

Oregon State Bar
2016 House of Delegates Meeting

Oregon State Bar Center
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97224
503.620.0222
Friday, November 4, 2016
10:00 a.m.

Oregon State Bar

Dear Oregon State Bar Member:

I am pleased to invite you to the 2016 OSB House of Delegates meeting, which will begin at **10:00 a.m.** on **Friday, November 4, 2016**, at the Oregon State Bar Center.

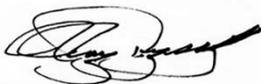
I am pleased to report that the Board of Governors is not requesting an increase in the annual membership fee for 2017. However, the BOG is proposing an increase in membership fees that are paid late. The preliminary agenda for the meeting also includes proposed amendments to the rules of professional conduct, a recommendation that the BOG implement a Writing for the Bar Mentorship Program, and a request to revisit the OSB Section CLE Co-Sponsorship policy. Other items on the meeting agenda are the annual recognition of deceased members, as well as resolutions to support adequate funding for low-income legal services and public defense providers, and in honor of veterans and service personnel.

All bar members are welcome and encouraged to participate in the discussion and debate of HOD agenda items, but only delegates may vote on resolutions. If you are unable to attend, please contact one of your delegates to express your views on the matters to be considered. Delegates are listed on the bar's website at www.osbar.org/docs/leadership/hod/hodroster.pdf.

If you have questions concerning the HOD meeting, please contact Camille Greene, Executive Assistant, by phone at 503-431-6386, by e-mail at cgreene@osbar.org, or toll free inside Oregon at 800-452-8260 ext 386.

Remember that delegates are eligible for reimbursement of round-trip mileage to and from the HOD meeting. Reimbursement is limited to 400 miles and expense reimbursement forms must be submitted within 30 days after the meeting.

I look forward to seeing you at the HOD meeting on November 4, and I thank you in advance for your thoughtful consideration and debate of these items.



Ray Heysell, OSB President

OREGON STATE BAR

2016 House of Delegates Meeting AGENDA

Oregon State Bar Center, 16037 SW Upper Boones Ferry Road, Tigard, Oregon 97224

10:00 a.m., Friday, November 4, 2016

Presiding Officer: Ray Heysell, OSB President

Reports

- | | |
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| <p>1. Call to Order
<i>Ray Heysell</i>
<i>OSB President</i></p> <p>2. Adoption of Final Meeting Agenda
<i>Ray Heysell</i>
<i>OSB President</i></p> <p>3. Report of the President
<i>Ray Heysell</i>
<i>OSB President</i></p> | <p>4. Report from the Chief Justice of the Oregon Supreme Court
<i>Thomas A. Balmer, Chief Justice</i>
<i>Oregon Supreme Court</i></p> <p>5. Report of the Board of Governors Budget and Finance Committee & Notice of 2017 Annual Fees
<i>John Mansfield, Chair</i>
<i>BOG Budget & Finance Committee</i></p> <p>6. Overview of Parliamentary Procedure
<i>James Westwood, Parliamentarian</i></p> |
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Resolutions

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| <p>7. In Memoriam
(Board of Governors Resolution No. 1)
<i>Tim Williams, BOG, Region 1</i>
<i>Guy Greco, BOG, Region 4</i>
<i>Chris Costantino, BOG, Region 5</i></p> <p>8. Veterans Day Remembrance
(Board of Governors Resolution No. 2)
<i>Jim Chaney, BOG, Region 2</i></p> <p>9. Increase 2017 Member Fee
(Board of Governors Resolution No. 3)
<i>Michael Levelle, OSB President-elect</i></p> <p>10. Amendment to RPC 7.2(b)
(Board of Governors Resolution No. 4)
<i>Amber Hollister, OSB General Counsel</i></p> <p>11. Amendment to ORPCs 7.2(c) and 7.3(c)
(Board of Governors Resolution No. 5)
<i>Amber Hollister, OSB General Counsel</i></p> | <p>12. Support for Adequate Funding for Legal Services to Low-Income Oregonians
(Delegate Resolution No. 1)
<i>Kathleen Evans, HOD, Region 6</i>
<i>Gerry Gaydos, HOD, Region 2</i>
<i>Ed Harnden, HOD, Region 5</i></p> <p>13. Implementation of "Writing for the Bar Mentorship Program"
(Delegate Resolution No. 2)
<i>Danny Lang, HOD, Region 3</i></p> <p>14. Support for Public Defense Providers
(Delegate Resolution No. 3)
<i>Marc D. Brown, HOD, Region 6</i></p> <p>15. OSB Section Co-Sponsorship
(Delegate Resolution No. 4)
<i>Sarah Drescher, Chair</i>
<i>OSB Labor & Employment Section</i>
<i>Michael Fuller, Chair, OSB Consumer Law Section</i></p> |
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**7. In Memoriam
(Board of Governors Resolution No. 1)**

Resolved, That the OSB House of Delegates and members assembled stand for a moment of silence in honor of the members of the Oregon State Bar who have died since the 2015 House of Delegates Meeting.

Donald L. Alderton	Paul N. Daigle	James S. Leigh	Douglas S. Robertson
Alvin L. Andrews	Douglas W. Daughtry	John B. Lewis	Jennifer A. Sabovik
John C. Anicker Jr	Stephanie L. Doherty	Clinton A. Lonergan	William F. Schroeder
David Bruce Bailey	Michael L. Emmons	Rita J. Lucas	James F. Simpson
Henry L. Bauer	Therese Engelmann	John S. Marandas	Robert G. Simpson
Douglas Bayern	H Thomas Evans	Gary L. Marlette	Stanley A. Sitnick
Hon John C. Beatty Jr	Robert M. Foster	James A. McClaskey	Toni DeFriez Skinner
Ernest R. Blair	Terrance P. Gough	John C. Melfi	Irvin D. Smith
Bradford T. Burke	Donald W. Green III	Albert C. Miller	Kenneth S. Solomon
Ralph H. Cake Jr	Donna J. Hamilton	David P. Miller	Craig J. Spomer
John C. Caldwell	Timothy F. Haslach	Kenneth M. Montgomery	Thomas G. Stapleton
Henry G. Campbell Jr	Robert A. Heard	Margery J. Moore	Stuart A. Sugarman
Leslie A. Carlough	Preston C. Hiefield Jr	William J. Moshofsky	James C. Tait
Steven Carpenter	R Craig Hindley	Bruce L. Mowery	Hon Richard L. Unis
Charles J. Cheek	William F. Hoelscher	Herman Stanley Muir III	Meredith Dean VanValkenburgh
Jeffrey M. Cheyne	Dale Jacobs	Wayne D. Palmer	Stephen L. Vorhes
Ralph F. Cobb	Robert M. Johnstone	Hon Edward L. Perkins	Leslie R. Weatherhead
Gary P. Compa	Julie A. Keil	Milo Pope	William G. Whitney
Thomas E. Cooney	Sherman B. Kellar	Karen D. Randolph	Thomas E. Withycombe
Dale T. Crabtree	John R. Keys Jr	Roger H. Reid	Hon George J. Woodrich
Betty I. Crofoot	Theodore D. Lachman	Garrett A. Richardson	Gerald D. Wygant
Jeffrey A. Crook	Jindrich Henry Langer	Robert D. Rindfusz	Rufus C. Young Jr

Presenters:
Tim Williams, BOG, Region 1
Guy Greco, BOG, Region 4
Chris Costantino, BOG, Region 5

**8. Veterans Day Remembrance
(Board of Governors Resolution No. 2)**

Whereas, Military service is vital to the perpetuation of freedom and the rule of law; and

Whereas, Thousands of Oregonians have served in the military, and many have given their lives; now, therefore, be it

Resolved, That the Oregon State Bar hereby extends its gratitude to all those who have served and are serving in the military, and further offers the most sincere condolences to the families and loved ones of those who have died serving their country.

Presenter: Jim Chaney

**9. Increase the 2017 Active Membership Fees effective after the Due Date by \$100 and the 2017 Inactive Membership Fee effective after the Due Date by \$50; eliminate the second fee increase for payments that are more than 30 days late.
(Board of Governors Resolution No. 3)**

Whereas, the annual membership fee is established by the Board of Governors and any increase over the amount established for the prior year must be approved by a majority of delegates voting thereon at the annual meeting of the House of Delegates, pursuant to ORS 9.191(1); and

Whereas, ORS 9.191 allows the Board of Governors to “establish the date by which annual membership fees must be paid;” and

Whereas, ORS 9.200 permits the executive director to send via electronic mail a notice of delinquency if not paid timely; now, therefore, be it

Resolved, that the Oregon State Bar increase by \$100 the Active Membership Fee and by \$50 the Inactive Membership Fee for payments received after the Due Date; eliminate the second fee increase for members paying 30 days or more after the Due Date.

Background

The recommendation was approved by the Board of Governors at its September 2016 meeting. No change is being recommended to the fees paid by the Due Date. Instead, these changes address only fees paid after the Due Date. The purposes of the proposed change are to avoid costly modifications to the bar’s new software and to limit the cost of bar staff time necessary to process late payments.

Since 2014 the Active Member Fee is increased by \$50.00 if not paid by the first due date, and another \$50.00 if not paid within 30 days of the due date. The additional fee for the Inactive Member is \$25.00 each for the two dates respectively. If not paid within 90 days after the due date the member is administratively suspended.

The following chart shows the Fee Schedule for the 2016 Membership Fees. The Due Date was Monday, February 1, 2016.

Membership Fee Status	Fee through February 1	Fee effective February 2	Fee effective March 3
Active over Two Years	\$557.00	\$607.00	\$657.00
Active under Two Years**	\$470.00	\$520.00	\$570.00
Active Pro Bono	\$125.00	\$125.00	\$125.00
Inactive	\$125.00	\$ 150.00	\$175.00

If passed, this resolution would eliminate the second fee increase 30 days after the due date. Instead, there would be a single late payment fee of \$100 above the timely paid Active Membership Fees and \$50 above the timely paid Inactive Membership Fee. Fees paid by the Due Date are the same as in 2016, and administrative suspensions would still go into effect 90 days after the Due Date.

The following chart shows the proposed Fee Schedule for 2017 Membership Fees. The due date will be Tuesday, January 31, 2017.

Membership Fee Status	Fee through January 31	Fee through February 1	
Active over Two Years	\$557.00	\$657.00	
Active under Two Years**	\$470.00	\$570.00	
Active Pro Bono	\$125.00	\$125.00	
Inactive	\$125.00	\$175.00	

Financial Impact

The financial impact of the proposed change is uncertain. In 2016, the amount of revenue to the bar from members paying after the 2016 Due Date was \$66,663. Although the 2017 late payment fee will be higher, it is anticipated that the number of individuals who pay late will decline in 2017 because members will want to avoid paying that higher rate. In addition, the revenue from late member fee payments has been slowly declining over the years as an increasing number of members are able to make timely payment by using a credit card to pay online. Thus, it is likely that the revenue from members paying after the Due Date will be approximately the same as in 2016.

*Presenter: Michael Levelle
OSB President-elect*

10. Amendment to ORPC 7.2(b)

(Board of Governors Resolution No. 4)

Whereas, the Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1);

Whereas, the Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rule of Professional Conduct 7.2(b) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- (2) pay the usual charges of a legal service plan or a ~~not-for-profit~~ lawyer referral service; and
- (3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and-office address of at least one lawyer or law firm responsible for its content.

Background

At the 2013 HOD meeting, the HOD approved a package of changes to the advertising rules—including ORPC 7.2—with the goal of bringing Oregon’s advertising rules more in line with the ABA Model Rules. The changes were not intended to be substantive. Instead, the purpose of the 2013 amendments was to provide Oregon practitioners with advertising guidelines that are clear, simple, and more consistent with other jurisdictions.

Recently, it was brought to the bar’s attention that the amendment to Rule 7.2(b) brought about a substantive change that was not intended. The proposed amendment at issue today seeks to reverse that unintended consequence.

Prior to the January 1, 2014 amendment of ORPC 7.2, Oregon lawyers were permitted to pay referral fees to any lawyer referral service, if certain conditions were met. Former Oregon RPC 7.2 provided:

(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.

(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

- (1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;
- (2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;
- (3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and
- (4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.

Under this former version of the rule, Oregon lawyers could utilize lead services or for-profit lawyer referral services, as long as the service complied with the additional restrictions of ORPC 7.2(c)(1)-(4).

Under the amended version of Rule 7.2(b), payments to for-profit referral services are not allowed. Nothing in the agendas or minutes of the Legal Ethics Committee, Board of Governors, or House of Delegates from that time suggest that the bar intended to implement an across-the-board prohibition of all lawyer payments to for-profit lawyer referral services. Therefore, it appears that prohibiting all lawyer payments to for-profit lawyer referral services was an unintended consequence of the 2014 amendments.

The Legal Ethics Committee considered a number of options to remedy this oversight, the first of which was to revert to the language from the original rule. The Committee concluded that the additional conditions imposed by former Oregon RPC 7.2(c) are already incorporated elsewhere in the current rules.

In keeping with its original directive to simplify the advertising rules, the Committee ultimately decided to recommend that the words “not-for-profit” be stricken from ORPC 7.2(b)(2).

*Presenter: Amber Hollister
OSB General Counsel*

**11. Amendments to ORPC 7.2(c) and ORPC 7.3(c)
(Board of Governors Resolution No. 5)**

Whereas, the Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1);

Whereas, the Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rules of Professional Conduct 7.2(c) and 7.3(c) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 7.2 Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and ~~office address~~ contact information of at least one lawyer or law firm responsible for its content.

Rule 7.3 Solicitation of Clients

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

~~(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).~~

(cd) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Background

At its November 2013 meeting, the HOD approved a package of changes to the advertising rules with the goal of providing Oregon practitioners with advertising guidelines that are clear, simple, and more consistent with other jurisdictions. The new advertising rules were adopted by the Supreme Court effective January 1, 2014.

After the rules were adopted, the Board of Governors asked the Legal Ethics Committee ("LEC") to revisit concerns raised that ORPC 7.2(c) and ORPC 7.3(c) are unconstitutional as they relate to electronic communications.

In 2009, the OSB Advertising Task Force issued a report that gave an overview of the federal and state constitutional free speech protections as applied to the advertising rules. It concluded that significant changes to the advertising rules were necessary in order to strike a proper balance in terms of constitutional law and public policy. Among the changes proposed were significant changes to the provisions at issue here.

Like the OSB Advertising Task Force, the LEC had concerns about the constitutionality of the provisions at issue; however, it did not engage in an in-depth analysis of whether these provisions actually violate free speech protections under the Oregon and United States Constitutions. Instead, it focused on whether the provisions still serve the purposes for which they were enacted.

Oregon RPC 7.2(c) requires that lawyers include their office address in all advertising. In practice, this means that lawyers may be unable to use modern electronic advertising mediums with character restrictions (e.g. Twitter has a 140 character limit, GoogleAd Words is also limited) because of the length of the address. Arguably, requiring an office address is out of step with today's legal culture, in which lawyers interact with potential clients through various mediums and not just the mail. In fact, many lawyers operate primarily online through "virtual offices."

The purpose of ORPC 7.2(c) is to enable members of the public to identify the lawyer or law firm advertising, and to give them the tools to find out more about the lawyer and report the lawyer to the bar if necessary. This same purpose would be served by simply requiring the lawyer to include some contact information in the advertising (e.g., telephone number, email address, or Twitter handle). Requiring contact information is unlikely to limit lawyers; after all, advertising that does not provide the potential client a method to contact the lawyer is poor advertising.

The purpose of ORPC 7.3(c) is to ensure that members of the public are not led to believe that an advertisement or solicitation from a lawyer is some type of legal process or other official communication that requires their response. The concern with the rule—as with the "laundry list" of prohibitions contained in former ORPC 7.1(a)—is that it may limit protected speech. Lawyers are already prohibited from making false or misleading communications. See ORPC 7.1(a). Thus, a lawyer who sends an

advertisement that looks like a summons (with the hope that the prospective client will open it and respond, rather than throw it away) would violate ORPC 7.1(a) because the communication is misleading.

Oregon RPC 7.3(c) does not provide any additional protection against this type of misleading conduct. Instead, like ORPC 7.2(c), it unduly restricts lawyers from advertising in mediums with character restrictions. Perhaps more troubling is that including the phrase “Advertising Material” on lawyer solicitations might lead persons in need of legal services to simply discard a communication that may help them recognize a legal need and access legal services. In other words, the limitations on lawyer speech in ORPC 7.3(c) do not protect against consumer harm and instead may limit the public’s access to legal services.

In the end, the LEC determined that the sections at issue provide no additional consumer protection and risk violating free speech protections. The BOG agreed and, therefore, proposes the amendments set forth above.

*Presenter: Amber Hollister
OSB General Counsel*

12. Support of Adequate Funding for Legal Services for Low-Income Oregonians (Delegate Resolution No. 1)

Whereas, providing equal access to justice and high quality legal representation to all Oregonians is central to the mission of the Oregon State Bar;

Whereas, equal access to justice plays an important role in the perception of fairness of the justice system;

Whereas, programs providing civil legal services to low-income Oregonians is a fundamental component of the bar’s effort to provide such access;

Whereas, since 1998, pursuant to ORS 9.575, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight for the state statutory allocation for legal aid in accordance with the bar’s Standards and Guidelines (which incorporate national standards for operating a statewide legal aid program);

Whereas, during the great recession the staffing for legal aid programs was reduced while the poverty population in Oregon increased dramatically, thus broadening “the justice gap” in Oregon;

Whereas, Oregon’s legal aid program currently has resources to meet about 15% of the civil legal needs of Oregon’s poor creating the largest “justice gap” for low-income and vulnerable Oregonians in recent history;

Whereas, Oregon currently has 1 legal aid lawyer for every 8,500 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 legal aid lawyers for every 10,000 low-income Oregonians;

Whereas, assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system; now, therefore, be it

Resolved, that the Oregon State Bar;

(1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for Oregon’s legal aid programs and through support for the Campaign for Equal Justice.

(2) Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation, which provides federal support for legal aid.

- (3) Work with Oregon’s legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.
- (4) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by the Oregon legal community, by establishing goals of a 100% participation rate by members of the House of Delegates, 75% of Oregon State Bar Sections contributing \$50,000, and a 50% contribution rate by all lawyers.
- (5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank at OLF Leadership Banks that pay the highest IOLTA rates.
- (6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery, and access to justice for low-income and vulnerable Oregonians.
- (7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.
- (8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

Background

“The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.” OSB Bylaw 1.2. One of the four main functions of the bar is to be “a provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all.” Id.

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolutions in 1996, 1997, 2002, 2005–2015). This resolution is similar to the resolution passed in 2015, but provides updates on the ratio of legal aid lawyers to Oregonians eligible for legal aid services.

The legal services organizations in Oregon were established by the state and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by state and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distribute the state statutory allocation for civil legal services and provide methods for evaluating the legal services programs. The Campaign for Equal Justice works collaboratively with the Oregon Law Foundation and the Oregon State Bar to support Oregon’s legal aid programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

Oregon’s legal aid program consists of four separate non-profits that work together as part of an integrated service delivery system designed to provide high priority free civil legal services to low-income Oregonians in all 36 Oregon counties through offices in 17 communities. There are two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and two county wide programs, Lane County Legal Aid and Advocacy Center and the Center for Non-Profit Legal Services (Jackson County). Because the need is great and resources are limited, legal aid offices address high priority civil legal issues such as safety from domestic violence, housing, consumer law, income maintenance (social security, unemployment insurance, and other self-sufficiency benefits), health, employment, and individual rights. About 37% of legal aid’s cases are family law cases, usually helping victims of domestic violence. All of these programs work to stretch limited resources through pro bono programs and self-help materials. Legal aid’s website, oregonlawhelp.org, receives about 167,000 unique visitors a year.

Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. An Oregon study concluded that low-income Oregonians who have access to a legal aid lawyer have a much improved view of the legal system compared with those who do not have such access: 75% of individuals without access to a lawyer had negative feelings about

the legal system, but of those who had access to a legal aid lawyer, 75% had a positive view of the legal system regardless of the outcome of their case. The 2014 Task Force on Legal Aid Funding, which included representatives of the bar, the Law Foundation, the judiciary, the legislature, and private practice concluded that legal aid funding should be doubled over the next 10 years. Because funding for legal aid is a state, federal, and private partnership, with about 80 different sources of funding, increases in funding must be made across the board to address the justice gap.

Currently, slightly more than 20% of lawyers contribute to the Campaign for Equal Justice, but in some Oregon regions (Jackson County and Lane County, for example), participation is as high as 40%.

Presenters:
Kathleen Evans, HOD, Region 6
Gerry Gaydos, HOD, Region 2
Ed Harnden, HOD, Region 5

13. Implementation of “Writing for the Bar Mentorship Program” (Delegate Resolution No. 2)

Whereas, the high cost of Law School Tuition, and related expenses such as Student Housing, have had a disparate impact upon both minorities and low income Oregonians, who are otherwise well qualified to become Members of the Oregon State Bar;

Whereas, the foregoing high cost of obtaining a Legal Education has also resulted in the “Student Loan Crisis”;

Whereas, the foregoing topics were the subject of an Open Discussion from the floor with Oregon Supreme Court Chief Justice Balmer during the 2015 HOD Meeting, as a topic of widespread interest;

Whereas, the Oregon State Bar has heretofore determined that approximately 80% of the Civil Litigation needs of Oregonians remain unmet;

Whereas, such lack of financial resources also has a disparate impact upon minorities that remain under-represented as a percentage of the Oregon State Bar Membership;

Whereas, there are Members of the Oregon State Bar and Oregon Law Firms that are ready, willing, and able to provide an alternative Opportunity to persons capable of developing the knowledge of the law and practice skillsets to pass a Bar Exam; but are presently excluded from the Opportunity simply for lack of financial resources;

Whereas, there is a lack of Law Schools throughout Rural Oregon that has also reduced availability of Legal Education and Legal Services in Rural and Low Income areas;

Whereas, historically, Legal Education was obtained via Mentoring or Apprentice Service, of which Abraham Lincoln was a classic example, having borrowed books from a fellow State Legislator and then obtained a certificate procured from the court of an Illinois county certifying to the applicant's good moral character, which was all that was required to begin practicing Law in Illinois [under an Illinois law enacted in 1833]; and today, California, Maine, New York, Vermont, Virginia, Washington and Wyoming, have alternatives to the three years of Law School Education;

Whereas, consideration of implementing a “Writing for the Bar Mentorship Program” offers potential advantages addressing the foregoing unmet needs;

Resolved, that the House of Delegates recommend the Board of Governors appoint a Volunteer Committee to study the advantages of implementing a “Writing for the Bar Mentorship Program,” by

which a Diversity of well-qualified persons would have the opportunity to take the Bar Exam and become valued Members of the Oregon State Bar.

Financial Impact

No fiscal impact upon Oregon State Bar.

Presenter:
Danny Lang, HOD, Region 3

14. Support for Public Defense Providers (Delegate Resolution No. 3)

Whereas, the Constitutions of both Oregon and the United States require that all people facing a possible deprivation of rights in court proceedings, such as those accused of criminal offenses, or those who may lose custody of their children and their parental rights, have the right to assistance by ethical and competent legal counsel;

Whereas, those same constitutions require that the counsel provided the person be provided and paid for by the government, if the person is indigent and cannot afford their own legal counsel;

Whereas, there is a salary and resource disparity between trial level legal counsel for the person and legal counsel for the State;

Whereas, trial level legal counsel for the person are government contractors and legal counsel for the State are government employees funded through direct appropriations;

Whereas, court-appointed appellate counsel and appellate counsel representing the State are both employees of the State yet a significant salary disparity exists between those attorneys;

Whereas, legal counsel for the person has an ethical and professional obligation pursuant to the state and federal constitutions, as well as Oregon Rules of Professional Conduct 1.1 (“A lawyer shall provide competent representation to a client”) and 1.3 (“A lawyer shall not neglect a legal matter entrusted to the lawyer”) to provide adequate representation;

Whereas, the American Bar Association has acknowledged for over a decade that resource parity, salary parity, and caseload standards are essential to its “Ten Principles of Public Defense”;

Whereas, the House of Delegates has long supported a strong public defense system and increased financial resources for public defense providers; now, therefore, be it

Resolved, that the Oregon State Bar, through its Board of Governors and staff, continue to participate actively with courts, prosecutors, the Oregon Department of Justice, the Legislative Assembly, the Office of Public Defense Services, the Oregon Criminal Defense Lawyers Association, and other public safety and child welfare stakeholders, to obtain equal resources and commensurate compensation for public defense providers, and work toward developing caseload standards that ensure those public defense providers can meet their constitutional and ethical obligations.

Financial Impact

None provided.

Presenter:
Marc D. Brown, HOD, Region 6

**15. Opt Out of OSB Section Co-Sponsorship
(Delegate Resolution No. 4)**

Whereas, starting in 2017, the OSB is requiring all OSB sections that provide CLE programs of four (4) hours or more to co-sponsor those programs with the OSB CLE Seminars Department, unless the OSB CLE Seminars Department decides that it does not want to co-sponsor the program;

Whereas, OSB sections required to co-sponsor programs with the Seminars Department will be required to split revenue generated from those programs with the OSB CLE Seminars Department at a fixed percentage or rate;

Whereas, splitting revenue generated from section CLE programs will result in a loss in revenue for sections that have developed successful CLE programs without previously co-sponsoring those programs with the Seminars Department;

Whereas, OSB sections required to co-sponsor CLE programs with the Seminars Department will lose the right to establish the budget and set prices for registration, meals, printed course materials, and any other separately priced items associated with the program;

Whereas, OSB sections that would be negatively impacted by mandatory co-sponsorship would like the opportunity to work with the Board of Governors and OSB staff to identify alternatives or potential compromises that would meet the Board's objectives while addressing sections' concerns; now, therefore, be it

Resolved, that OSB sections that provide CLE programs of four (4) hours or more may opt out of co-sponsoring CLE programs with the OSB Seminars Department.

Background

Starting in January of 2017, OSB sections that provide CLE programs of four (4) hours or more in length will be required to notify the OSB CLE Seminars Department (Seminars Department) of the program. The Seminars Department can then choose to co-sponsor the program with the section. According to the OSB, "[t]he programs we are most likely to want to co-sponsor are ones where the subject is of broad general interest or there is a lack of existing quality content." <http://www.osbar.org/docs/sections/SectionCLEoptions.pdf>.

If the Seminars Department chooses to co-sponsor the program, the section is required to co-sponsor the program with the Seminars Department. Sections will not be able to opt out of co-sponsorship.

When a section is required to co-sponsor a program with the Seminars Department, the Seminars Department will establish the budget for the program and set the prices for registration, meals, printed course materials, and any other separately priced items. *Id.* The section is also required to participate in revenue sharing with the Seminars Department.

The level of revenue sharing depends on the length of the program. For full day programs with more than \$1,000 in net revenue, the section will receive only \$15 for each registration paid at the early, regular, or new lawyer rate. *Id.* For half-day programs with more than \$500 in net revenue, the section will only receive \$8 for each registration paid at the early, regular, or new lawyer rate. *Id.* However, complimentary and other special or discounted registration rates—including discounted section member registration rates—are not included in the revenue sharing calculation. *Id.* As a result, if a large number of program attendees are section members whose registration is discounted at a section member rate, the section receives no revenue from those registrations.

Multi-day meal-inclusive events must share revenues on a percentage basis that includes an administrative fee. The administrative fee for programs held in 2017 will be 18% of gross event revenue, i.e., all registration, sponsor, exhibitor, and any other revenue that is processed by the Seminars Department. After paying the 18%

administrative fee to the Seminars Department, the section then must split any remaining net revenue with the Seminars Department.

Prior to these changes, sections could choose to co-sponsor CLE programs with the Seminars Department, but co-sponsorship was not required. Sections that did not co-sponsor programs had the ability to pay for individual services provided by the Seminars Department, such as registration services, compilation of course materials, print services, and signage services, without relinquishing control over program decisions and without required profit sharing.

This resolution would maintain the status quo by allowing sections to choose whether to co-sponsor CLE programs with the OSB CLE Seminars Department.

This resolution seeks to maintain the status quo so that the sections, Board of Governors, and OSB staff have additional time to identify potential alternatives before the OSB implements mandatory co-sponsorship under the terms described above, with the goal of developing a revised policy that would meet the Board's objectives while addressing the concerns of sections.

Financial Impact

Because this resolution seeks to maintain the status quo of 2016, it would not have a financial impact when compared to 2016. If passed, the resolution would have a financial impact in 2017, when mandatory co-sponsorship will be implemented.

The OSB estimates it can increase revenue for the CLE Seminars Department by approximately \$20k–\$30k per year by requiring co-sponsorship of section CLEs.

By allowing sections to opt out of mandatory co-sponsorship, the CLE Seminars Department would not have the right to share in profits from section CLEs and would lose the ability to generate approximately \$20k–\$30k per year.

Presenters:

Sarah Drescher, Chair, OSB Labor & Employment Section

Michael Fuller, Chair, OSB Consumer Law Section