

**OREGON STATE BAR**  
**Policy and Governance Committee**

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**Meeting Date:** March 19, 2012  
**Memo Date:** March 30, 2012  
**From:** Oregon Law Foundation Board  
**Re:** Centralized Legal Notice System

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**Action Recommended**

This memo is informational only.

**Background**

**OBJECTIVE:** Create a website owned by the Oregon State Bar, at which all legal notices required under state law would be made available free of charge and in a searchable format to the public, the net revenue of which website would be allocated to the Oregon Law Foundation (OLF) for distribution according to its charitable formulae.

**WHY MOVE TO A SYSTEM OF ONLINE LEGAL NOTICES:** The current system in which legal notices are published in newspapers is both costly and ineffective. Persons and businesses who must publish legal notices in newspapers incur significant costs, often running into the thousands of dollars for each individual legal notice. Some local governments, which must publish a variety of legal notices regarding governmental meetings and actions (see, e.g., ORS § 305.583(9)), spend considerable sums publishing these required legal notices. In the case of legal notices published by private businesses, such as banks or construction firms, the costs of publishing these notices are passed along to customers; in the case of legal notices published by county and local governments, those costs are passed on to taxpayers in the form of higher taxes.

Equally disturbing, legal notices published in newspapers are often never viewed by the persons who might be interested or affected by the actions that are the subject of the notices. Indeed, many of these legal notices are published in newspapers with small circulations in which it is highly unlikely that interested parties will ever see or learn of the notice.

Moreover, the Legislature did not create the newspapers' monopoly because it wished to subsidize the newspaper industry but because, for most of Oregon's history, newspapers were the best way to alert the public of important issues and developments.

That assumption, which is the entire rationale for requiring publication of legal notices in newspapers – no longer holds true in the 21<sup>st</sup> Century. More and more individuals seek information through online sources. Correspondingly, newspaper circulation has dwindled substantially in the past decade. As a result of these two, mutually reinforcing phenomena, newspaper publication is increasingly unlikely to alert members of the public of the activities or developments that are the subject matter of the required legal notices. In short, relying on newspapers to provide a forum for the dissemination of important legal notices no longer makes sense.

By centralizing legal notices on a single, online website, costs to advertisers would be reduced (saving affected businesses and taxpayers millions of dollars per year in advertising costs). In addition, a centralized online system would make it easier for individuals and businesses to find or be made aware of notices that affect or interest them. In short, an online notice system would be both more efficient and more effective.

**WHY DOES THE SYSTEM NEED TO BE CENTRALIZED?** In order to ensure that the public would be able to easily find legal notices in which they are interested, all legal notices would have to be published in one, central location. If there were multiple websites (or newspapers as there are now), members of the public would not know which website to access. Indeed, for those notices whose publication is required by due process, the failure to centralize the online publication of such notices would arguably raise concerns under the Due Process Clause of the Fourteenth Amendment.

**WHY OSB SHOULD BE THE ENTITY TO SET UP AND RUN AN ONLINE LEGAL NOTICE WEBSITE:** For three reasons. First, the bar is the most natural entity to own and operate a centralized legal notices website. Legal notices are, by definition, uniquely associated with the legal profession. They are typically created by lawyers and have critical due process impact on the public. Who better to understand and enforce the public's due process rights than lawyers. Moreover, part of the problem with the current, newspaper-based system is that so many legal notices are never seen or read by the parties to which they are ostensibly addressed. An OSB-owned website would be the most natural place for lawyers both to post and to search legal notices. As such, it would be much more likely that

notices posted on such a website would reach their intended audience, thereby assisting in the administration of justice in Oregon.

Second, as discussed in more detail below, a centralized, online legal notice website would generate a significant amount of net revenue. It is precisely because of the amount of revenue that is at stake that newspapers or other for-profit enterprises have an incentive to maximize profits which come at the cost of tax payers and consumers. Hence, the online legal notices website should be owned by a not for profit entity, such as the bar. Indeed, it is hard to imagine another not for profit entity that would be better suited to own and operate an online, legal notices website other than the bar. In addition an important element of a legal notice system is that notices be published in a forum independent of the government such as a neutral third party to ensure that the notice delivery requirements are followed. The bar is a public corporation funded by membership and program fees. It is not a state agency and does not receive any financial support from the state's general fund. To that end it is an objective third party with no economic stake in the system making it the ideal neutral party.

Third, by operating the legal notices website, the bar would be positioned, via the Oregon Law Foundation, to provide funds for legal services for the benefit of needy Oregonians. Affiliated with the bar, OLF helps fulfill the bar's mission of increasing access to justice in Oregon. As in the 1980s, when the bar realized that the interest on lawyer trust accounts provided a potential revenue source for legal aid programs and assigned the OLF to serve as the organization to collect and distribute IOLTA income, the requirement to publish legal notices likewise creates a large potential source of revenue that could be used to fund legal aid services. Although the state's IOLTA program provides significant assistance to legal aid services in Oregon, the drop in interest rates witnessed in the past four years has forced the Oregon Law Foundation to slash the amount of money that it awards to grantees by over 66% during that time. The income generated from a bar-owned legal notices website would allow OLF both to diversify its income sources (thereby making it less sensitive to interest rate changes) and, more importantly, to increase the amount of money that it is able to distribute each year to eligible programs.

**HOW SUCH AN ONLINE SYSTEM WOULD WORK:** Persons or entities who are required by law to give the public notice of proposed actions (such as public meetings, foreclosures, probating of wills, etc.) would send the proposed notice to the online website (either electronically or via mail), which would then post the notice on the website in an easily searchable format for the required time period for that type of notice. The website would be free to the public, who could search the posted notices free of charge. The persons or businesses who post the notices, however, would be charged a reasonable fee for publishing the notice, just as newspapers do currently.

Such a centralized online system would likely generate significant income for the bar. An informal study conducted last fall by an Oregon attorney, John Gear, estimated that Oregon newspapers receive approximately \$30 million per year to publish legal notices required under state law. Assuming that the \$30 million figure is in the general ballpark, an online website could easily charge less than the newspaper do now (because, unlike a newspaper, the website would not have to purchase newsprint or hire many employees to operate the endeavor). Preliminary investigations as to what it would cost to create and maintain the website suggest that it would cost approximately \$100,000 to set up the website and perhaps that same amount per year to maintain it. If the website were to charge one-third of what newspapers currently charge, it would stand to generate potentially as much as \$10 million in gross revenue per year, which would produce a net income of approximately \$9.9 million per year.

In addition to this publication revenue, additional revenue could also be generated by setting up the website to allow for individuals who wish to be notified when a notice naming a particular person, property, or business to purchase an "alert me" service. For a fixed fee covering a limited period of time, the website would email the subscriber to alert them whenever a legal notice with a particular person, property, or business is named in the notice. Because such a service is not currently offered by Oregon newspapers, the likely revenue stream from such subscriptions is difficult to estimate.

**WHAT NEEDS TO BE DONE:**

**PHASE ONE (Legislative Changes):** Currently, a number of sections in the Oregon Revised Statutes require regulated entities to publish notices in a newspaper of general circulation. As a consequence, newspapers possess a legislatively-conferred monopoly on the publication of these notices. In order to set up a bar-owned and operated online legal notice system, it would be necessary to persuade the Legislature during the 2013 Regular Session to amend these statutory provisions.

Legislation to establish an online legal notices system would need to comprise two elements. First, a new subchapter would need to be added to Chapter 193 of the ORS, which governs publication of legal notices, to expressly provide for online publication through the OSB. This subchapter would authorize OSB to create a centralized, online website for the publication of legal notices, permit OSB to charge persons who submit such notices for publication a reasonable charge for such publication, and outline the basic guidelines for the publication of such notices (how long must OSB keep them online, etc.). In addition, the statute would provide that the net revenue from such website be provided to OLF to, in turn, fund access to justice.

Second, all of the pertinent statutes throughout ORS that require newspaper publication of a legal notice would have to be amended to provide that all such legal notices be "published" in the OSB Legal Notices Website. For example, consider the statutory requirement for banks and other lenders that wish to foreclose on real property to provide notice of the foreclosure sale to the public. As currently written, ORS § 86.750(2)(A) requires trustees under a deed of trust to publish notice of the foreclosure sale: "a copy of the notice of sale must be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four successive weeks. The last publication must be made more than 20 days prior to the date the trustee conducts the sale." In recent years, this particular statutorily-conferred monopoly has become especially lucrative for newspapers, so much so that real estate trust companies have recently begun purchasing small-

town newspapers to reduce their publication costs – see the Oregonian article from Jan. 15, 2012

([http://www.oregonlive.com/business/index.ssf/2012/01/northwest trustee squeezes mor.html](http://www.oregonlive.com/business/index.ssf/2012/01/northwest_trustee_squeezes_mor.html)). Under this proposal, ORS § 86.750(2)(A) would be amended to read something like the following: “... a copy of the notice of sale must be transmitted to the Oregon State Bar, which shall include such notice on its legal notice website as provided in ORS § 193.\_\_\_\_ for a period of no less than 28 days, the last day of which period must be at least 20 days prior to the date the trustee conducts the sale.”

**PHASE TWO (Business Startup):** Create the OSB Legal Notices website in time for it to be up and running as of the effective date of the statutory changes.

A. Place an RFP with website developers to create a website that would permit individuals to search all legal notices by name, subject, or location. The website could also sell subscription services to individuals and lawyers, in which, for a fixed fee, the website would automatically alert the individual or lawyer by email if a legal notice were posted that met a specified search parameter.

B. Once the website is up and running, OSB would designate a person to manage the website to ensure its continual operation and to answer questions by outside parties.

C. Advertise the website. It will be important to undertake an advertising campaign to assure that both the entities using the website to place notices and the public searching for notices have knowledge of the website's existence.

#### **LIKELY OBJECTIONS AND THE RESPONSES THERETO:**

(1) This is stealing business from newspapers and will therefore be the end of many newspapers. Newspapers are likely to object to this proposal on the ground that it will eliminate a substantial category of their advertising revenue, thereby imperiling many marginal newspapers. While that is undoubtedly true, it is also beside the point.

Newspapers have been able to generate that income solely by virtue of the legislatively-conferred monopoly that the Oregon Legislature has given them. There is nothing sacrosanct about that monopoly. In fact, newspapers have abused that monopoly by charging high prices for the publication of those notices. Those high costs, in turn, are passed along to consumers and taxpayers, both of whom must ultimately foot the bill for the cost of these notices.

(2) Due process requires that legal notices be published in newspapers. The U.S. Supreme Court has never held that legal notices must be published in newspapers; rather, due process requires only that any notice, other than personal notice, be undertaken in a manner “reasonably calculated” to reach affected persons or entities. True, publication in newspapers has long been held to provide a way of complying with due process when personal notice is impossible or unavailable. At a time when newspapers were the only widely circulated medium of communication, newspapers were perhaps the best mechanism for reaching individuals who could not be identified personally or for giving notice to the public generally. These days, however, with declining newspaper circulation, it is possible that newspaper publication no longer satisfies this due process requirement. More importantly, though, online publication on a centralized website available free of charge to the public would certainly provide a superior means of providing notice both to individuals potentially affected by the action that is the subject matter of the notice and to the public generally. Unlike newspaper publication, the online system would be free to consumers and more readily accessible to the public at large.

Newspapers will argue that a web based legal notice system is not readily accessible to those members of the public not online so the due process requirement is not met. However the same holds true for those members of the public who do not subscribe to a newspaper. Both those without online access and those without a newspaper subscription can go to their local library to gain either online or newspaper access for free.

**SUMMARY:** The current statutory system provides newspapers with a legislatively-conferred and -created monopoly for the publication of legal notices. This monopoly is both costly and incomplete. It is costly because, in many towns and cities where there is only one

newspaper, that newspaper is able to charge above-market advertising rates for individuals, businesses, or local governments that must publish legal notices. It is incomplete because individuals or businesses that wish to learn of some action that is the subject of the legal notice may not subscribe to the relevant newspaper or read the pertinent section of the newspaper on the day that the legal notice is published.

By moving to a centralized, online system for the publication of legal notices, costs to businesses and taxpayers could be reduced, and due process concerns could be more easily met. Moreover, as the principal, not for profit organization dedicated to serving and bolstering the system of justice in Oregon, OSB is best positioned to assume this role, and the income generated by the website could then be used by OLF to help fund legal services for low-income Oregonians.