

Communicating With Your Legislator

What Your Legislator Likes

1. Your legislator likes to hear opinions from home and wants to be kept informed of conditions in the district. Base your letter on your own pertinent experiences and observations.
2. Write about a specific bill, describe it by number or its popular name. Your legislator reviews hundreds of bills in the course of a six-month period. Write only about one subject in your one-page letter.
3. Your legislator likes intelligent, well thought-out letters that present a definite position, even if your legislator does not agree with it.
4. Even more important and valuable is a concise statement of the reasons for your position, particularly if you are writing about a field in which you have specialized knowledge. Your legislator has to vote on many matters with which he has little or no first-hand experience. Some of the most valuable help comes from facts presented in letters from persons who really know what they're talking about. (However, if you are not sure about the specifics of the bill, it is better to just indicate that you support it because you feel it is important legislation rather than indicating a number of reasons, which are not sound ones.)
5. Short one-page letters are always best. Members of the Legislature receive many letters each day, and a long letter may not get as prompt a reading as a brief statement.
6. Letters should be timed to arrive while the issue is still alive. If your legislator is a committee member, he will appreciate knowing your views while the bill is before him for study and action.
7. A legislator likes to know when he or she has done something of which you approve. Do not hesitate to write a one-page letter to your legislator if he or she has supported and voted for legislation in which you are interested.

What Your Legislator Does Not Like

1. Your legislator does not like letters that merely demand or insist that he vote for or against a certain bill without providing a reason. Your legislator has no way of knowing whether your reasons are good or bad, and is not greatly influenced.
2. Your legislator does not like to be threatened with promises of defeat at the next election.
3. Your legislator does not like to be told how influential the writer is in his own locality.
4. Your legislator does not like to be asked to commit to a particular bill until the committee in charge of the subject has had a chance to hear evidence and dig out all of the pros and cons.
5. Your legislator does not like form letters, or letters that include excerpts from other peoples' letters on the same subject.
6. Your legislator does not like to be deluged by letters from the same person on the same subject. Quality, not quantity, is what counts.

Tips for Effective and Successful Lobbying

Follow a few common-sense guidelines when lobbying for state bar positions and your efforts will be more productive and less frustrating.

Be prepared. Legislators rely heavily on correspondence and committee hearings for information to make decisions. Take extra copies of written testimony with you.

Know the players. Develop and maintain relationships with key players who may have an interest in your issues or who represent a part of your community. They can often provide guidance or important entrees in the legislative process.

Maintain your credibility. Be candid and avoid making demands or overstating the truth. An effective witness is regarded as a valuable resource. Most legislators respond best to well-reasoned arguments.

Be concise. Be direct and to the point. Focus on your primary message. If necessary, written testimony can include additional attachments and longer explanatory information.

Be positive. Demonstrate positive advocacy and provide constructive feedback on issues.

Remember, legislators are trying to solve problems, real or perceived. Flat-out opposition may arouse hostility.

Be persistent. Do not give up. Persistence makes the difference in the statehouse.

Build relationships. Build widespread support from a variety of interest groups for your legislative proposal or position. Bills are often torpedoed by interest groups that feel they were excluded from the formulation of the policy. When appropriate, recruit section and committee support.

Monitor the status of bills. Carefully follow the progress of your legislation. Do not lose sight of your bill until it is signed into law by the governor.

Consider fiscal implications. Do not overlook the importance that financial impact may have on the success or failure of a legislative proposal.

Recognize the art of compromise. Remember, half a loaf is better than nothing. Be professional, because today's opponent may be tomorrow's ally.

Practical Aspects of Lawyer "Lobbying"

The legislative process is complex. Failure to understand basic principles of the process and organization frequently result in an inability to effectively pursue necessary legal changes. To render valuable service to clients, the public and the law itself, a lawyer should know fundamental rules of the legislative process. These include:

Who's Who: Speaker of the House and President of the Senate, Majority and Minority Leaders, Committee Chairs, Committee Members, Clerk, Secretary, floor staff, legislative assistants, committee and caucus staff.

What's What: Committee rooms, offices in the Capitol, chambers, Coffee Shop, rules in the hall.

Bill Drafting and Introduction: Legislative Counsel (how to get a "note from mother"), pre-session filing, interim committees, requests, priorities, amendments, and relating clauses.

Bill Tracking: Following the agenda in both chambers, hearing schedules (24-hour and 36-hour rules; suspension in final days), floor motions, debate and votes, conference committees, veto/signing by governor, Session Laws.

Lobbying: Preparing testimony and exhibits, visiting members in office, after hours, in committee and during floor session. What a legislator needs from a lawyer lobbyist and when lawyers should keep out of sight.

Oregon Law on Lobbying, Ethics Generally*

* Revised 11/5/02

1. What is lobbying?

It is defined as influencing or attempting to influence legislative action through oral or written communication with legislative officials, solicitation of others to influence or attempt to influence legislative action or attempting to obtain good will of legislative officials. ORS 171.725(8).

2. What are some of the fine points regarding the question “What is lobbying?”

Oregon Attorney General Opinion 8259 (August 7, 1998) discusses the following issues, among others:

- a. Is providing information without taking a position either in support of or opposition to specific legislative action lobbying? Short answer: No.
- b. Is office work such as creating, drafting, editing and finalizing legislative presentations lobbying? Short answer: No. Lobbying only includes the acts of imparting or transmitting testimony or presentations to legislative officials and does not encompass the acts of creating and preparing testimony.
- c. Is waiting to testify, in and of itself, lobbying? Short answer: No.
- d. Does lobbying include attending meetings of interested stakeholders for the purpose of obtaining approval or compromise on proposals for legislative measures? Short answer: Yes, if attendees request or urge members of the stakeholder group to communicate with legislative officials about the group’s work for the purpose of having proposed measures sponsored, supported, passed, or defeated.

3. Who are “legislative officials”?

ORS 171.725(7) defines “legislative official” to mean “any member or member-elect of the Legislative Assembly, any member of an agency, board or committee that is part of the legislative branch, and any staff person, assistant or employee thereof.”

4. How is “lobbyist” defined?

Lobbyists include:

- a. any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying.

b. any person not otherwise within a. above who provides personal services as a representative of a corporation, association, organization or other group, for the purpose of lobbying.

c. Any public official who lobbies.

ORS 171.725(9). “‘Public agency’ means a commission, board, agency or other governmental body.”

ORS 171.725(10). “‘Public official’ means any member or member-elect of any public agency and any member of the staff or an employee of the public agency.” ORS 171.725(11).

5. When do “lobbyists” have to register with the Oregon Government Standards and Practices Commission (OGSPC)?

Once a “lobbyist” spends more than 24 hours during any calendar quarter lobbying and spends more than \$100 lobbying during any calendar quarter, the lobbyist must register. ORS 171.735(4) (amended in 2001). It is not clear whether travel time is excluded from the 24-hour computation. The OGSPC’s January 2000 version of the “Guide to Lobbying in Oregon”, page 5, indicates that travel time is excluded from the 24-hour computation. However, this Guide has not yet been revised to reflect changes as a result of the actions of the 2001 Legislative Assembly. The cost of personal travel, meals and lodging appear to be excluded from the \$100 computation. OAR 199-010-0075(5). Once either the 24 hours or \$100 threshold is passed by an individual or a corporation, association, organization or other group, the individual or entity must register with the OGSPC within three working days after exceeding either the time limit or expenditure limit or both. ORS 171.740(1).

It should be noted that there now appears to be an inconsistency in the statutes. ORS 171.735(4), amended in 2001, provides: “A person who spends not more than 24 hours during any calendar quarter lobbying and who does not spend an amount in excess of \$100 lobbying during any calendar quarter” (emphasis added) does not need to register in accordance with ORS 171.740 and 171.745. However, ORS 171.740(1) provides: “Within three working days after exceeding the limit of time or expenditure specified in ORS 171.735(4), a lobbyist shall register....” (emphasis added) Although ORS 171.735(4) indicates that a person does not need to

register unless they meet both the 24 hours and \$100 requirement, ORS 171.740(1) indicates that a lobbyist must register when either the 24 hours or the \$100 requirement is met. OAR 199-010-0025(1) supports ORS 171.740(1) and provides: “Individuals subject to the lobbying registration law must register within three working days after spending either \$100 or 24 hours during a calendar quarter on lobbying activities.” In addition, the OGSPC’s January 2000 version of the “Guide to Lobbying in Oregon”, page 5, provides that persons are exempt from registration and expenditure reporting if they “do not spend more than either 24 hours (excluding travel time) or \$100 (excluding personal travel, meals and lodging) in a calendar quarter lobbying.” At this time, it is prudent to interpret the statutes in the most restrictive fashion, i.e., individuals subject to the lobbying registration law should register within three working days after spending either \$100 or 24 hours during a calendar quarter on lobbying activities.

6. Are there any other exceptions to registration?

Yes. See ORS 171.735. The one most relevant to our discussions is contained in ORS 171.735(3). “Any individual who receives no compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies” is exempt from registration so long as the person is not otherwise registered with the OGSPC.

7. Beyond registering, what must lobbyists do?

They must file statements of lobbying in accordance with the requirements of ORS 171.745.

Note should be made of ORS 171.745(4). It provides that “a registered lobbyist, who engages in lobbying activities without compensation on behalf of an organization, is not required to register as a lobbyist for the organization as long as the lobbying activity does not exceed the financial or time limits set in ORS 171.735(4).”

8. What must employers of lobbyists do?

Any person on whose behalf a lobbyist was registered, or was required to register with the OGSPC at any time during the preceding calendar year, must file with the OGSPC by January 31 of the fol-

lowing year a statement of expenditures in accordance with the requirements of ORS 171.750.

9. What other important restrictions apply to lobbyists?

- a. Lobbyists may not instigate the introduction of any legislative action for the purpose of obtaining employment to lobby in opposition to the legislative action. ORS 171.756(1).
- b. Lobbyists may not attempt to influence the vote of any member of the Legislative Assembly by the promise of financial support of the candidacy of the member, or by threat of financing opposition to the candidacy of the member, at any future election. ORS 171.756(2).
- c. Persons may not lobby or offer to lobby for consideration any part of which is contingent upon the success of any lobbying activity. ORS 171.756(3).
- d. Lobbyists cannot, pursuant to ORS 171.764(1), make false statements or misrepresentations to any legislative or executive official or, knowing a document to contain a false statement, cause a copy of such document to be received by a legislative or executive official without notifying such official in writing of the truth as prescribed in ORS 171.764(2).

10. Are there additional restrictions that apply to lawyer-lobbyists?

Yes. Oregon lawyers must comply with all applicable provisions of the Oregon Code of Professional Responsibility while engaging in lobbying activities. Some of the more important rules include:

- a. DR 1-102(A)(3) (It is professional misconduct for a lawyer to: engage in conduct involving dishonesty, fraud, deceit or misrepresentation).
- b. DR 1-102(A)(5) (It is professional misconduct for a lawyer to: state or imply an ability to influence improperly a government agency or official).
- c. Lawyers who hold public office must comply with the requirements of DR 8-101:
 - A. A lawyer who holds public office shall not:
 1. Use the lawyer’s public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

2. Use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

3. Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

4. Either while in office or after leaving office use confidential government information obtained while a public official to represent a private client.

a. As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which at the time the information is used the government is prohibited by law from disclosing to the public or has legal privilege not to disclose and which is not otherwise available to the public.

B. The foregoing provisions of DR 8-101(A) do not preclude a lawyer from acting under a law which specifically authorizes the performance of a governmental function, despite a conflict of interest, if the lawyer complies with all requirements of such law.

C. Notwithstanding the provisions of DR 8-101(A) or any other disciplinary rule, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article I, section 6, of the United States Constitution, a lawyer-legislator shall not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress.

D A member of a lawyer-legislator's firm shall not be subject to discipline for representing a client in any claim against the State of Oregon provided:

1. The lawyer-legislator is screened from participation or representation in the matter in accordance with the procedure set forth in DR 5-105(I). The required affidavits shall be served on the Attorney General; and

2. The lawyer-legislator shall not directly or indirectly receive a fee for such representation.

DR 5-105 Conflicts of Interest: Former and Current Clients

DR 5-105(G) Vicarious Disqualification of Affiliates. Except as permitted in subsections (D) and (F), when a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule other than DR 2-110(B)(3), DR 5-101(A)(2), DR 5-102(A), DR 5-106(A) or DR 5-110, no other member of the lawyer's firm may accept or continue such employment, except as provided in DR 8-101(D).

DR 5-105(I) Screening Procedure Upon Termination of Employment. The prohibition stated in DR 5-105(H) shall not apply provided the personally disqualified lawyer is screened from any form of participation or representation in the matter. In order to ensure such screening:

1. The personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter of representation.

2. At least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation.

3. No violation of DR 5-105(H) or of the requirements of DR 5-105(I) shall be deemed to have occurred if the personally disqualified

lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.

11. Isn't it unlawful to make political contributions to elected officials during a legislative session?

ORS 260.174(3) prohibits this, but Oregon Attorney General Opinion 8274 (January 2, 2001) concludes that ORS 260.174 violates Article I, Section 8 of the Oregon Constitution and therefore cannot be enforced. Notwithstanding Oregon Attorney General Opinion 8274, ORS 260.174(3) is still the law in Oregon.

The 2001 Oregon Legislative Assembly established ORS 260.076 in an effort to address some of the concerns related to contributions received during a session of the Legislative Assembly. ORS 260.076(1) provides that "A legislative official, statewide official or candidate therefor, or the official's or candidate's principal campaign committee, shall file statements showing contributions received by or on behalf of the official, candidate or committee during the period beginning January 1 immediately preceding a regular biennial session of the Legislative Assembly and ending upon adjournment of the regular biennial session of the Legislative Assembly, or during any special session of the Legislative Assembly." The required statement "shall be filed not later than two business days after the date a contribution is received" on a form prescribed by the Secretary of State. ORS 260-076(5).

12. Are members of the Board of Governors, OSB Committee Chairs and Members, and OSB Section Executive Committee Chairs and Members required to register as lobbyists for the Oregon State Bar?

As a general proposition, yes, if they spend more than 24 hours during any calendar quarter lobbying and spend more than \$100 lobbying during any calendar quarter. However, as noted above in response to question 5, there now appears to be an inconsistency in the statutes. ORS 171.735(4), amended in 2001, provides: "A person who spends not more than 24 hours during any calendar quarter lobbying *and* who does not spend an amount in excess of \$100 lobbying during any calendar quarter" (*emphasis added*) does not need to register in accordance with ORS 171.740 and 171.745. However, ORS 171.740(1) provides: "Within three working days after exceeding the limit of time *or* expenditure specified in ORS 171.735(4), a lobbyist shall register...." (*emphasis added*) At this time, it is prudent to interpret the statutes in the most restrictive fashion, i.e., individuals subject to the lobbying registration law should register within three working days after spending either \$100 or 24 hours during a calendar quarter on lobbying activities.

The exception contained in ORS 171.735(3) should be restated here: "Any individual who receives no compensation or reimbursement of expenses for lobbying, who limits lobbying activities solely to formal appearances to give testimony before public sessions of committees of the Legislative Assembly, or public hearings of state agencies, and who, when testifying, registers an appearance in the records of the committees or agencies" does not have to register as a lobbyist.

And, again, as previously noted, ORS 171.745(4) provides that "a registered lobbyist, who engages in lobbying activities without compensation on behalf of an organization is not required to register as a lobbyist for the organization as long as the lobbying activity does not exceed the financial or time limits set in ORS 171.735(4)."

DR 8-101 Action as a Public Official

A lawyer who holds public office shall not:

Use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

Use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.

Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.

Either while in office or after leaving office use confidential government information obtained while a public official to represent a private client.

As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which at the time the information is used the government is prohibited by law from disclosing to the public or has legal privilege not to disclose and which is not otherwise available to the public.

The foregoing provisions of DR 8-101(A) do not preclude a lawyer from acting under a law which

specifically authorizes the performance of a governmental function, despite a conflict of interest, if the lawyer complies with all requirements of such law.

Notwithstanding the provisions of DR 8-101(A) or any other disciplinary rule, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article I, section 6, of the United States Constitution, a lawyer-legislator shall not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress.

A member of a lawyer-legislator's firm shall not be subject to discipline for representing a client in any claim against the State of Oregon provided

The lawyer-legislator is screened from participation or representation in the matter in accordance with the procedure set forth in DR 5-105(I). The required affidavits shall be served on the Attorney General; and

(2) The lawyer-legislator shall not directly or indirectly receive a fee for such representation.

MCLE Credits for Legislative Service*

**Current at the time of this handbook's publication.*

OSB MCLE Rules and Regulations

RULE 5 — ACCREDITATION STANDARDS

5.2(f) Other CLE Activities — Legislative Service

Two general credit hours per month shall be given for each full month of service as a member of the Oregon Legislative Assembly while it is in session.

