

Board of Governors
Future Calendar of Events
Revised September 21, 2009

BOG 2009 Meeting Schedule (tentative)

<u>Committees Meetings at OSB Center 2009</u>	<u>Board Meeting Various Locations</u>	<u>BOG Meeting Locations</u>	<u>Special Events in Conjunction w/Meetings</u>
September 25	September 25	OSB Center	Special BOG meeting to approve HOD Agenda, Past BOG Dinner
	October 29-31	Gold Beach	Board Retreat, Board Mtg., Local Bar Social
	November 6	OSB Center	House of Delegates

BOG 2010 Meeting Schedule

<u>Committees Meetings at OSB Center</u>	<u>Board Meeting Various Locations</u>	<u>BOG Meeting Locations</u>	<u>Special Events in Conjunction w/Meetings</u>
January 15	February 18-20	The Oregon Gardens	Board Mtg., ONLD, Lunch w/Supreme Court, Local Bar Social, President's Reception
March 19	April 23-24	OSB Center	Board Meeting, Past BOG Dinner
May 14	June 17-19	Geiser Grand, Baker City	Board Meeting, Local Bar Social
July 16	August 13-14	Tigard	Board Meeting, Local Bar Social (tentative), approve HOD Agenda
September 24	October 14-17	Timberline Lodge	Board Retreat, Board Mtg., Local Bar Social
	October 29	OSB Center	HOD Annual Meeting

Upcoming Events of Interest

<u>Other Events of Interest</u>		Awards Dinner	December 2
Past BOG Dinner	September 25	Conference of Bar Leaders	January 21
HOD Regional Meetings	Sep. 28 – Oct .2	Bar Exam (2010)	February 23-24
Swearing In Ceremony	October 8	Bar Exam (2010)	July 27-28
A Supreme Sesquicentennial	October 9		
OGALLA Annual Dinner	October 24		

<u>SPRB</u>		<i>Annual Meeting</i>		Toronto, Canada
October 16	Conference Call	Feb. 1-7	2012	NABE/NCBP/ABA
November 21	Tigard	<i>Midyear Meeting</i>		New Orleans, LA
December 18	Conference Call	Aug. 2-7	2012	NABE/NCBP/ABA
<u>Professional Liability Fund Board</u>		<i>Annual Meeting</i>		Chicago, IL
October 8	2009 Tigard	Feb. 6-12	2013	NABE/NCBP/ABA
December 11	2009 Tigard	<i>Midyear Meeting</i>		Dallas, TX
		Aug. 8-13	2013	NABE/NCBP/ABA
		<i>Annual Meeting</i>		San Francisco, CA
		Aug. 7-12	2014	NABE/NCBP/ABA
<u>National/Regional Meetings</u>		<i>Annual Meeting</i>		Boston, MA
Feb. 3-9	2010 NABE/NCBP/ABA	July 30-Aug. 4	2015	NABE/NCBP/ABA
Midyear Mtg.	Orlando, FL	<i>Annual Meeting</i>		Chicago, IL
Mar. 24-27	2010 WSBC			
	Cancun, MX			
Aug. 5-10	2010 NABE/NCBP/ABA			
Annual Mtg.	San Francisco, CA			
Feb. 9-15	2011 NABE/NCBP/ABA			
Midyear Mtg.	Atlanta, GA			
Aug. 4-9	2011 NABE/NCBP/ABA			

OREGON STATE BAR
MEETING OF THE BOARD OF GOVERNORS
Schedule of Events
September 25, 2009
9/9/2009 12:19 PM

Meeting Place OSB Center **Phone:** 503-620-0222
16037 SW Upper Boones Ferry Rd.
Tigard, OR 97281-1935

September 25, 2009

Note: I suggest business attire because of the BOG Alumni Reception and Dinner (formerly known as the Past BOG Reception and Dinner), which will take place at 5:30 p.m. at the Red Star Tavern in the Hotel Monaco. As the host, the BOG is encouraged to attend.

8:30 a.m. – 9:30 a.m. **Executive Director Evaluation Committee** (Naucler, DiIaconi, Evans, Gaydos, Johnson)
Santiam Room

9:30 a.m. – 10:30 a.m. **Budget and Finance Committee** (Green, Evans, Garcia, Kent, Lord, Naucler) *
McKenzie Room

9:30 a.m. – 11:00 a.m. **Member Services Committee** (Johnson, Fisher, Gaydos, Johnnie, Larson, Piucci, Wright) *
McKenzie Room

11:00 – 12:00 p.m. **Policy and Governance Committee** (Evans, DiIaconi, Greene, Kent, Larson, Matsumonji, Naucler) **
Santiam Room

12:00 p.m. – 12:15 p.m. **Board**
McKenzie Room

12:15 p.m. – 1:00 p.m. **Lunch**
McKenzie Room

1:00 p.m. – 1:30 p.m. **Access to Justice Committee** (Wright, Garcia, Johnnie, Lord, Matsumonji, Naucler, Vieira)

Santiam Room

1:30 p.m. – 4:30 p.m. **Appointments Committee** (Johnnie, DiIaconi, Evans, Fisher,
Greene, Larson, Piucci, Wright)
McKenzie Room

5:30 p.m. – 7:00 p.m. **BOG Alumni Reception and Dinner**
Hotel Monaco
Red Star Tavern and Road House
Tenth Floor, Fifth Ave. Room
503 S.W. Alder
Portland, OR 97204
503-222-0005

* and ** indicate committees which have no overlap and can meet at the same time.

NO MEETING **Appellate Screening Committee**

NO MEETING **Public Member Selection Committee**

NO MEETING **Public Affairs Committee**

Oregon State Bar
Meeting of the Board of Governors
September 25, 2009
Special Meeting
Open Session Agenda

The Special Open Session Meeting of the Oregon State Bar Board of Governors will begin at 12:00 p.m. on September 25, 2009; the following agenda is not a definitive indication of the exact order in which items will appear before the board. Any item on the agenda may be presented to the board at any given time during the board meeting.

Friday, September 25, 2009

A. HOD Agenda

1. Approve Proposed HOD Agenda Action 5-13

B. Approve Proposed Changes to RCP 4.4 Action 14

➤ *The LEC is proposing this to address an issue that comes up frequently but for which there is no clear answer in the Rules of Professional Conduct. The LEC would like this to go to the HOD in November. If P&G approves the amendment, it will come before the BOG at its special meeting.*

C. Discuss Additional and *Ex-parte* Filing Fees Inform
Effective October 1, 2009

D. Review of Fastcase Inform

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: September 25, 2009
From: Sylvia E. Stevens, General Counsel
Re: Approval of Preliminary 2009 HOD Agenda

Action Recommended

Approve the preliminary 2009 HOD Agenda¹ for distribution to the membership in accordance with OSB Bylaw 3.4.

Background

The draft preliminary agenda contains 12 action items. The BOG may exclude from the agenda any item that is inconsistent with the Oregon or US Constitution, outside the scope of the Bar's statutory mission, or is not within the permitted activities for which mandatory dues may be used.² It does not appear that any of the items are subject to removal for the reasons given above.

There are, however, several issues for the BOG to consider regarding the agenda:

1. Only two of Danny Lang's resolutions (Items Nos. 15 & 17) involve bar governance issues. While not a reason specified in the bylaws, and a couple of years ago the BOG eliminated several similar items from the agenda. Mr. Lang was entitled to ask the HOD to return them to the agenda prior to approval of the final agenda, but his motion to do so failed. The argument for leaving them on the agenda is that the HOD is pretty good about disposing quickly of issues it deems irrelevant, and there is value in not being perceived as censoring the HOD's voice.
2. Item No. 12, the resolution to amend Oregon RPC 4.4 is on the Policy & Governance Committee's Friday morning agenda. If P&G presents a favorable recommendation, the BOG needs to decide whether to include the item on the agenda.
3. Item No. 11 asks for the HOD's view of the BOG's plan to seek a legislative amendment to eliminate the 10 signature requirement for HOD nominating petitions. While it is likely the plan will have broad support, it is included to ensure that the BOG doesn't implement something that doesn't have the HOD's approval.

¹ The first order of business for the HOD is to approve the agenda.

² In *Keller v. State Bar of California*, 496 US 1 (1990), the US Supreme Court limited the use of mandatory bar dues to activities that are germane to the purposes for which the bar exists. Pursuant to ORS 9.080, the board must direct its power to "the advancement of the science of jurisprudence and the improvement of the administration of justice."

4. Item No. 22, recommending that the Supreme Court defer adoption of the new reciprocity rule, contains some factual errors (including the reference in the title to the Rules of Professional Conduct). To aid in the HOD's consideration of the resolution, the BOG may want to include its own Background statement or invite the BBX to submit something explaining the development of the rule and its distribution to the membership for comment.
5. Presenters for the BOG resolutions need to be identified now so they can be listed on the agenda that will be distributed soon. Decisions on whether to support the various items can be deferred until the October BOG meeting if desired.
6. The BOG might wish to change the order of the resolutions. One of Mr. Lang's resolutions is to put HOD items ahead of BOG items. Moreover, since Mr. Lang will be presenting seven of the resolutions, there may be value in breaking up his appearance on the dais.

Oregon State Bar
2009 House of Delegates Meeting

*Oregon State Bar Center
16037 SW Upper Boones Ferry Rd.
Tigard, Oregon
Friday, November 6, 2009
1:30 p.m.*

Oregon State Bar

Dear Oregon State Bar Member:

DRAFT

OREGON STATE BAR
2009 House of Delegates Meeting
Oregon State Bar Center
16037 SW Upper Boones Ferry Rd.
Tigard, OR 97281-1935
1:30 p.m., Friday, November 6, 2009
Presiding Officer: Gerry Gaydos, OSB President

Agenda

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Call to Order
<i>Gerry Gaydos, OSB President</i> 2. Overview of Parliamentary Procedure
<i>James N Westwood, Stoel Rives LLP</i> 3. Report of the President
<i>Gerry Gaydos, OSB President</i> 4. Adoption of Final Meeting Agenda
<i>Gerry Gaydos, OSB President</i> 5. Comments from the Chief Justice of the Oregon Supreme Court
<i>Paul J. DeMuniz, Chief Justice, Oregon Supreme Court</i> 6. Report of the Board of Governors Budget and Finance Committee
<i>S. Ward Greene, Chair, BOG Budget and Finance Committee</i> 7. Notice of 2009 Membership Fees Page
<i>S. Ward Greene, Chair, BOG Budget and Finance Committee</i> <hr/> <p style="text-align: center;">Resolutions</p> <hr/> <ol style="list-style-type: none"> 8. In Memoriam (Board of Governors Resolution No. 1) Page
<i>Gerry Gaydos, OSB President, Board of Governors</i> 9. Adoption of Oregon Rule of Professional Conduct Rule 6.1 (Board of Governors Resolution No. 2)
????? 10. Amendment of Oregon Rule of Professional Conduct 1.18 (Board of Governors Resolution No. 3)
????? 11. Elimination of Signature Requirement for HOD Nominations (Board of Governors Resolution No. 4)
????? 12. Amendment of RPC 4.4 (Board of Governors Resolution No. 5)
????? 13. Encourage Fair Compensation for State Senators and Representatives (House of Delegates Resolution No. 1)
<i>Danny Lang, Region 3</i> 14. Paralegal Representation in Federal Cases (House of Delegates Resolution No. 2)
<i>Danny Lang, Region 3</i> | <ol style="list-style-type: none"> 15. Priority Placement of HOD Delegate Resolutions on HOD Agenda (House of Delegates Resolution No. 3)
<i>Danny Lang, Region 3</i> 16. Notice Pleading (House of Delegates Resolution No. 4)
<i>Danny Lang, Region 3</i> 17. Simplified MCLE Reporting (House of Delegates Resolution No. 5)
<i>Danny Lang, Region 3</i> 18. ORCP 54E - Dismissal of Actions; Compromise [Proposed Amendment to Provide <u>Mutual</u> Offers to Allow Judgment] (House of Delegates Resolution No. 6)
<i>Danny Lang, Region 3</i> 19. ORCP 54E - Dismissal of Actions; Compromise [Proposed Amendment to Allow More Adequate Response Time Extending the Three Day Deadline for Acceptance] (House of Delegates Resolution No. 7)
<i>Danny Lang, Region 3</i> 20. Appointment of Study Group to Determine Whether to Require Registration by Out-of-State Attorneys Appearing in Arbitration in Oregon (House of Delegates Resolution No. 8)
<i>Michelle Vlach-Ing, Region 6</i> 21. Opposing Repeal of State Tax Measures (House of Delegates Resolution No. 9)
<i>Charles Williamson, Region 5</i> 22. Opposing Proposed Amendment to the Rules of Professional Conduct Regarding Admissions (House of Delegates Resolutions No. 10)
<i>Leslie Johnson, Region 5</i> |
|---|---|

7. Notice of 2010 Membership Fees

The 2009 Oregon State Bar membership fees and assessments are as set forth below. The amounts include an increase in CSF Assessment from \$5 to \$15 approved by the BOG pursuant to its authority under ORS 9.645. **(This will be updated by Rod before it is published.)**

If paid by due date	Paid after due date but by last business day in February 2009	Paid after the last business day in February 2009	
Regular active members admitted in any jurisdiction before 1/1/07	\$482.00	\$532.00	\$582.00
Active members admitted in any jurisdiction on or after 1/1/07	\$403.00	\$453.00	\$503.00
Inactive members	\$110.00	\$135.00	\$160.00
Active Emeritus/Active Pro Bono members	\$115.00	\$115.00	\$115.00
If paid by due date	Paid after due date but by last business day in February 2009	Paid after the last business day in February 2009	
Regular active members admitted in any jurisdiction before 1/1/07	\$482.00	\$532.00	\$582.00
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Presenter: S. Ward Greene
Region 5, Board of Governors

Other Resolutions

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

To be added.

Gerry Gaydos
President, Board of Governors

9. Adoption of Oregon Rule of Professional Conduct Rule 6.1 (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 addition of the following Rule 6.1 to the Oregon Rules of Professional Conduct is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 6.1 Voluntary Pro Bono Publico Service

Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

In addition, a lawyer should voluntarily contribute financial support to organizations that provide legal services to persons of limited means.

The responsibility set forth in this Rule shall not be enforced through disciplinary process.

Presenter: ???, BOG Member Region ???

Background

This rule would replace OSB Bylaw 13.1, which provides: Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono

service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

10. Amendment of Oregon Rule of Professional Conduct 1.18 (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 1.18 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 1.18 Duties to Prospective Clients

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), Representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client.

Presenter: ?????

Background

The Oregon Rules of Professional Conduct, adopted effective January 1, 2005, were drawn almost entirely from the ABA Model Rules, consistent with the drafters' goal of bringing

Oregon's rules into alignment with what was then a majority and is now the entirety of other US jurisdictions.

Several months ago, in the course of analyzing a member's inquiry, OSB staff noted a discrepancy between Oregon RPC 1.18 and the ABA Model Rule on which it was based.

Rule 1.18 was designed by the ABA to eliminate unnecessary disqualification of a lawyer based solely on a consultation with prospective client that didn't result in a representation. Previously, such situations had to be analyzed under the former client conflict rule, and a lawyer was disqualified from representing a party if the lawyer had acquired relevant confidential information from the adverse party in even a brief consultation. RPC 1.18 allows a lawyer in a law firm who has the consultation to be screened so as not to disqualify the entire firm from representing the adverse party.

Missing from Oregon's version of Rule 1.18 is language limiting the application of the rule to situations where the consulting lawyer didn't delve too deeply into the prospective client's matter. The rule was not meant to allow screening from what would otherwise be a former client conflict. As written Oregon RPC 1.18 rule seems to allow anyone with whom the lawyer consults without forming a lawyer-client relationship to be characterized as a prospective client. In the situation that brought this omission to OSB staff's attention, the lawyer had at least two meetings with a person who the lawyer never intended to represent but to whom the lawyer was giving advice as a favor to a friend (the firm did employer-side labor law and the client was an employee). The lawyer suggested that the person was a "prospective client" within the meaning of the rule notwithstanding that the communications had gone well beyond the exploratory discussions that would typically occur when a person is considering hiring a lawyer.

Minutes from the drafting committee's work do not indicate that the omission was purposeful; on the contrary, there is no indication that the committee intended to broaden the application of the rules from the ABA approach. (Note, however, that Oregon did not include the ABA language the prohibits the consulting lawyer from sharing in the fee from a case in which the lawyer is screened.)

Amending RPC 1.18 as set forth above will better ensure the protection of clients while still not creating conflicts from initial, exploratory meetings. The correction will make it easier for lawyers to understand the limits of the prospective client "exception" to the former client rule.

11. Elimination of Signature Requirement for HOD Nominations (Board of Governors Resolution No. 4)

Resolved, that the OSB initiate and pursue in the 2011 legislative session an amendment to ORS 9.152 to eliminate the requirement that nominations for the HOD be by petition signed by at least 10 members of the Oregon State Bar.

Presenter: ??????

Background

The BOG voted in June to seek an amendment in the 2011 legislative session that would eliminate the requirement that BOG candidates be nominated by petitions signed by 10 active members in the candidate's region. After further discussion, the BOG concluded that the requirement for HOD candidates should also be eliminated. The purpose of this resolution is to ensure that the HOD agrees with the BOG's choice as it relates to HOD candidates.

The BOG's decision to eliminate the 10-signature requirements came after lengthy discussion and careful analysis of the apparent benefits and drawbacks to the requirement. The rationale for the requirement is lost to history. For BOG candidates, it has been part of the Bar Act since the bar was created in 1935; the requirement for HOD candidates appears to have been included for no reason other than consistency.

Presumably, the 10-signature requirement was a way to "vet" potential candidates by ensuring they had the respect and support of at least some of their peers. In recent years, however, the requirement has been criticized as either a needless burden or a meaningless exercise. For lawyers in rural areas, gathering signatures from 10 active members in the region can be a practical impediment that has nothing to do with the candidate's qualifications to serve. On the other hand, lawyers in larger urban areas or law firms can obtain the required signatures with little effort so that the signatures also say little about the candidate's qualifications.

Most important to the BOG's analysis was the fact that BOG and HOD members are elected, which is the most meaningful endorsement. Eliminating the 10-signature requirement will make it easier for interested candidates to participate, while retaining the determination of each candidate's qualifications by popular vote.

12. Amendment of RPC 4.4 (Board of Governors Resolution No. 5)

Whereas, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); 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 4.4 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 4.4 Respect for the Rights of Third Persons; Inadvertent or Unauthorized Disclosure of 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.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was sent inadvertently or disclosed without authority shall:

(i) in the case of a document sent inadvertently, promptly notify the sender;

(ii) in the case of a document disclosed by a person not authorized to disclose it, promptly notify the opposing party or counsel, unless doing so would violate the lawyer's duties under RPC 1.6.

Presenter: ????

Background

RPC 4.4(b) gives lawyers clear guidance on their obligations when they receive material that was sent inadvertently. Unfortunately, it offers no help when a lawyer

receives material from someone not authorized to disclose it. The situation arises, for example, when a friendly co-worker of an employee misappropriates documents from the employer that are believed to be helpful to the employee's wrongful termination case. Another common situation is where one spouse in a dissolution proceeding gains access to the other spouse's e-mail and intercepts communications between the other spouse and her lawyer.

The Legal Ethics Committee struggled for several months to draft an opinion that would provide guidance on the unauthorized disclosure situation, but was stymied by the lack of any authority. They were uncomfortable with the idea that, under the existing rule, the lawyer has no duty to do anything while the other party's confidential information is being passed on without knowledge or consent. At the same time, the LEC didn't want to put lawyers in the position of having to prejudice their own clients by disclosing theft or other improper conduct.

Ultimately, the LEC determined that the best approach would be to develop a rule and believes that this proposal strikes the proper balance between fairness to the opposing party and protection of the lawyer's client. Under the new rule, a lawyer who receives documents from a third party must notify the opposing party or counsel of the unauthorized disclosure. However, if the disclosure will implicate the lawyer's client in misconduct (either because the client took the documents without authority or induced the third person to do so), the lawyer is not required to notify the opposing party or counsel if doing so would violate the lawyer's duty of confidentiality under RPC 1.6.

Under either scenario, RPC 4.4 does not require the lawyer to return or avoid reading the document and leaves to the substantive law the remedies of the inadvertent sender or victim of unauthorized disclosure.

13. Encourage Fair Compensation for State Senators and Representatives (House of Delegates Resolution No. 1)

Whereas, Members of the Oregon Legislature bear substantial responsibility for drafting, debating, and enacting Legislation;

Whereas, State Senators and State Representatives presently do not receive fair compensation for service in the Oregon Legislature;

Whereas, it is in the best interest of the Citizens and State of Oregon to attract and retain the best possible qualified Legislators;

Whereas, the Oregon State Bar has also supported fair compensation for Members of the Judiciary; therefore, be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors to adopt a Resolution favoring fair compensation for State Senators and State Representatives for service in the Oregon Legislature.

Presenter: Danny Lang, Region 3

14. Paralegal Representation in Federal Cases (House of Delegates Resolution No. 2)

Whereas, despite the good efforts and contributions to the *Campaign for Equal Justice*, 80% of the civil litigation needs for representation continue to go unmet;

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

Whereas, legal aid programs in Oregon are currently able to meet less than 20% of the legal needs of low income Oregonians;

Whereas, assistance from the Oregon State Bar legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful Access to Justice;

Whereas, rather than dwelling on how the practice of law once was, the profession needs to accept the present and find ways to be efficient in the new environment;

Whereas, certain categories of litigation, such as Residential Landlord-Tenant Evictions [FED cases], often/frequently are cases that Law Firms and Oregon State Bar Members find non-economic to provide representation for the Parties; and

Whereas, a substantial percentage of parties to such litigation are unable to afford representation; and

Whereas, such FED cases would be well served by the availability of competent Paralegals, under the Supervision of an Oregon State Bar Member, being allowed to appear at hearings in FED cases; therefore be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors to:

(1) Further, 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 of low-income Oregonians; and

(2) Further, strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our State, through Legislative Amendments to the State Bar Act [ORS Chapter 9], so as to permit Law Firms and Oregon State Bar Members the option to appear by Law Office Staff Paralegals employed and under supervision of an Oregon State Bar Member at Residential FED Mediations and Residential FED Contested Hearings [i.e., Paralegals employed and under supervision by an Oregon State Bar Member].

Presenter: Danny Lang, Region 3

15. Priority Placement of HOD Delegate Resolutions on HOD Agenda (House of Delegates Resolution No. 3)

Whereas, the Annual House of Delegates Meeting is the Forum at which the House of Delegates conducts business generally; and, in particular considers, debates, and votes upon recommendations to the Board of Governors;

Whereas, the Board of Governors past practice has been to place House of Delegates Agenda Items in trail behind Board of Governors sponsored Agenda Items;

Whereas, proposals originating from the Members would be encouraged if Agenda Items proposed by Delegates are given priority placement upon the Agenda at the Annual House of Delegates Meeting; therefore be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors to provide for priority placement of Resolutions originating/proposed by individual Member Delegates on the Annual Agenda in recognition of the importance of encouraging participation by the Oregon State Bar Membership via Delegate initiatives at the Annual Meeting.

Presenter: Danny Lang, Region 3

16. Notice Pleading (House of Delegates Resolution No. 4)

Whereas, the Federal Courts have adopted *Notice Pleading*;

Whereas, the present requirement of Code Pleading acts as barrier to low income Oregonians and acts as a barrier to Access to Justice;

Whereas, *Notice Pleading* offers simplified and less costly pleadings by reducing the time and expense involved in pleading matters;

Whereas, such simplified and less costly *Notice Pleadings* promote Access to Justice;

Whereas, the Oregon Rules of Civil Procedure adequately provide for pretrial discovery; therefore be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors study the feasibility of implementing *Notice Pleadings* as the method of pleading claims and defenses in Oregon.

Presenter: Danny Lang, Region 3

17. Simplified MCLE Reporting (House of Delegates Resolution No. 5)

Whereas, a less burdensome procedure for Oregon State Bar Members reporting of Mandatory Continuing Legal Education credits can be achieved by use of an "Affidavit of Compliance", simply stating that the Member has complied with all MCLE requirements;

Whereas, the Oregon State Bar Administration can benefit by better utilization of staff and corresponding reduced expenses, by recognizing such an Affidavit as evidence of compliance that the Member has complied with all MCLE requirements; therefore be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors to implementation of a simplified Member reporting procedure; consisting of a sworn statement for the subject reporting period.

Presenter: Danny Lang, Region 3

18. ORCP 54E - Dismissal of Actions; Compromise [Proposed Amendment to Provide Mutual Offers to Allow Judgment] (House of Delegates Resolution No. 6)

Whereas, unresolved Civil Litigation in Oregon Courts involves ongoing burdens for Parties to such unresolved litigation;

Whereas, unresolved Litigation, including trials, results in burdens upon the resources of Oregon Trial Courts;

Whereas, Public Policy favors settlement of unresolved Civil Litigation;

Whereas, because the existing Oregon Rule of Civil of Procedure [Rule 54E(1)(2)(3) - Dismissal of Actions; Compromise] provides potential benefits only to the party against whom a claim is asserted; without any corresponding benefit to the party asserting the claim... the present Rule is less effective than a procedure offering an equal opportunity [mutual remedies] to both the party asserting a claim and the party opposing the claim;

Whereas, negotiated resolutions offer a recognized benefit of reducing the burdens of litigation upon the parties and upon Oregon Courts; therefore be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors to provide equal opportunities and equal incentives for both Plaintiffs and Defendants to effectuate resolution without trial, by implementation of a revised mutual procedure, allowing either the Plaintiff or the Defendant to serve and file an Offer to Allow Judgment, so as to promote settlement of litigation and thereby reduce the burden on Oregon Courts and the Parties to Litigation.

Present: Danny Lang, Region 3

19. ORCP 54E - Dismissal of Actions; Compromise [Proposed Amendment to Allow More Adequate Response Time Extending the Three Day Deadline for Acceptance] (House of Delegates Resolution No. 7)

Whereas, unresolved Civil Litigation in Oregon Courts involves ongoing burdens for Parties to such unresolved litigation;

Whereas, unresolved Litigation, including trials, results in burdens upon the resources of Oregon Trial Courts;

Whereas, Public Policy favors settlement of unresolved Civil Litigation;

Whereas, because the existing Oregon Rule of Civil of Procedure [Rule 54E(2) - Dismissal of Actions; Compromise] in relevant part allows only three days for the accepting party or the accepting party's attorney to both endorse such acceptance and file with the Clerk;

Whereas, the existing three day time limit fails to allow sufficient time 1) for Counsel to communicate the offer; 2) for a party to have adequate time to consider the offer; and 3) imposes an unreasonably short time [only three days] to perfect filing of the acceptance with the Clerk;

Whereas, negotiated resolutions [settlements] offer recognized benefits of reducing the burdens of litigation upon the parties and upon Oregon Courts and a more reasonable additional response time would provide a more realistic and reasonable time to communicate, endorse, and file such acceptance with the Clerk; therefore be it

Resolved, That the House of Delegates recommend and encourage the Board of Governors to support the amendment of ORCP 54E(2) to extend the present three day time limit for acceptance to a more reasonable time period.

Present: Danny Lang, Region 3

20. Appointment of Study Group to Determine Whether to Require Registration by Out-of-State Attorneys Appearing in Arbitration in Oregon (House of Delegates Resolution No. 8)

Whereas, the regulation for the practice of law by a foreign attorney in Oregon are defined by three sources: 1.) ORS 9.241 - Practice of law by attorneys license in other jurisdiction; rules; fees; 2.) Oregon Uniform Trial Court Rules 3.170 - Association of out-of-state counsel (*pro hac vice*); and 3.) Oregon Rule of Professional Conduct 5.5,

Whereas, Model Rule of Professional Conduct 5.5 – Unauthorized Practice of Law; Multijurisdictional Practice of Law was adopted by the ABA in 2004 and by Oregon on January 1, 2005 may permit out of state attorneys to represent a party in an ADR proceeding under certain “temporary” conditions (among them where the forum does not require *pro hac vice* admission),

Whereas, “temporary” is a subjective and ambiguous term,

Whereas, said rules do not contemplate ORS 36.670 and other international laws and treaties which permit parties in Arbitration to appoint anyone, including out-of-state attorneys, to represent a party in an Arbitration proceeding,

Whereas, Arbitration is often a substitute to the traditional jury trial,

Whereas, Arbitration has the potential of becoming more costly, time consuming and rule oriented, and may detract from a person's inherent rights and liberty,

Whereas, the Oregon State Bar wishes to preserve the integrity of professionalism, promote professionalism and protect the public trust in the legal system, therefore be it

Resolved, That the House of Delegates recommends and encourages the Board of Governors to form a committee to review the issues regarding out-of-state attorneys appearance in Oregon in an Arbitration pursuant to contract or ORS 36.670 and advise the House of Delegates and the Board of Governors on that finding and determine whether said out-of-state attorneys should register with the Oregon State Bar prior to any hearing the matter in which the out-of-state attorney is appearing; provide a certificate of good standing from the state or country in which the out-of-state attorney is admitted to practice, provide a certificate of insurance and collect a reasonable fee.

Presenter: Michelle Vlach-Ing, Region 6

Background

Arbitration clauses have become an alternate means to the traditional notions of who may practice law in Oregon. Increasing number of arbitration clauses in contracts permit a party to select any person to represent that party in an arbitration proceeding. While in many commercial cases it may make sense for a party to select a knowledgeable employee or principle in a corporation to appear on behalf of a party, a party may also select an attorney who may be experienced in the area whether or not that attorney is licensed to practice law in the State of Oregon. Often such agreements affect the interest of citizens of the State of Oregon, particularly if the clause or rule provides the arbitration must take place within the State of Oregon.

The effect is ADR rules and the Uniform Arbitration Act permit out-of-state lawyers to represent clients in Oregon which often affect Oregon residents and citizens thereby bypassing any requirements to apply to the court or administrative body for *pro hac vice*. Traditionally, no records are kept in arbitration and the potential for abuse and misconduct remains unchecked.

Contractual arbitration is binding and not often subject to review unless there is a showing of bias or misconduct of the arbitrator. Although there are rules governing the conduct an attorney licensed in Oregon, there is no guidance on how to reproach misconduct by an attorney not licensed in Oregon.

Boiler plate contracts and adhesion contracts, such as those commonly accepted by consumers to obtain consumer credit contain arbitration clauses. When invoked, the matter is often assigned to an agency or law firm for process. There are instance the arbitration is performed by an out-of-state attorney rather than a non-attorney designee. When out-of-state attorneys appear in multiple arbitrations, it calls to question whether the appearance is truly temporary and whether the attorney is practicing law in Oregon without a license.

In other instances, there is no means to know whether the party appearing in arbitration is an attorney in another jurisdiction and whether that party should be held to the standards of the Rules of Professional Conduct in this jurisdiction or his or her own jurisdiction. Any ruling which may favor one party based on misconduct of the out-of-state attorney is not reviewable.

Most of the concerns are based on anecdotal stories from various members of the bar. A committee made up on knowledgeable practitioners and arbitrators in Oregon may be better to determine whether a registration process is warranted.

The creation of a registration process for out-of-state attorneys to register with the bar will provide the bar with the means to monitor and track the number of appearances by out-of-state attorneys and collect the information needed to determine whether or not additional action need be addressed by the Oregon State Bar. Collection of a reasonable fee should deter any cost which will be incurred by the bar to implement and maintain such a program.

21. Opposing Repeal of State Tax Measures (House of Delegates Resolution No. 9)

Whereas, the 2009 Oregon Legislature passed the following taxes to reduce cuts in public services:

HB 3405 increases the minimum tax that corporations, partnerships and LLCs will pay from \$10 to \$150 annually. The marginal tax rate for profitable C-corporations will increase by 1.3% to 7.9% on profits exceeding \$250,000, however, beginning in 2013, the rate will decline to 7.6% and it will only apply to profits exceeding \$10-million. C-corps that do not officially declare a taxable profit (about two-thirds of them) will have their taxes increase from \$10 annually to an amount equal to approximately 1/10th of 1% of their Oregon sales.

HB 2649 increases the marginal tax rate on incomes above \$250,000 for married couples or \$125,000 for single people by 1.8% for the next three years. A couple making \$260,000 a year would pay an extra \$180. The marginal tax rate on incomes above \$500,000 for married couples, \$250,000 single people, shall be increased by 2% during the same period. ((In other words someone making \$600,000 shall pay a 1.8% higher rate on their income between \$250,000 and \$500,000, and see their rate go up by an additional 0.2% on the last \$100,000.) In 2012, the top rate will be decreased to .9% so that couple making \$260,000 will be paying \$90 more than they do today.

Whereas, these taxes may be referred to the voters and if so referred, would be voted upon in an election to be held January 26, 2010.

Whereas, if these taxes are repealed, it will result in lost revenue to the state of Oregon over the next biennium of approximately \$733-million. Prorata cuts to the Oregon system of justice and agencies closely affecting the rule of law in Oregon include:

State courts: \$15.4 million

State Police: \$12.9 million

Department of Corrections: \$64.8 million

Public defenders: \$10.8 million

District Attorneys: \$523,000

Oregon Youth Authority: \$13.7 million

Human Services (includes Commission on Children and Families): \$181 million

Whereas, this decrease in revenue will severely harm state services necessary for a functioning effective system of justice and maintenance of public safety; now therefore be it

Resolved, That the Oregon State Bar opposes the repeal of HB 3405 and HB 2649 and urges its membership to work to retain this state income to protect the justice system and public safety for the people of Oregon.

Presenter: Charles R. Williamson, Region 5

Background

The figures above are derived from the state general fund and lottery budget contained in the Legislative Fiscal Office's budget highlights document. Other necessary background is included in the resolution above.

Fiscal Impact

This resolution will not have a fiscal impact on the Oregon State Bar. Bar members should consider the fiscal damage a repeal will inflict on the justice system, their clients and their practices.

22. Opposing Proposed Amendment to the Rules of Professional Conduct Regarding Admissions (House of Delegates Resolution No. 10)

Whereas, the Board of Bar Examiners has proposed to the Oregon Supreme Court an amendment to the Rules of Professional Conduct on admission that would allow for the reciprocal admission (i.e., admission without passing an Oregon bar exam) of lawyers from as many as 37 "qualifying jurisdictions";

Whereas, the proposed amendment would allow the admission of any attorney, duly admitted in another state and with a certain level of practice experience, who is a member of the bar of another state bar when that state bar has agreed or will agree to admit Oregon lawyers on the same terms;

Whereas, the proposed amendment also calls for all such admittees to have professional liability coverage with Oregon's PLF or substantially similar coverage from another insurer;

Whereas, there has been limited, if any, consideration at the level of the general bar membership on the impact on the quality of legal services provided in Oregon of a substantial influx of admittees from other jurisdictions – the ability of the OSB and/or the PLF to accommodate a significant influx of admittees, or the impact on claims experience or the insurance premiums of Oregon lawyers;

Whereas, there is a question as to whether the PLF is exceeding its authority under ORS chapter 9 to provide insurance coverage to lawyers who do not maintain the principal office of their practice in Oregon; now therefore be it

Resolved, That the Oregon State Bar recommends that the Oregon Supreme Court defer consideration of the proposed amendment to the admissions rules pending broader discussion among the bar membership on the issue.

Presenter: Leslie S. Johnson, Region 5

Background

Financial Impact

Oregon State Bar

16037 SW Upper Boones Ferry Rd.
P.O. Box 231935
Tigard, OR 97281-1935

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**Rule 4.4 Respect for the Rights of Third Persons; Inadvertent or Unauthorized
Disclosure of Documents**

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(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.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was sent inadvertently or disclosed without authority shall:

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(i) in the case of a document sent inadvertently, promptly notify the sender;

(ii) in the case of a document disclosed by a person not authorized to disclose it, promptly notify the opposing party or counsel, unless doing so would violate the lawyer's duties under RPC 1.6.