

**Oregon State Bar  
Meeting of the Board of Governors  
Special Open Session Agenda  
Friday, September 23, 2011, 8:00 a.m.  
Oregon State Bar Center, McKenzie Room**

- 1. Call to Order**
  
- 2. Approval of 2011 House of Delegates Agenda [Mr. Piucci]      Action      Exhibit**
  - A. Approve HOD Agenda
  
- 3. Task Force On Discipline For Discrimination, Intimidation & Harassment      Action      Exhibit**
  - A. Accept Task Force Report and Adopt Recommendations
  
- 4. Consider Formation of Non-Profit Law Section [Ms. Naucler]      Action      Exhibit**
  - A. Approve the formation of a Nonprofit Organizations Law Section as recommended by the Policy and Governance Committee.
  
- 5. CEJ Request for Co-Sponsorship [Ms. Stevens]      Action      Exhibit**
  - A. Approve OSB co-sponsorship of trophy awarded annually to the region of the state that has the largest percentage increase in the number of CEJ donors.
  
- 6. Good of the Order (Non-action comments, information and notice of need for possible future board action)**

**Oregon State Bar**  
**2011 House of Delegates Meeting**

*Oregon State Bar Center*  
*16037 SW Upper Boones Ferry Rd.*  
*Tigard, Oregon*  
*Friday, October 28, 2011*  
*10:00 a.m.*

Oregon State Bar

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Dear Oregon State Bar Member:

I am pleased to present the preliminary agenda for the 2011 OSB House of Delegates Meeting, which will begin at 10:00 a.m. on Friday, October 28, 2011 at the Oregon State Bar Center.

The OSB is an outstanding professional organization, due largely due to the committed participation of its members. The House of Delegates is a crucial piece of bar governance. All bar members are welcome and encouraged to participate in the discussion and debate, 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 web site at <http://www.osbar.org/docs/leadership/hod/hodroster.pdf>.

The HOD meeting will be followed by a reception recognizing the first group of new lawyers and mentors participating in the OSB's recently-launched New Lawyer Mentoring Program.

Matters that will be considered by the House include:

- Veterans Day Remembrance
- Amendment of ORPC 1.5-2
- Amendment of ORPC 5.5
- Amendment of Statement of Professionalism
- Support for Judicial Department Budget Funding
- Support for Adequate Funding of Legal Services for Low-Income Oregonians

If you have questions concerning the House of Delegates meeting, please contact Camille Greene, Executive Assistant, by phone at 503-431-6386, by email at [cgreene@osbar.org](mailto:cgreene@osbar.org), or toll free inside Oregon at 800-452-8260 ext 386.

Remember that delegates are eligible for reimbursement of roundtrip 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 Bar Center on October 28, and I thank you in advance for your consideration and debate of these items.



Stephen V. Piucci, OSB President

**OREGON STATE BAR**  
**2011 House of Delegates Meeting**

Oregon State Bar Center  
16037 SW Upper Boones Ferry Rd.  
Tigard, OR 97281-1935  
10:00 a.m., Friday, October 28, 2011  
Presiding Officer: Stephen V. Piucci, OSB President

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**Agenda**

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| 1. Call to Order<br><i>Stephen V. Piucci</i><br><i>OSB President</i>                         | 5. Comments from the Chief Justice of the Oregon Supreme Court<br><i>Paul J. De Muniz, Chief Justice</i><br><i>Oregon Supreme Court</i>          |
| 2. Overview of Parliamentary Procedure<br><i>James N. Westwood</i><br><i>Stoel Rives LLP</i> | 6. Report of the Board of Governors Budget and Finance Committee<br><i>Christopher H. Kent, Chair</i><br><i>BOG Budget and Finance Committee</i> |
| 3. Report of the President<br><i>Stephen V. Piucci</i><br><i>OSB President</i>               | 7. Notice of 2012 Membership Fees<br><i>Christopher H. Kent, Chair</i><br><i>BOG Budget and Finance Committee</i>                                |
| 4. Adoption of Final Meeting Agenda<br><i>Stephen V. Piucci</i><br><i>OSB President</i>      |  |

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**Resolutions**

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| 8. In Memoriam<br>(Board of Governors Resolution No. 1)<br><i>Presenter: Gina Johnnie</i><br><i>Board of Governors, Region 6</i>   | 13. Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians<br>(Delegate Resolution No. 2)<br><i>Presenters: Kathleen Evans</i><br><i>House of Delegates, Region 6</i><br><i>Gerry Gaydos</i><br><i>House of Delegates, Region 2</i><br><i>Ed Harnden</i><br><i>Board of Governors, Region 5</i> |
| 9. Amendment of Oregon Rule of Professional Conduct 1.15-2<br>(Board of Governors Resolution No. 2)<br><i>Presenter: Helen Hierschbiel</i><br><i>General Counsel, Oregon State Bar</i> | 14. Amendment to Statement of Professionalism<br>(Board of Governors Resolution No. 5)<br><i>Presenter: Hon. Angel Lopez</i><br><i>Multnomah County Circuit Court</i>  |
| 10. Amendment of Oregon Rule of Professional Conduct 5.5<br>(Board of Governors Resolution No. 3)<br><i>Presenter: Helen Hierschbiel</i><br><i>General Counsel, Oregon State Bar</i>   | 15. Amendment to Oregon Rule of Civil Procedure 42<br>(Delegate Resolution No. 3)<br><i>Presenter: Timothy MB Farrell</i><br><i>House of Delegates, Region 1</i>   |
| 11. Veterans Day Remembrance<br>(Board of Governors Resolution No. 4)<br><i>Presenter: Christopher H. Kent</i><br><i>Board of Governors, Region 5</i>                                  | 16. Increasing LRS Initial Consultation Fee<br>(Delegate Resolution No. 4)<br><i>Presenter: Peter J. Mozena</i><br><i>House of Delegates, Region 5</i>   |
| 12. Support for Judicial Department Budget Funding<br>(Delegate Resolution No. 1)<br><i>Presenter: Danny Lang</i><br><i>House of Delegates, Region 3</i>                               |  |

## Agenda Exhibits

### 7. Notice of 2012 Membership Fees

The 2012 Oregon State Bar membership fees and assessments are as follows:

Membership Category	If paid by January 31, 2012	If paid after January 31 but by February 29, 2012	If paid after February 29, 2012
Active members admitted in any jurisdiction before 1/1/10	\$492.00	\$542.00	\$592.00
Active members admitted in any jurisdiction on or after 1/1/10	\$413.00	\$463.00	\$533.00
Inactive members	\$110.00	\$135.00	\$160.00
Active Pro Bono members	\$125.00	\$125.00	\$125.00

*Presenter: Christopher H. Kent  
Region 5, Board of Governors*

## Resolutions

### 8. In Memoriam (Board of Governors Resolution No. 1)

Richard J. Akers  
Hon. Donald C. Ashmanskas  
Myer Avedovech  
H. William Barlow  
Elmer Roy Bashaw  
Millard M. Becker  
Oscar Hilding Bengtson  
Richard L. Biggs  
Joe D. Bispham  
Wayne H. Blair  
John P. Bledsoe  
Edward Branchfield  
Susan A. Brewster  
Hon. Clarke C. Brown  
Richard J. Brownstein  
Mickey Bruce  
Scott D. Caplan  
Timothy S. Cardwell  
Delos R. Clark  
Jack Gore Collins  
Robert Lynton Cook

Peter C. Davis  
Roger L. Dick  
Donald A. Dole  
Sandra N. Duffy  
Robert B. Duncan  
Donald F. Dunn  
Roy E. Edwards  
Ralf H. Erlandson  
Robert K. Flug  
Charles H. Foster  
Walter W. Foster  
Hon. Helen J. Frye  
Patrick J. Furrer  
James K. Gardner  
Glenn A. Geurts  
Dennis V. Gilbert  
Rockne Gill  
Edward A. Goll  
H. J. Hamilton Jr.  
Donald H. Hartvig  
George A. Haslett Jr.

H. H. Hayner  
Jeannette C. Hayner  
Walter B. Hinson  
Hon. Alan R. Jack  
Larry F. Klang  
Harry R. Kraus  
Anne MacDonald  
Kurt L. Maul  
Ross T. McCarty  
Samuel A. McKeen  
Thomas I. Meehan Jr.  
Leo S. Meysing  
Jeffrey S. Miller  
Charles R. Mundorff  
Robert L. Myers  
Steven Matthew Newman  
Russell R. Niehaus  
Walter D. Nunley  
Ronald J. Podnar  
Leonard Popick  
John P. Pries

Hon. Albert E. Radcliffe  
Forrest N. Rieke  
Hon. Betty Roberts  
Craig R. Rockwell  
Hon. Charles A. Sams  
Stanley M. Samuels  
Hon. Loren L. Sawyer  
William D. Scalf  
John L. Schwabe  
Allan D. Sobel  
Ronald M. Somers  
Paul J. Speck  
John D. Thomas  
John Toran Jr.  
Bruce W. Towsley  
Hon. Stephen S. Walker  
Warren A. Woodruff  
Claudette L. Yost  
James W. Young  
Zachary Zabinsky

*Presenter: Gina Johnnie  
Board of Governors, Region 6*

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**9. Amendment of Oregon Rule of Professional Conduct 1.15-2  
(Board of Governors Resolution No. 2)**

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

*Whereas*, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they may be 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 1.15-2 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

**Rule 1.15-2 IOLTA Accounts and Trust Account  
Overdraft Notification**

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest (“net interest”) shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. IOLTA accounts shall be operated in accordance with this rule and with operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.

\* \* \*

*[(m) Every lawyer shall certify annually on a form and by a due date prescribed by the Oregon State Bar that the lawyer is in compliance with Rule 1.15-1 and this rule. Between annual certifications, a lawyer establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of establishing the account, on a form approved by the Oregon Law Foundation].*

*[(n) m] For the purposes of paragraph (h)(3), “service charges” are limited to the institution’s following customary check and deposit processing charges: monthly maintenance fees, per item check charges, items deposited charges and per deposit charges. Any other fees or transactions costs are not “service charges” for purposes of paragraph (h)(3) and must be paid by the lawyer or law firm.*

*Presenter: Helen Hirschbiel  
General Counsel, Oregon State Bar*

**Background**

RPC 1.15-2(m) requires bar members to file an annual certification disclosing their lawyer trust accounts to the Oregon Law Foundation. Because

this obligation is a rule of professional conduct, a lawyer can be disciplined for a failure to comply. *See, In re Klosterman*, 23 DB Rptr 204 (2009); *In re Barteld*, 23 DB Rptr 198 (2009). Experience has shown that the effort expended by the bar in the disciplinary process enforcing RPC 1.15-2(m) is considerable, and any benefit from the filing requirement could be accomplished without making non-compliance a disciplinary offense.

In 2010, the Board of Governors decided pursue legislation that would make the annual IOLTA filing a statutory requirement under which a failure to comply would result in an administrative suspension, rather than a disciplinary prosecution. This is the approach the bar has taken for many years with the payment (and nonpayment) of annual bar dues and the PLF assessment. *See*, ORS 9.191 and 9.200. The board’s IOLTA proposal became Senate Bill 380, which was passed by the 2011 Legislature:

(1) An active member of the Oregon State Bar shall certify annually to the bar whether the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more lawyer trust accounts, the member must disclose the financial institution in which each account is held and the account number for each account. The executive director of the Oregon State Bar shall prescribe a form and due date for the certification and disclosures required by this section.

(2) If a member does not file the certificate and disclosures required by this section by the due date prescribed under subsection (1) of this section, the executive director shall send written notice of the default to the member. The notice shall be sent by registered or certified mail to the last-known post-office address of the member. If a member does not file the certificate and disclosures required by this section within 60 days after the date the notice is mailed, the person’s membership in the bar is automatically suspended. The executive director shall provide the names of all persons suspended under this section to the judges of the circuit courts, the Court of Appeals and the Oregon Tax Court.

(3) A person suspended under this section may be reinstated to membership in the bar only if the person pays all required fees and contributions and complies with all rules of procedure and rules of the Supreme Court relating to reinstatement.

Repeal of RPC 1.15-2(m) will complete the process of making IOLTA compliance certification an

administrative rather than disciplinary matter for Oregon lawyers.

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**10. Amendment of Oregon Rule of Professional Conduct 5.5  
(Board of Governors Resolution No. 3)**

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

*Whereas*, The Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they may be 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 5.5 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

**Rule 5.5 Unauthorized Practice of Law;  
Multijurisdictional Practice**

- (a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.
- (b) A lawyer who is not admitted to practice in this jurisdiction shall not:
- (1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or
  - (2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.
- (c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:
- (1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;
  - (2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;
  - (3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission;

- (4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or
  - (5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission.
- (d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.
- (e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:
- (1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and
  - (2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer
    - (i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or
    - (ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.
- The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

*Presenter: Helen Hierschbiel  
General Counsel, Oregon State Bar*

**Background**

In November 2009, the HOD approved a resolution directing the BOG to "study and implement a program whereby out-of-state attorneys appearing in Oregon in an arbitration...register with the Oregon State Bar...." In response, OSB President Kathleen Evans appointed a task force of 15 OSB members to study the issues raised by the resolution and present recommendations to the BOG. The task force submitted its report and recommendations to the

BOG in August 2010 (the complete report is appended at the end of this agenda).

The majority recommended against establishing a registration program for out of state lawyers participating in Oregon arbitrations, having found no evidence of a problem that would be corrected by a registration program. Moreover, they were concerned that erecting such a barrier might have adverse consequences for Oregon lawyers who handle arbitrations in other jurisdictions.

A minority of the task force recommended the creation of a registration system, concluding that the protection of clients justifies a modest certification program focusing on malpractice coverage. The minority was concerned that widespread Internet advertising by out of state lawyers coupled with the growing use of arbitration to resolve disputes in an increasing variety of practice areas will mean more out-of-state lawyers practicing in Oregon, and a certification program will assist the bar in monitoring the magnitude of temporary practice while promoting appropriate protection of clients.

In November 2010, after considering the task force report and presentations by representatives of the majority and minority, the BOG voted in favor of the minority view and agreed to put the proposed amendment to RPC 5.5 before the HOD as required by ORS 9.490(1). The BOG recognizes that the registration requirement will require administration by OSB staff, but is satisfied that the cost can be alleviated by a reasonable registration fee.

RPC 5.5, a version of which exists in every jurisdiction, is designed to give out-of-state lawyers limited permission to provide legal services (i.e., to engage in the practice of law) in jurisdictions where they are not licensed to practice. The rule was promulgated by the American Bar Association in 2002 in recognition that modern law practice is increasingly not bounded geographically; it also allows clients greater flexibility in choosing a lawyer.

Oregon is the only US jurisdiction that requires malpractice insurance for OSB members engaged in private practice and whose principal office is in Oregon. ORS 9.080 Oregon lawyers admitted by examination who do not maintain their principal offices in Oregon are not required to have malpractice coverage, but lawyers who are admitted by reciprocity are required to maintain PLF or equivalent coverage regardless of the location of their principal offices. Pursuant to UTCR 3.170, out-of-state lawyers admitted *pro hac vice* to appear in an Oregon court or administrative proceeding *must* show proof of insurance substantially equivalent to that offered by the PLF. The proposed amendment to RPC 5.5 will extend the malpractice coverage requirement (or proof of notice to the client that no such insurance is carried) to out-of-state lawyers participating in arbitrations in Oregon, but not to out-of-state lawyers who provide other legal services temporarily in Oregon.

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## **11. Resolution for Veterans Day Remembrance (Board of Governors Resolution No. 4)**

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

*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: Christopher H. Kent  
Board of Governors, Region 5*

### **Background**

The mission of the Bar is to serve justice and promote the rule of law. Active duty military service members, the guard, and reservists, all embody the American tradition of a citizen soldier. We literally would not have our freedom, much less the rule of law, without generations of sacrifice by these citizens. This resolution is simply intended to offer thanks and condolences to all who have sacrificed. This applies to all living veterans, to those who are presently serving, and to the families of those who have lost loved ones.

In honor of Veterans Day, November 11, 2011, The Board of Bar Governors would like to say thank you and pause for a moment to offer sympathy to the families of those who have suffered.

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**12. Support for Judicial Department Budget Funding  
(Delegate Resolution No. 1)**

*Whereas*, the State of Oregon continues to experience severe revenue shortfalls;

*Whereas*, revenue shortfalls have adversely impacted the Judicial Branch Budget;

*Whereas*, Budget cuts have resulted in Court Staff furloughs;

*Whereas*, the Legislature relies upon Public input in setting priorities;

*Whereas*, Public input depends upon Public awareness of the need for priority funding of Oregon Courts to maintain staffing necessary for access to justice and for staffing and replacing of outdated facilities;

*Whereas*, better attention has been diverted toward increased funding for new Prison facilities, leaving

shortfalls in the funding of the Judicial Department Budget;

*Whereas*, better public balancing of Judicial priorities will result from providing public disclosure of the Fiscal Impact resulting from mandatory minimum Prison terms; and,

*Whereas*, better public information will assist the Legislature in prioritizing the needs of the Judicial Branch Budget; now,

*Therefore*, be it resolved that the House of Delegates recommend that the Board of Governors support the Judicial Department Budget by proposing the optional annotation upon the OJIN Case Record of the projected Fiscal Impact from a Judgment of Conviction imposing a Prison term.

*Presenter: Danny Lang  
House of Delegates, Region 3*

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**13. Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians  
(Delegate Resolution No. 2)**

*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 are a fundamental component of the Bar's effort to provide such access;

*Whereas*, the Oregon State Bar provides oversight regarding the use of state court filing fees to help fund legal aid and this funding now comprises one-third of legal aid's overall funding and is critical in providing equal access to justice;

*Whereas*, legal aid programs in Oregon are currently able to meet less than 20% of the legal needs of Oregon's poor;

*Whereas*, Oregon legal aid programs are facing a 16% reduction in staff because of decreased federal funding, low interest rates that has caused a significant reduction in IOLTA revenue, loss of state general fund money, and loss of foundation support because of the poor economy;

*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.

*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 civil legal services programs for low-income Oregonians.
- (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.
- (3) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by establishing goals of a 100% participation rate by members of the House of Delegates, 50% of Oregon State Bar Sections, and a 50% contribution rate by all lawyers.



- (4) Actively participate in and support the fundraising efforts of those non-profit low-income legal service providers in Oregon that are not supported by the Campaign for Equal Justice.
- (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 those banks that have the highest IOLTA interest rates.
- (6) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.
- (7) Work to increase funding for legal aid and preserve the dedicated court filing fee funding for legal aid that was adopted in 1977 and which has been monitored and distributed by the Oregon State Bar Legal Services Program since 1997.

*Presenters: Kathleen Evans  
House of Delegates, Region 6  
Gerry Gaydos  
House of Delegates, Region 2  
Ed Harnden  
Board of Governors, Region 5*

### **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.” Section 1.2 of the Oregon State Bar Bylaws. 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, 2005-2010). This resolution is similar to the resolution passed in 2010, but specifically recites the current reductions in staff at Oregon’s legal aid programs, and adds sections encouraging Oregon State Bar sections to support the Campaign for Equal Justice, and encouraging Oregon lawyers to bank with leadership banks to maximize interest on IOLTA accounts that support legal aid.

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 filing fees for civil legal services and provide methods for evaluating the legal services programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

In a comprehensive assessment of legal needs study, which was commissioned by the Oregon State Bar, the Office of the Governor, and the Oregon Judicial Department found that equal access to justice plays an important role in the perception of fairness of the justice system. *The State of Access to Justice in Oregon* (2000). Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. The study also concluded that individuals 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. Studies in 2005 and 2009 by the national Legal Services Corporation confirm that in Oregon we are continuing to meet less than 20% of the legal needs of low-income Oregonians. Legal Services Corporation, “Documenting the Justice Gap in America: The unmet Civil Legal Needs of the Low-Income Americans” (Fall 2005). Although we have made great strides in increasing lawyer contributions to legal aid, there remains a significant deficit in providing access to justice to low-income Oregonians.

Currently, only about 20% of lawyers contribute to the Campaign for Equal Justice. The Campaign supports statewide legal aid programs in Oregon which have offices in 18 different Oregon communities, and provide representation to income eligible clients in all 36 Oregon counties. The offices focus on the most critical areas of need for low-income clients. About 40% of legal aid’s cases involve family law issues relating to domestic violence.

In 2011, Oregon’s legal aid programs are facing staffing cuts of 16%. This comes at a time when Oregonians are still dealing with the poor economy and legal aid programs are reporting increases in the frequency and severity of domestic violence, and issues relating to housing and unemployment.

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**14. Amendment to Statement of Professionalism  
(Board of Governors Resolution No. 5)**

*Whereas*, in 1990 the Oregon State Bar membership approved a Statement of Professionalism that was adopted by the Supreme Court of Oregon in 1991 and revised in 2006, and

*Whereas*, the Oregon Bench/Bar Commission on Professionalism believes that the Statement of Professionalism should reflect the importance of diversity to the bench and bar of Oregon, and

*Whereas*, the Oregon Bench/Bar Commission on Professionalism has proposed an amendment to the Statement of Professionalism that has the support of the Board of Governors; now therefore be it

*Resolved*, that the current Statement of Professionalism be amended as set forth below, and submitted to the Supreme Court for adoption.

**OREGON STATE BAR  
STATEMENT OF PROFESSIONALISM**

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is the courage to care about and act for the benefit of our clients, our peers, our careers, and the public good. Because we are committed to professionalism, we will conduct ourselves in a way consistent with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and the public.

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.

- I will avoid all forms of discrimination.
- I will support a diverse bench and bar.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

*Presenter: Hon. Angel Lopez  
Multnomah County Circuit Court*

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**15. Amendment to Oregon Rule of Civil Procedure 42  
(Delegate Resolution No. 3)**

*Whereas*, ORCP 42 is currently reserved for future expansion;

*Whereas* all U.S. jurisdictions except for Oregon allow the use of interrogatories in their civil rules, including the Oregon Federal District Court;

*Whereas* interrogatories are a useful tool for litigants to conduct discovery in preparing cases for trial by encouraging the speedy and inexpensive determination of an action under ORCP 1;

*Whereas* the Oregon Revised Statutes allow the use of interrogatories in other forums and instances outside of pretrial discovery, including their use in collecting on a judgment;

*Whereas*, the Council on Court Procedures is authorized to make recommendations to the legislature to make changes to the Oregon Rules of Civil Procedure;

*Whereas* recent changes to the rules of admission to the Oregon State Bar allow members of other state bar associations to become members of the OSB through reciprocal admission and these out of state attorneys are familiar with the use of interrogatories in their home states;

*Whereas* there is no case law that would prohibit the use of interrogatories as a Constitutional matter;

*Resolved*, that the House of Delegates shall recommend to the Council on Court Procedures that ORCP 42 be amended to allow the use of interrogatories as a discovery device in matters pending before Oregon courts.

*Presenter: Timothy MB Farrell  
House of Delegates, Region1*

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**16. Increasing Lawyer Referral Service Initial Consultation Fee  
(Delegate Resolution No. 4)**

*Whereas*, the establishments of a fair rate of compensation for an initial conference with a member of the bar creates an expectation of value of the advice given, fosters respect for lawyers and the legal profession, and avoids an incentive to take a case only to generate fees;

*Whereas*, the lawyer referral service, although a service to the public, is not service based on financial need. Establishing a fee below the market for such services damages the reputation and credibility of the bar and the profession;

*Whereas*, there exists other important organizations that provide financial or needs based legal services;

*Whereas*, Southwest Washington Lawyer Referral Service has had an initial consultation fee of \$75.00 for many years, it is time to consider an increase in Oregon;

*Whereas*, wealthy financially able individuals and businesses unfairly benefit from artificially low rate and create possibility of abuse; and

*Whereas*, ORS 9.139(1)(b) provides that the House of Delegates may “direct the board of governors as to future action,” and ORS 9.139(2) provides that “the board of governors is bound by a decision of the house of delegates made in the manner prescribed by subsection (1) of this section:” now, therefore be it

*Resolved*, the initial consultation fee established by Lawyer Referral Service should be raised (suggestion \$75.00) for the initial consultation. The Board of Governors should take any action to direct such change.

*Presenter: Peter J. Mozena  
House of Delegates, Region5*

**Background**

Southwest Washington Lawyer Referral Service in Clark County has had an initial consultation fee of \$75.00 for many years.

**Financial Impact**

None to OSBA or members except for obvious minor impact for bar members.

Oregon State Bar

Report of the  
**Out of State Lawyers in Arbitration  
Task Force**

August 13, 2010

## Introduction

The Out of State Lawyers in Arbitration (OOSLA) Task Force was created on January 6, 2010 by OSB President Kathleen Evans in response to a 2009 House of Delegates Resolution which directed the Board to Governors (BOG) to:

“...study and implement a program whereby out-of-state attorneys appearing in Oregon in an arbitration...register with the Oregon State Bar prior to any hearing..., provide a certificate of good standing from the [jurisdiction] in which the attorney is admitted to practice and certificate of insurance [and] that the registration program collect a reasonable fee from out-of-state attorneys applying to appear in arbitration in Oregon.”

The Task Force was chaired by Richard G. Spier (Portland). The other members of the Task Force were Robert S. Banks, Jr. (Portland); Jeffrey M. Batchelor (Portland); Hon. Frank L. Bearden (Portland); James M. Brown (Portland); Hon. Mary J. Deits (Portland); M. Christie Helmer (Portland); David A. Hilgemann (Salem); Michelle Vlach-Ing (Salem); Leslie S. Johnson (Portland); James L. Knoll (Portland); Michael Moffitt (Eugene); Katherine H. O’Neil (Portland); James R. Uerlings (Klamath Falls); O. Meredith Wilson, Jr. (Portland); and Barbara Woodford (Portland). Christopher Kent (Portland) was the Board of Governors liaison. OSB General Counsel Sylvia E. Stevens served as reporter. The OOSLA Task Force met on February 17, March 13, May 26, and June 24, 2010.

After thoroughly and carefully analyzing the myriad issues raised by the HOD resolution, a majority of the Task Force (9 members) recommends against establishing a registration program for OOSLs participating in arbitrations in Oregon. A minority of the Task Force (6 members) recommends that new language be added to Oregon Rule of Professional Conduct 5.5 requiring (1) certification by OOSLs participating in pending or potential arbitrations to be held in Oregon that they are in good standing in their home jurisdictions and (2) evidence that they possess malpractice insurance equivalent to that required of Oregon attorneys or that they have informed their client that they do not possess such insurance.

## Task Force Analysis and Findings

The Task Force began its work by reviewing the HOD resolution which, according to the proponent, was aimed at addressing the following concerns:

- clarifying whether representation of a client in arbitration constitutes the practice of law in Oregon;
- ensuring that OOSLs are subject to discipline in Oregon;
- filling any gaps in existing regulation, including what is meant by “temporary practice” in RPC 5.5; and
- gathering information about the frequency of OOSL participation in Oregon arbitrations

There was agreement among Task Force members, as an initial proposition, that a lawyer representing a client in an arbitration proceeding is engaged in the practice of law, no different than representing a client in court-based litigation.<sup>1</sup> The Task Force then turned to a review of Oregon RPCs 5.5 and 8.5. The Task Force acknowledged that RPC 5.5(c)<sup>2</sup> clearly contemplates the provision of legal services by OOSLs in connection with “pending or potential arbitration” proceedings without any kind of registration. The Task Force read RPC 8.5<sup>3</sup> to unequivocally subject OOSLs who provide or offer to provide legal services in Oregon to

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<sup>1</sup> The Task Force recognized that certain arbitration forums allow representation by nonlawyers, and that such practice is outside the Task Force’s purview.

<sup>2</sup> Rule 5.5 (Unauthorized Practice of Law; Multijurisdictional Practice) provides in pertinent part:

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(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

\*\*\*

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

\*\*\*

(5) are provided to the lawyer’s employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

\*\*\*

<sup>3</sup> Rule 8.5 (Disciplinary Authority; Choice of Law) provides in pertinent part:

the disciplinary authority of the Oregon State Bar, although there was some question about the efficacy of such authority. Finally, the Task Force reviewed ORS 36.670, which expressly allows OOSLs to appear in arbitration proceedings in Oregon. There was some discussion about whether the statute prohibited the imposition of any regulations or requirements, but it was ultimately concluded that modest requirements wouldn't impinge with the statutory mandate.

To ensure it considered as wide a range of views as possible, the Task Force directed the following inquiry to arbitration organizations:

1. Have your administrators, arbitrators or participants identified any problems or concerns with the performance or conduct of out-of-state lawyers as advocates in Oregon arbitration proceedings?
2. Have there been any concerns or allegations of misconduct or incompetence?
3. Has your organization identified any significant difference in the outcome of proceedings when out-of-state lawyers are involved?
4. If out-of-state lawyers were required to register with the Oregon State Bar in order to appear in an Oregon arbitration, would that have any impact on the manner in which your organization handles the proceedings?

Responses were received from the American Arbitration Association, US Arbitration & Mediation, and the Arbitration Service of Oregon. None had experienced any problems with OOSLs and they were unanimous in opining that a registration requirement would create unnecessary barriers to client's ability to be represented by the lawyer of their choosing. The American Arbitration Association reported that there are only a handful of states that require OOSLs to register in order to appear in an arbitration and that lawyers and parties tend to avoid those jurisdictions, especially when insurance is a requirement.

A similar inquiry was sent to members of the ADR, Litigation, Business, Insurance and Consumer Law Sections of the OSB:

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(a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

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1. Have you identified any problems or concerns with the performance or conduct of out-of-state lawyers as advocates in Oregon arbitration proceedings?
2. Have you identified any significant difference in the outcome of proceedings when out-of-state lawyers are involved?
3. Do you think it would be a good idea for the bar to require out-of-state lawyers appearing in Oregon arbitrations to register with the bar?

Nineteen lawyers responded. Of those, 10 were strongly opposed to any requirement for registration or certification of OOSLs; 4 were in favor and 5 were ambiguous. The principal arguments in opposition were that registration would create barriers to clients' free choice of counsel and risk the imposition of reciprocal limits imposed against Oregon lawyers. Some respondents also questioned the authority or propriety of the OSB regulating private dispute resolution proceedings. Those in favor cited the similarity of arbitrations to court proceedings and analogized a registration or certification obligation to the existing requirement for *pro hac vice* admission to appear in an Oregon court proceeding.

Synthesizing the many views expressed as well as their own experience and opinions, the Task Force identified the following factors as important to a final decision:

- There is no evidence, anecdotal or otherwise, to suggest that OOSL practice in Oregon arbitrations is currently a problem;
- Arbitrations are often complex and significant, comparable to court cases, and there is a similar need for protection of affected clients;
- Clients are typically unaware of the jurisdictional limits of a lawyer's practice and the corresponding differences in what recourse is available in the event of a fee dispute, malpractice claim or complaint of disciplinary misconduct;
- The guiding principle for practicing law in Oregon, including through *pro hac vice* or reciprocity admission, is "thou shalt be insured;"
- Registration would be a minor inconvenience and not anti-competitive;
- No registration program will assure that clients have full recourse against incompetent lawyers even if they have malpractice coverage;



- Compliance with any registration rule must be the obligation of lawyers, with no duty to monitor or enforce imposed on or expected of arbitrators; and
- Registration should not erect unnecessary or overly burdensome barriers to an out-of-state client's choice of counsel.

### Conclusions and Recommendation

After considering all the information received from within and outside the group, a majority of the Task Force concluded that the bar should not impose a certification or registration program on OOSLs in Oregon arbitrations. They found no evidence or other basis to indicate that a problem existed that would be corrected by a certification or registration; moreover, they had some concern that erecting such a barrier might have unfortunate consequences for Oregon lawyers who handle arbitrations in other jurisdictions.

A minority of Task Force members disagreed, concluding that protection of clients justifies the imposition of a modest certification requirement focusing on malpractice coverage. They are concerned that widespread and ever-increasing Internet advertising by OOSLs coupled with the growing use of arbitration to resolve disputes in a wider variety of practice areas will mean more OOSL practice in Oregon. A certification or registration program will assist the bar in monitoring the magnitude of temporary practice and ensuring appropriate action to protect clients.

While the majority of the Task Force recommends against any kind of certification for OOSLs in Oregon arbitrations, they recognize that the HOD resolution appears to require the BOG to "implement" such a program. Accordingly, the Task Force offers a proposed amendment to RPC 5.5 for the BOG's consideration if it determines implementation of a certification program is required. The proposal is a compromise between the desire of the minority to require malpractice insurance of all OOSLs in Oregon arbitrations. Task Force members recognize that lawyers in other jurisdiction are not required to have such insurance, and that mandating coverage would inappropriately intrude on an out-of-state client's ability to be represented by a lawyer of their choosing. Accordingly, the Task Force agreed that the rule should require *either* proof of malpractice coverage equivalent to that required of Oregon lawyers *or* that the client has been notified that the lawyer does not have the coverage required of Oregon lawyers. It was also agreed that in-house counsel (including government lawyers) should be exempt from the certification requirement. A question was raised whether to exempt collective bargaining arbitrations, but after discussion, the group concluded that no special treatment in that area is needed.

## **Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice**

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires *pro hac vice* admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires *pro hac vice* admission.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide

legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

(e) A lawyer who provides legal services in connection with a pending or potential arbitration proceeding to be held in his jurisdiction under paragraph (c)(3) of this rule must, upon engagement by the client, certify to the Oregon State Bar that:

(1) the lawyer is in good standing in every jurisdiction in which the lawyer is admitted to practice; and

(2) unless the lawyer is in-house counsel or an employee of a government client in the matter, that the lawyer

(i) carries professional liability insurance substantially equivalent to that required of Oregon lawyers, or

(ii) has notified the lawyer's client in writing that the lawyer does not have such insurance and that Oregon law requires Oregon lawyers to have such insurance.

The certificate must be accompanied by the administrative fee for the appearance established by the Oregon State Bar and proof of service on the arbitrator and other parties to the proceeding.

The Task Force recognizes that certification, if required, will impose administrative burdens on the Oregon State Bar and on OOSLs and their clients. The costs to the bar can be alleviated by the fee, and any burden on the lawyers and clients is outweighed by the protection it will afford to clients of OOSLs, commensurate with those available to clients of Oregon lawyers.

Respectfully submitted,

OUT-OF-STATE LAWYERS IN ARBITRATION TASK FORCE

ROBERT G. BURT, P.C.

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September 19, 2011

Stephen V. Piucci  
President  
OREGON STATE BAR  
Oregon State Bar Center  
P.O. Box 231935  
Tigard, Oregon 97281-1935

Re: OSB Legal Ethics Committee Task Force Review of Oregon Rules of Professional Conduct to Address the Issue of Discrimination, Intimidation, and/or Harassment In Legal Proceedings

Dear Mr. Piucci:

This is in response to a request by the OSB Board of Governors (“BOG”) that the OSB Legal Ethics Committee (“LEC”) review a March 18, 2011, letter from Oregon Women Lawyers (“OWLS”) concerning the amendment of existing Oregon Rules of Professional Conduct (“RPCs”) to “adequately address the issue of harassment in legal proceedings.” The letter included endorsements by the Oregon Chapter of the National Bar Association, the Oregon Minority Lawyers Association, and the Oregon Asia Pacific American Bar Association.

In response to the BOG’s request, the LEC formed a Task Force (“TF”) to evaluate the OWLS’ request. This letter is the TF’s evaluation of the issues raised by OWLS’ letter.

I. BACKGROUND

OWLS’ letter was prompted by an ethics complaint filed by a Portland lawyer against another Portland attorney for discrimination, intimidation, and/or harassment (“Levy Matter”). The complaint arose from a March 4, 2010, incident at a downtown Portland law firm party. The female victim complained about being groped and subjected to sexually-charged statements by Jack Levy. In the victim’s complaint, she stated that she believed Levy’s conduct was a “strategic maneuver” to unsettle her on the night before she and Levy would be meeting at her client’s property on a pending construction defect case (the victim represented the property owner, and Levy represented the property developer). The victim subsequently filed a complaint against Levy with the Portland Police Department. On July 2, 2010, Levy pleaded guilty in Multnomah County Circuit Court to a violation of ORS 166.065(1)(a)(A) (a class A misdemeanor for intentionally harassing or

Stephen V. Piucci  
President  
OREGON STATE BAR  
September 19, 2011  
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annoying another by subjecting that person to offensive physical contact that consists of touching the sexual or other intimate parts on the person). Levy was sentenced to two years probation, and was ordered to: write a letter of apology to the victim; stay away from the victim; and attend a class on gender issues and professionalism. On February 24, 2011, the Oregon Supreme Court's Disciplinary Board approved a stipulation for Levy's discipline, whereby he was publicly reprimanded for violating ORS 9.527(2)(for conviction of a misdemeanor involving moral turpitude)(see, attached copy of ORS 9.527).

While the Levy Matter was pending, OWLS formed a committee to consider whether the existing RPCs adequately address the issue of discrimination, intimidation, and/or harassment by a lawyer in legal proceedings. OWLS' March 18, 2011, letter to the BOG stated (page 1):

Regardless of the outcome of the pending complaint, OWLS believes there is significant gap in the RPCs because they do not directly address discrimination, intimidation and/or harassment. Specifically, OWLS strongly believes discrimination, intimidation and/or harassment by a licensed attorney against any other person involved in a legal proceeding or legal matter in which the attorney is involved should be ethically prohibited by the RPCs. Further, any new or amended rule regarding discrimination, intimidation and/or harassment should prohibit such conduct not only on the basis of gender, but also on the basis of race, ethnicity, sexual orientation, and disability.

## II. ADEQUACY OF EXISTING RPCs

OWLS' letter concluded that "there is a significant gap in the RPCs because they do not directly address discrimination, intimidation and/or harassment." That "significant gap," from OWLS' perspective, results in:

(a) The OSB Client Assistance Office and the OSB Disciplinary Counsel's Office not considering sexual and other forms of harassment as constituting violations of the RPCs or ORS 9.527 without an accompanying criminal conviction; and

(b) The OSB not keeping pace with other state bars (or with the Oregon Department of Justice or leading Oregon law firms) in advancing a stated policy against discrimination, intimidation, and/or harassment by an attorney towards others involved in the legal process.

OWLS incorrectly states the position of both the OSB Client Assistance Office and the OSB Disciplinary Counsel's Office – a criminal conviction of harassment is not treated by either as a prerequisite for either initiating an investigation or proceeding with a disciplinary action. With the possible exception of the Levy Matter, OWLS' letter does not identify specific instances in which the OSB Client Assistance Office or the OSB Disciplinary Counsel's Office required a criminal conviction of sexual and other form of

harassment as a prerequisite to pursuing a violation of the RPCs or ORS 9.527 on those grounds (see, subparagraph (a), above). The OSB Client Assistance Office's initial processing of the victim's telephone call in the Levy Matter may have left the victim with a misinterpretation of the OSB Client Assistance Office's intake policy on complaints. The occurrence appears to have been an isolated incident, and did not ultimately result in a failure to investigate to Levy's conduct -- or in a failure to sanction Levy. The TF's inquiry has not produced another specific occurrence like the victim's experience with the OSB Client Assistance Office. Levy's conduct was unquestionably unprofessional, boorish, and rude -- and was ultimately determined to have been both criminal and a violation of ORS 9.527; however, such conduct might have been found (even in the absence of the victim filing a police report, and Levy pleading guilty to a class A misdemeanor) to have violated the following existing RPCs and Oregon statute:

**RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS; INADVERTENTLY SENT DOCUMENTS**

(a) In representing a client or the lawyer's own interests, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

**RULE 8.4 MISCONDUCT**

(a) It is professional misconduct for a lawyer to:

\* \* \*

(2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

\* \* \*

(4) engage in conduct that is prejudicial to the administration of justice;

\* \* \*

**9.527 Grounds for disbarment, suspension or reprimand.** The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

(1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;

\* \* \* \* \*

(4) The member is guilty of willful deceit or misconduct in the legal profession;

With the exception of ensuring that the OSB Client Assistance Office is appropriately sensitive to inquiries concerning harassment, the TF believes that the circumstances surrounding the victim's contact with the OSB Client Assistance Office is a case of "no harm, no foul." After a rough start, the process ultimately worked as it should have. The existing RPCs and ORS 9.527 provide bases upon which to address lawyer conduct involving discrimination, intimidation, and/or harassment in a legal proceeding. In the absence of other considerations (see, Part II, below), the TF believes that there may not be a need to amend the existing RPCs.

### III. AMENDMENT OF EXISTING RPCs

OWLS' letter observes "that many jurisdictions have a rule or combination of rules in effect that address intimidation and harassment" (see, subparagraph (b), above). OWLS' observation is correct. Many other state bars (as well as the American Bar Association) address the issue of discrimination, intimidation, and/or harassment in their functional equivalents of RPC 4.4 and/or RPC 8.4. The TF's review indicates that, with varying degrees of specificity, 29 other state bars have a rule that proscribe discrimination, intimidation, and/or harassment – in fact, 6 of those other state bar's rules specifically proscribe sexual harassment itself.<sup>1/</sup>

### IV. CONCLUSION

Although RPC 4.4(a), RPC 8.4(a)(2) or (4), and ORS 9.527 provide potential bases to address discrimination, intimidation, and/or harassment by lawyers in legal proceedings, the TF agrees with OWLS -- that it is in the interests of the OSB and its members to now amend RPC 8.4 to advance, in a specific manner, a policy against lawyers knowingly manifesting, by words or conduct, in the course of representing a client or the lawyer's own interests, bias or prejudice based upon race, religion, age, gender, sexual orientation, national origin, marital status, or disability. Toward that end, the TF has prepared, and by this letter recommends that the Board of Governors adopt a resolution for, an amended RPC 8.4 to implement such a specific policy by the OSB and its members. I have attached the TF's recommended amended RPC 8.4.<sup>2/</sup>

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<sup>1/</sup> They include the state bars for: Iowa (Rule 32:8.4); Maryland (Rule 8.4); Minnesota (Rule 8.4); Missouri (Rule 4-8.4); New Jersey (RPC 8.4); and Wisconsin (SRC 20:8.4).

<sup>2/</sup> On October 14, 2011, OWLS is sponsoring a conference in Portland – "Diverse Perspectives Bringing the Legal Profession into the 21st Century." The conference's keynote speaker will be Professor Anita Hill. Although an amendment of RPC 8.4 cannot be accomplished by the conference's date, it would be a fine gesture from the OSB and its members if Professor Hill could, in her presentation at the conference, announce that she has learned that the OSB has joined six other state bars in adopting an RPC that states a policy against discrimination, intimidation, and/or harassment (including a specific policy against sexual harassment).

Stephen V. Piucci  
President  
OREGON STATE BAR  
September 19, 2011  
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If you have any questions concerning the above, please do not hesitate to contact me.

Very truly yours,

Robert G. Burt  
Task Force Chair

RGB/mgp  
Enclosures: as



# OREGON REVISED STATUTES

**9.527 Grounds for disbarment, suspension or reprimand.** The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

- (1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;
- (2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence;
- (3) The member has willfully disobeyed an order of a court requiring the member to do or forbear an act connected with the legal profession;
- (4) The member is guilty of willful deceit or misconduct in the legal profession;
- (5) The member is guilty of willful violation of any of the provisions of ORS 9.460 or 9.510;
- (6) The member is guilty of gross or repeated negligence or incompetence in the practice of law; or
- (7) The member has violated any of the provisions of the rules of professional conduct adopted pursuant to ORS 9.490. [Formerly 9.480; 1989 c.1052 §11]

# OREGON RULES OF PROFESSIONAL CONDUCT

## RULE 8.4 MISCONDUCT

(a) It is professional misconduct for a lawyer to:

- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;
- (4) engage in conduct that is prejudicial to the administration of justice;
- (5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;
- (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
- (7) *knowing manifest by words or conduct, in the course of representing a client or the lawyer's own interests, bias or prejudice based upon race, religion, age, gender, sexual orientation, national origin, marital status, or disability.*

(b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

(c) *Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16, or from engaging in legitimate advocacy with respect to the bases set forth therein.*

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** September 23, 2011  
**Memo Date:** September 13, 2011  
**From:** Mitzi Naucler, Policy and Governance Committee Chair  
**Re:** Formation of a Nonprofit Organizations Law Section

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### **Action Recommended**

Approve the formation of a Nonprofit Organizations Law Section as recommended by the Policy and Governance Committee. Set section membership dues at \$25.00.

### **Background**

Bar bylaw 15.2 states that the Board will consider creating a section upon the petition of 100 bar members who commit to joining the section. Through an online survey conducted by bar member John Gear, 109 bar members indicated their support of the Nonprofit Organizations Law Section and committed to joining the section if formed.

Mr. Gear requests that the section become effective January 1, 2012 and that section dues be collected with 2012 bar membership fees. Dues are proposed at \$25.00.

### **Nonprofit Organizations Law Section Purpose and Description**

The purpose of the Oregon State Bar Nonprofit Organizations Law Section (NOLS) is to serve the people of Oregon by helping Oregon attorneys to better serve the very diverse range of non-governmental, not-for-profit entities recognized under Oregon and federal laws. These include large and small public-benefit charities, private mutual-benefit associations, trade groups, religious institutions, educational institutions, foundations, political advocacy groups, arts and cultural groups, and others.

To accomplish that purpose, the NOLS will offer attorneys opportunities to

- Improve their understanding of the laws governing and the best practices for working in this diverse universe of entities
- Meet and collaborate with other attorneys and other professionals serving nonprofits
- Advise the bar and, when appropriate, the Legislature, on matters affecting nonprofits
- Help develop resources for helping nonprofit organizations be more successful.

Because nonprofits serve Oregonians in almost every aspect of life, lawyers serving nonprofits get to become familiar with many other areas of law. However, regardless of their clients' missions, there are common issues that arise in all nonprofits, issues that stem from the original decision to create and operate a nonprofit rather than a for-profit entity. This decision causes profound and pervasive differences in the legal environment and constraints at every level of every nonprofit. Thus, nonprofit law is a distinct practice area that merits recognition as such.

Not only are nonprofits treated very differently under the federal tax code, there is a nonprofit corporations chapter in the Oregon Revised Statutes, as well as a distinct body of research and a network of national organizations involved with study of and advocacy on behalf of nonprofit sector entities, which face many unique challenges that for-profit peer organizations do not. Most

significantly, the vast majority of Oregon nonprofits are either all-volunteer led and run or operate with a mixture of volunteers and a relatively few paid staff. This is both a key strength and a difficult challenge for nonprofit leaders and, therefore, for their attorneys.

Nonprofit Organizations Law Section Executive Committee:

Officers:

Chair-- David E. Atkin of Eugene

Chair-elect – Daniel W. Meek of Portland

Treasurer -- Mark L. Katzman of Bend

Secretary -- John Gear of Salem

Members at large:

James Baldock of Albany

Richard Baroway of Portland

Ross Day of Portland

Karen Knauerhase of Portland

Jann P. Lane of Lake Oswego

Nancy Murray of Portland

Barbara Smythe of Portland

## Sylvia Stevens

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**From:** Sandra Hansberger  
**Sent:** Tuesday, September 13, 2011 5:28 PM  
**To:** (e) Stephen Piucci; Sylvia Stevens  
**Cc:** (e) Gerry Gaydos; Tim.Gerking@ojd.state.or.us  
**Subject:** CEJ Advisory and Leadership Meeting  
**Attachments:** Sandra Hansberger.vcf

Hi, Steve and Sylvia. I hope your OSB trip to the coast went well. We missed you at the CEJ Advisory Committee and Leadership Meeting on September 8. We had a good turnout and we heard from Justice De Muniz, Senator Bonamici, Rep. Kotek, Tom Matsuda, and legal aid lawyer Dee Weston. Charlie Williamson, OLF President talked about what OLF is doing to get banks to return to leadership status. Judith Baker and Susan Grabe were present, and both Sen. Bonamici and Rep. Kotek publically thanked Susan for her work with the legislature. Mike Haglund was there from the BOG.

As you know, legal aid has announced a 16% reduction in staff. This is about 30 FTE. The need continues to grow. It is going to be a tough year for legal aid programs, and we're continuing to work on how we message these issues to the private bar, and how to motivate the private bar to step it up. Our fundraising goal for the annual campaign is \$1.2 million. (We raised \$1.1 million last year.) We are also looking to increase our number of donors to 3,000 (in previous years we have never gone above 2,500 donors).

We appreciate everything the bar does to help support access to justice, especially access for low-income Oregonians who have nowhere else to turn.

At the September 8 meeting we announced that we will be giving a trophy to region of the state that has the largest percentage increase in the number of donors. (I borrowed the idea from Washington state.) We will announce the winner at the February 8 annual awards luncheon in Portland (but we'll make sure there are plenty of photos for the CEJ Annual Report and the OSB Bulletin.) We're searching for the trophy now. We're looking for a cup and we expect to call this the Justice Cup--or a different title if someone can think of a name. We'll put a plaque on the trophy and the trophy will move each year to the region that does the best.

Would the OSB like to sponsor the contest along with the CEJ? The insignia of the trophy could have both of our logos, and we could have the OSB President announce the winner each year at our annual luncheon (and also present the trophy).

Also, we'd like to announce the contest at the regional luncheons, and it would be great if Mr. Piucci would like to do that starting with the Salem luncheon on September 28 at the Mission Mill Museum. Dates for other regional events are listed below (my signature). Gerry Gaydos is excited to announce it to the very competitive Lane County bar, and I have no doubt that Tim Gerking and the Medford folks will put up a good fight for the trophy.

Please let me know if you would like to participate in the trophy idea. Also, as always, please let me know if you have any questions.

Best regards,

Sandy