregon State Bar, and will serve as President in 2003. I am currently a member of the Board of Governors of the OSB and am the Chair the OSB Access to Justice Committee.

3. We make this declaration on behalf of the Oregon State Bar in support of the plaintiffs' request for a preliminary injunction enjoining the enforcement of restrictions imposed by the Legal Services Corporation ("LSC") on the professional activities of lawyers employed by non-profit corporations receiving funding from LSC, especially when those activities are funded entirely from non-LSC private and governmental sources, because the Bar believes that the restrictions interfere significantly with OSB's effort to use state funding to provide comprehensive legal services. More specifically, we make this declaration to demonstrate that LSC's program integrity regulation requirement of physical separation between LSC-funded and non-LSC-funded activities imposes an undue burden on First Amendment activities of legal services providers. Because the separation requirement inevitably imposes significant costs, the plaintiffs should be permitted to challenge LSC's claimed justification for those costs, and should not be required to exhaust administrative remedies prior to testing the legality of the requirement. Finally, we make this declaration to describe particular ways in which certain other legal services restrictions infringe on plaintiffs' First Amendment rights.

4. The Oregon Legislature directed the Oregon State Bar to by rule establish a Legal Services Program to provide legal services to the poor without charge (ORS 9.572 to 9.578). The legislature funded this program through state filing fees. In 1998, OSB adopted the mission of the state legal services program as follows:

To use the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified

in the Mission Statement of the *OSB Civil Legal Services Task Force Final Report*, May 1996, and

To use its oversight authority to work with Providers to insure that the delivery of services is efficient and effective in providing a full spectrum of high quality legal services to low-income Oregonians.

Legal services programs exist to ensure that institutions and organizations created to serve public interests and needs, particularly governmental and civic institutions, treat individuals equally no matter what their economic situation. This is not a radical notion; it is the cornerstone of American concepts of justice and fair play.

The mission of Oregon's statewide legal services delivery system should continue to be centered on the needs of its client community. It should be expansive, recognizing that equal justice contemplates more than simply providing a lawyer in every family law or unlawful detainer case (though it certainly includes this goal as well). This mission must contemplate lawyering in its broadest sense, acknowledging that the interests of low income clients can only be served if the delivery system is dedicated to providing full and complete access to the civil justice system in a way that empowers this segment of the population to define, promote, and protect its legitimate interests. As such, the mission must be to:

- * Protect the individual rights of low income clients;
 - * Promote the interests of low income individuals and groups in the development and implementation of laws, regulations, policies and practices that directly affect their quality of life;
 - * Employ a broad range of legal advocacy approaches to expand the legal rights of low income individuals and groups where to do so is consistent with considerations of fundamental fairness and dignity; and
 - * Empower low income individuals and groups to understand and effectively assert their legal rights and interests within the civil justice system, with or without the assistance of legal counsel.

5. The mission of the OSB Legal Services Program, as set out above, was written by the OSB Civil Legal Services Task Force. In the summer of 1995, Judy Henry, the President of the Oregon State Bar, in consultation with Oregon Supreme Court Chief Justice Wallace P.

Carson, Jr., appointed ten distinguished Oregonians to serve on the OSB Civil Legal Services Task Force and gave the Task Force the general charge to “develop a plan for civil legal services in Oregon for 1996 and future years, which will, when implemented, effectively provide a full range of legal services to low income Oregonians with all available resources.” The Task Force included several prominent private attorneys from some of the most respected firms in Oregon, a trial judge who was later appointed to the Court of Appeals, a judge from the Court of Appeals, a State Senator who was Chair of the Joint Judiciary Committee and two representatives from the OSB. The Task Force appointed subcommittees bringing in a much larger number of participants with extensive knowledge and expertise. Task Force participants contributed hundreds of volunteer hours in the consideration and final drafting of the reports and recommendations.

6. The Oregon Legislature directed OSB to provide standards and guidelines for legal service providers (ORS 9.572). The OSB guidelines require using the filing fee revenue to fund a coordinated, statewide system of legal services centered on the needs of the client community as identified in the mission statement set out above in paragraph 4. In addition, OSB adopted the “Standards for Providers of Civil Legal Services to the Poor,” as approved by the American Bar Association House of Delegates, August 1986, “Standards for Programs Providing Civil Pro Bono Legal Services to Persons of Limited Means,” as adopted by the American Bar Association House of Delegates, February, 1996, “The Legal Services Corporation Performance Criteria,” 1996 and the Oregon Code of Professional Responsibility.

7. The LSC restrictions – including restrictions on class actions, attorney fees, lobbying, and representing certain categories of clients – make it significantly more difficult for the Oregon State Bar to implement the mission, standards and goals of the state Legal Services

Program. These restrictions effectively prevent many legal services offices in Oregon from meeting key needs of their clients, both by directly restricting advocacy financed by LSC funds and by restricting advocacy financed by non-LSC funds in programs that also receive some LSC funds. The federal restrictions on the use of state money increase costs of providing state funded services to low income Oregonians, increase the administrative expense and reduce the quality of service for the reasons explained below.

8. The OSB Legal Services Program distributed approximately \$ 2,793,000 to service providers in 2001. These funds went to twenty offices serving low income clients in all 36 counties in Oregon. Fourteen of these offices also accepted federal funding from LSC and therefore provided a limited range of legal services in compliance with the LSC restrictions. Six legal services offices in Oregon receive no federal LSC money and therefore provide a full range of legal services low income clients without the LSC federal restrictions.

9. There is inadequate funding for civil legal services in Oregon. The Oregon State Bar, Oregon Judicial Department and Office of Governor John Kitzhaber, M.D. sponsored an assessment of legal needs in Oregon that was published March 31, 2000. The needs survey established that fewer than two in ten low-income people with a need for civil legal services get legal services in Oregon (including services provided by non-profits, pro bono and private practitioners working for a fee). This determination was based on surveys of judges, lawyers, social service providers, legal service providers and low income people.

Quantity of Services

10. Based on the Oregon experience, the cost of creating and sustaining separate non-profit corporations and separate offices, as required by the LSC "program integrity" regulation, reduces the quantity of services that can be provided by the OSB Legal Services Program

because it requires increasing operating expenses necessary to rent additional space, pay for separate executive directors, pay for separate accounting departments, operate separate computer networks, and operate separate telephone systems.

11. For example, the Oregon Law Center (“OLC”), which receives funding from OSB, the Oregon Law Foundation (OLF), Campaign for Equal Justice (CEJ) and from other foundations, was established to provide unrestricted services through offices located in Portland, Ontario, Coos Bay and Grants Pass. Legal Aid Services of Oregon (“LASO”) provides LSC restricted services through offices located in Portland, Bend, Pendleton, Roseburg, McMinnville, Hillsboro, Woodburn, Newport, Oregon City, and Albany. The same individuals serve on the board at LASO and the board at OLC. The two corporations maintain separate offices and do not share employees. Both non-profit corporations deliver services to low-income clients living in thirty-three of Oregon’s thirty-six counties. Rural offices are paired by region so that, for example, one LSC funded office in Northeastern Oregon can refer restricted cases or clients to a state funded office located in another town within the same region. Both programs maintain separate offices located in Portland. There are administrative costs inherent in coordinating a system with two separate corporations serving a geographical area that would be better served by one. The additional administrative costs necessary to maintain the separate entities could be better used to open another rural office or to hire more staff attorneys to provide additional service to clients if LSC permitted the OSB Legal Services Program to pay for one staff attorney assigned to do class actions, seek attorney fees, work on legislative and administrative lobbying, and represent immigrants, who was permitted to work in the same office and program as a staff attorney paid for by LSC to represent individual clients.

12. In addition, there is a financial cost imposed by the LSC restriction that prohibits seeking attorney fees. Because current funding is only adequate to serve two in ten people with a civil legal problem, the OSB Legal Services Program seeks to increase the number of clients served with the state filing fee money by directing non-profit service providers to recover statutory attorney fees when available. The money earned through attorney fees is then used to increase the quantity of civil legal services available for low income clients. Attorneys funded by state filing fee money who are working for a non-profit service providers who also accept federal LSC funding cannot seek or retain attorneys fees. Money that should be available to provide more services is lost. For example, attorney fees that could be earned under statutes like the federal Equal Access to Justice Act are never collected.

Quality of Service

13. The harms caused by the legal services restrictions are compounded by Oregon's large geographical area, widely distributed clients and limited funding. This task of providing high quality legal services throughout the state is made far more difficult or even impossible when the federal restrictions prohibit using state money to pay for restricted work that is done within an office that also receives any federal money from LSC. The federal requirement of "program integrity" requires maintaining a separate non-LSC-funded office to provide the full range of high quality legal services. It is not possible to have two legal services offices in a small rural county, and certainly not in each of the thirty-six counties in Oregon, with current funding.

14. The OSB recognizes that technological advances can help address some of the problems posed by underfunded, understaffed and restricted offices serving a large client base over vast distances. Video telephones, hotlines, pro se forms and classes, courthouse facilitators,

web sites and booklets are used legal services providers in Oregon. However, none of the technological advances are a real substitute for having a legal services office representing clients in a community. It remains crucial to have a presence in communities across Oregon. Legal services attorneys working in rural offices become an important part of the community. By their mere presence there is less likely to be major problems for low income people. Legal services attorneys living in rural communities understand local client needs, the local economy, social structure, politics and judges. They are respected by the clients, judges, office holders, social service providers, the private bar and opposing parties.

15. High quality civil legal services for the poor cannot be provided across long distances. The "separate entity" restriction has forced legal services providers in Oregon to support an OLC office in Ontario (no federal money) and an LASO office in Pendleton (some LSC federal money). For example, in theory, a person lacking eligible alien status, needing representation in a class action, requiring administrative or legislative advocacy, or bringing a case where attorneys fees are available could go to OLC in Ontario to seek legal services. There are two staff attorneys in Ontario and four staff attorneys in Pendleton. However, it is 167 miles from Pendleton to Ontario. In addition, many of the low income people in the region served by each office live even farther away. The Blue Mountains are located between the two offices with two treacherous sections of the highway often closed in winter. Low income families usually lack the reliable transportation, money for gas and time off from low wage jobs necessary to make such a trip. Lawyers have to take time to travel to court hearings that are far away; they handle fewer cases and provide lower quality legal representation because they work as outsiders in the distant community. Some routine legal services cases like domestic violence and evictions require going to court quickly on little notice. A lobbyist from another town is less

effective at city hall or with the county commissioners. Clients would receive far better service if OSB Legal Services Program money were used to finance one attorney in Ontario and one attorney in Pendleton to do the work that needs to be done to provide equal access to justice, while LSC funded three attorneys in Pendleton and one in Ontario to do the work currently permitted by LSC. Having the “program integrity” requirement precludes this approach. The same problem is repeated in Bend (241 miles to the paired OLC office in Grants Pass), Roseburg (85 miles to the paired office in Coos Bay), Newport (98 miles to the paired office in Coos Bay), Albany (69 miles to Portland), Woodburn (30 miles to Portland), and McMinnville (38 miles to Portland).

16. The LSC restriction prohibiting attorneys from seeking attorneys fee award also reduces the quality of services that can be provided to clients through Oregon’s coordinated delivery system. Oregon has many fee shifting statutes that are designed to encourage settlement and to discourage the litigation of uncertain claims. The prevailing party is entitled to attorney fees. Clients represented by an attorney who is free to seek attorney fees are better served because the parties are more likely to reach a reasonable settlement quickly. Indeed, it is sometimes essential for lawyers to move for contempt but even in those circumstances, which often are not predictable at the outset, the attorneys in LSC-funded programs are prohibited from seeking fees. Although the Oregon planning process has attempted to provide individuals with access to attorneys who can do unrestricted work, it is inevitable and unavoidable that LASO will take some cases where the client would be entitled to seek fees but for the barrier presented by the federal LSC restrictions.

17. The LSC restrictions prohibiting attorneys from working on class actions also reduces the quality of services. One of the Key Recommendations in the *OSB Civil Legal*

Services Final Report was to support “Full Service Law Centers” that provide all LSC restricted work, “particularly class actions on issues affecting low income populations, such as welfare reform and administration of public benefit programs.” The following example is illustrative of the problem: The plaintiff alleged that a welfare office in one county had a pattern and practice of improperly processing applications for general assistance. General assistance is made available to very low income people who are extremely vulnerable, often people who have a mental disability and are not receiving any other benefits. State law required that the office adequately develop an evidentiary record when processing applications. The local welfare office was not following this requirement and was routinely denying benefits to a large number of qualified applicants.

18. Because of inadequate resources, OLC could not take the case and LASO filed a lawsuit in state court seeking an order directing the state agency to change its policy in order to follow the law. The court denied the order on grounds that the plaintiff could have corrected the harm done to plaintiff as an individual by asking for an administrative hearing where the hearings officer would have followed the state law, developed the record and granted benefits to plaintiff. The judge told the LASO attorney from the bench that she would have to file a class action in order to change the local welfare office’s pattern and practice. When she told the judge that federal LSC regulations prohibited her from filing a class action, he expressed concern.

19. The LASO office does not have the staff necessary to accept every case on behalf of general assistance applicants, ask for a hearing and make certain that the individual client gets benefits. It is a much more efficient and effective use of an attorney’s time in this type of case to file a class action forcing the local welfare office to follow the law and grant benefits in response to the first application. Even if there were adequate staff to accept each individual case, many

desperate low income clients, especially those with a mental disability, would be unlikely to understand their legal rights and get the help they need to enforce their legal rights. Oregon courts do not recognize standing based on capable of repetition yet evading review.

20. The “program integrity” restriction effectively precludes the OSB Legal Services Program from funding one attorney to do this work in each legal services office while permitting an LSC funded attorney to do different work in the same office. Instead, the OSB is unable to do more than to fund attorneys who are located at a great distance in many cases. The result is that, as a consequence of the program integrity restriction, important work simply cannot be done.

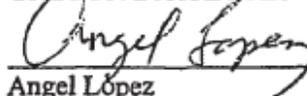
21. We were authorized to sign a declaration on behalf of the Oregon State Bar by a resolution of the Board of Governors adopted on the 25th day of January 2002.

We declare under penalty of perjury that the foregoing is true and correct.

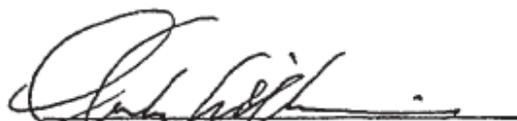
Executed on June 12, 2002

Portland, Oregon

OREGON STATE BAR



Angel López
President



Charles Williamson
President Elect