

OREGON STATE BAR

Board of Governors

Meeting Date: March 20, 2015
Memo Date: March 11, 2015
From: Karen Clevering, Chair, Oregon New Lawyers Division
Re: ABA Young Lawyers Division Assembly Resolution in Support of ORCP 8.4(a)(7)

Action Recommended

Oregon New Lawyers Division (ONLD) requests approval to propose a resolution to the ABA Young Lawyers Division (ABA YLD) Assembly at the 2015 Annual Meeting. The proposed resolution idea is attached to this memo.

The proposed resolution would request that the ABA YLD support an amendment to the definition of “professional misconduct” in the Model Rules of Professional Conduct. The definition of professional misconduct would be amended to include;

in the course of representing a client, knowingly intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.

Background

Oregon is leading the way in professionalism.

In December 2006, the Oregon State Bar adopted the ABA Model Rules of Professional Conduct (the “Model Rules”), which defined professional misconduct in Model Rule 8.4 as:

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

In 2014, after learning that the ABA’s rule did not sufficiently address professional misconduct, the Oregon House of Delegates and Board of Governors asked the Oregon Supreme Court to amend Oregon’s model rules to include an additional definition.

In February 2015, the Oregon Supreme Court amended the Oregon Rules of Professional Conduct (the “ORPCs”) by adding rule 8.4(a)(7) . It is now professional misconduct to:

“in the course of representing a client, knowingly intimidate or harass a person because of that person’s race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.”

To the ONLD’s knowledge, Oregon is the only state that maintains this language in its ethical rules, and is the only state to recognize gender identity and gender expression in its ethical rules.

As expressed in the Oregon State Bar’s Statement of Professionalism, we, as members of the Oregon Bar,

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.

With this new definition the Oregon State Bar has advanced its profession and the public good, and it is time to encourage the rest of the nation to take this important next step.

ONLD is best suited to propose the resolution

Change is timely

- ABA model rules have been amended in the past 10 years but no changes have addressed 8.4.
- The legal and social landscape has changed since the original drafting of Model Rule 8.4: gay marriage is legal in many states and there are more laws to protect individuals for all backgrounds from discrimination and harassment. It is time for the model rules to catch up.
- As the BOG and the Oregon State Bar believed the amended 8.4 will improve our profession, the ONLD believes that this amendment to the Model Rules would be beneficial to the profession nationwide.

YLD is a place to start the discussion

- Amending the model rules is a long process and requires coordination and collaboration from different groups. The ABA YLD is a critical platform to vaulting this message. It is a group of young lawyers but also lawyers who are future leaders in the profession.
- As the affiliate representing Oregon State Bar new lawyers, ONLD is best suited to present this to the ABA YLD.
- ONLD has established a solid reputation in the past few years in the ABA-YLD and can leverage its present leadership and connections to move this change.
 - o The current Chair of the ABA YLD is Portland attorney and ONLD member, Andrew Schpak.
 - o Several members of the Executive Committee are leaders in the ABA-YLD, to include:
 - Karen Clevering, ONLD Chair 2015, is Managing Editor of *TYL* magazine (an ABA YLD publication).
 - Colin Andries, ONLD Chair-Elect 2015, is co-chair of the ABA YLD’s Solo, Small Firm and General Practice Committee.
 - Jason Hirshon, ONLD Chair 2012, is co-chair of TIPS committee and a former delegate.

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- Ben Eder, ONLD Chair 2014, was the Oregon Delegate on the ABA House of Delegates for 5 years.
 - Collin McKean, ONLD Executive Committee Member, Region 5, was co-chair of the ABA YLD's Family Law committee in 2013-2014
 - Missy Healy, ONLD LRE Subcommittee Chair, was editor on ABA YLD's *Affiliate* Newsletter from 2012-2014.
 - The ABA-YLD held its Fall Conference in Portland in October 2014 and ONLD Chair-Elect Colin Andries and Portland attorney and ONLD member Traci Ray served as co-chairs of the conference.
 - ONLD sends delegates each to the ABA YLD meetings.
 - ONLD has also won the prestigious ABA YLD "Project of the Year Award – Service to the Bar" in 2011 and 2012.

The ONLD plans to reach out to a large number of organizations and people for support of this resolution. To begin, ONLD will ask for support from current ABA YLD leadership. Current ABA YLD Chair Andrew Schpak has already given his support and offered to help in recruiting additional supporters. In addition to current leadership, ONLD will reach out to the ABA Center for Professional Responsibility as well as the ABA Diversity Center. At the ABA YLD level we would reach out to the ABA YLD Diversity and Outreach Committees for their support. Finally, the ONLD would contact other state delegations for their support at the assembly.

ABA-YLD Resolution Process

The ABA process would be as follows:

- 1) Submit a completed resolution idea form by March 31, 2015;
- 2) Draft the formal resolution by May 1st, 2015;
- 3) Meet with, call and gather support for the resolution;
- 4) Resolution would be presented for vote at the Annual Assembly July 30th – August 2nd in Chicago.



YLD Assembly Resolution Idea Form (2014-2015)

I. PERSON SUBMITTING IDEA			
Clevering	Karen		
Last Name	First Name	Middle Initial	
Oregon New Lawyer's Division			
Firm/Organization	City	State	Zip
Oregon New Lawyer's Division			
Name of ABA YLD Affiliate, Committee, Board or Team			
Email	Karen.clevering@doj.state.or.us	Phone	503-947-4530
(required for contact purposes)			

II. RESOLUTION INFORMATION	
Resolution Title	Amending the Model Rules of Professional Conduct to ban intimidation or harassment based on a person's status
Has this been presented before?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes: when, where, and by whom?	
Resolution Supporters – list supporters or those to be targeted as potential co-sponsors	
Center for Professional Responsibility ABA Diversity Center ABA YLD Diversity and Outreach Committees, including Minorities in the Profession, Sexual Orientation and Gender Identity and Women in the Profession ABA YLD Ethics and Professionalism Committee	
Resolution Summary, Purpose & Desired Outcome	
The resolution asks the assembly to propose to the ABA to amend Rule 8.4 of the ABA Model Rules of Professional Conduct to add the following section 7 to Rule 8.4(a) "in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability."	
Any additional information to help us consider your resolution?	
The Oregon Supreme Court recently amended the Oregon Rules of Professional Conduct to include the above language, making it misconduct for an attorney to harass or intimidate individuals (which includes other attorneys and non-attorneys) solely based on that person's status. The goal is to expand this rule nation wide and the ABA Model Rules are the best way to do so.	

Please submit form to Assembly Speaker Dave Scriven-Young (dscriven-young@pecklaw.com) and Tara Blasingame (tara.blasingame@americanbar.org) **no later than September 15, 2014 for the ABA Midyear Meeting and no later than March 31, 2015 for the ABA Annual Meeting**. Resolution ideas are considered and confirmed on a rolling basis. However, you must meet the above deadlines if you wish to have your proposal considered at a particular meeting of the ABA YLD Assembly. Please go to ambar.org/yldassembly for more information on resolutions.