

**Oregon State Bar
Special Open Session of the Board of Governors
September 22, 2017
Minutes**

President Michael Levelle called the meeting to order at 12:25p.m. on September 22, 2017. The meeting adjourned at 1:55 p.m. Members present from the Board of Governors were John Bachofner, Jim Chaney, Chris Costantino, Eric Foster, Rob Gratchner, Ray Heysell, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, Kerry Sharp and Elisabeth Zinser. Not present were Guy Greco, and Per Ramfjord. Staff present were Helen Hirschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe and Camille Greene.

1. Call to Order

Mr. Levelle called the meeting to order.

2. Board Development Committee

In Mr. Ramfjord's absence, Ms. Costantino presented the committee's recommendations for the Disciplinary Board Appointments.

Motion: The board voted unanimously to approve the committee recommendations as presented by the Board Development Committee: Faith Morse (Region 3), Amy Bilyeu and Jill Tanner (Region 5), Charlie Van Rossen (Public Member), and Tawnya Stiles-Johnson (Region 7). The motion passed.

3. Budget & Finance Committee - 2018 Budget

Mr. Chaney asked Mr. Wegener to update the board on the Budget & Finance Committee's proposed budget for 2018. The Budget & Finance Committee will present the final budget to the board for approval on November 18, 2017. Mr. Chaney reported the Committee discussion regarding the Client Security Fund Committee's recommendation that the CSF assessment be reduced by \$5 beginning in 2018.

Motion: Mr. Bachofner moved, Mr. Peachey seconded, and the board voted unanimously to reduce the annual Client Security Fund assessment from \$15 to \$10 beginning in 2018. The motion passed.

4. Approve 2017 HOD Agenda

Mr. Levelle presented the preliminary HOD agenda.

Ms. Rice moved, Mr. Peachey seconded, and the board voted unanimously to reorder the HOD agenda items to place the In Memoriam and Veterans Day resolutions at the end of the agenda.

Mr. Levelle asked for volunteers to present the In Memoriam and Veterans Day resolutions. Mr. Chaney volunteered to present the Veteran's Day resolution. Mr. Peachey, Ms. Rastetter, and Mr. Bachofner volunteered to present the In Memoriam resolution.

Mr. Levelle asked whether any of the four delegate resolutions should be excluded from the HOD agenda and whether the board wanted to take a position in support of or opposition to any of the delegate resolutions.

The board agreed by consensus to support Delegate Resolution #1 re: Adequate Funding for Legal Services.

Motion: Ms. Nordyke moved, Mr. Peachey seconded, and the board voted unanimously to exclude Delegate Resolution #2 re: “CLE Credit for HOD Delegates” from the HOD agenda because the resolution asks the board to do something that is outside of its authority. The motion passed.

Motion: Mr. Foster moved, Ms. Zinser seconded, and the board voted to oppose Delegate Resolution #3 re: “Study the PLF Program Flat Per Capita Rate Structure.” Mr. Bachofner, Mr. Chaney and Mr. Peachey abstained. The motion passed.

Motion: Mr. Mansfield moved, Ms. Rastetter seconded, to exclude Delegate Resolution #4 re: “Give Members the Right to Redirect Funds Directed for Them to LRAP” from the HOD agenda based on Keller issues. After lengthy discussion, the board voted 7 in favor and 8 opposed to the motion to remove the resolution from the HOD agenda. In favor: Ms. Rastetter, Mr. Mansfield, Ms. Rice, Ms. Costantino, Mr. Medina, Mr. Chaney, and Ms. Zinser. Opposed: Mr. Gratchner, Ms. Rossi, Ms. Reeves. Mr. Foster, Ms. Nordyke, Mr. Sharp, Mr. Bachofner, and Mr. Peachey. The motion was defeated.

Mr. Bachofner will present the BOG’s position of opposition to Delegate Resolution #4 at the HOD meeting.

Motion: Ms. Rastetter moved, Mr. Mansfield seconded, and the board voted unanimously to adopt the preliminary HOD agenda as presented. **[Exhibit A]**

Mr. Levelle announced that the Nominating Committee had not yet decided its candidate for the 2018 President-elect but would be continuing its deliberations that afternoon.

Oregon State Bar
2017 House of Delegates Meeting

Oregon State Bar Center
16037 SW Upper Boones Ferry Road
Tigard, Oregon 97224
503.620.0222
Friday, November 3, 2017
10:00 a.m.



Dear Oregon State Bar Member:

I am pleased to invite you to the 2016 OSB House of Delegates meeting, which will begin at **10:00 a.m.** on **Friday, November 3, 2017**, at the Oregon State Bar Center.

I am pleased to report that the Board of Governors is not requesting an increase in the annual membership fee for 2017. The preliminary agenda for the meeting includes proposed amendments to the rules of professional conduct. Other items on the meeting agenda are the annual recognition of deceased members and honoring of veterans and service personnel, and resolutions to support adequate funding for low-income legal services and public defense providers.

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

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

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

I look forward to seeing you at the HOD Meeting on November 3, and I thank you in advance for your thoughtful consideration and debate of these items.

MICHAEL D. LEVELLE

Michael Levelle, OSB President

OREGON STATE BAR
2017 House of Delegates Meeting AGENDA

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

10:00 a.m., Friday, November 3, 2017

Presiding Officer: Michael Levelle, OSB President

Reports

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| <p>1. Call to Order
<i>Michael Levelle</i>
<i>OSB President</i></p> <p>2. Adoption of Final Meeting Agenda
<i>Michael Levelle</i>
<i>OSB President</i></p> <p>3. Report of the President
<i>Michael Levelle</i>
<i>OSB President</i></p> | <p>4. Report on behalf of the Chief Justice of the Oregon Supreme Court
<i>Hon. Rives Kistler, Justice</i>
<i>Oregon Supreme Court</i></p> <p>5. Report of the Board of Governors Budget and Finance Committee & Notice of 2018 Annual Fees
<i>Jim Chaney, Chair</i>
<i>BOG Budget & Finance Committee</i></p> <p>6. Overview of Parliamentary Procedure
<i>Alice Bartelt, Parliamentarian</i></p> |
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Resolutions

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| <p>7. In Memoriam
(Board of Governors Resolution No. 1)
<i>Tom Peachey, BOG, Region 1</i>
<i>Guy Greco, BOG, Region 4</i>
<i>Chris Costantino, BOG, Region 5</i></p> <p>8. Veterans Day Remembrance
(Board of Governors Resolution No. 2)
<i>Jim Chaney, BOG, Region 2</i></p> <p>9. Amendment to ORPC 5.4(a)(5) and 7.2(b)(2) re: Professional Independence of a Lawyer, and Advertising
(Board of Governors Resolution No. 3)
<i>Amber Hollister, OSB General Counsel</i></p> <p>10. Amendment to ORPC 7.3 re: Solicitation of Clients
(Board of Governors Resolution No. 4)
<i>Amber Hollister, OSB General Counsel</i></p> <p>11. Amendment to ORPC 8.3 re: Reporting Professional Misconduct
(Board of Governors Resolution No. 5)
<i>Amber Hollister, OSB General Counsel</i></p> | <p>12. Support for Adequate Funding for Legal Services to Low-Income Oregonians
(Delegate Resolution No. 1)
<i>Kathleen Evans, HOD, Region 6</i>
<i>Ed Harnden, HOD, Region 5</i>
<i>Ross Williamson, HOD, Region 2</i></p> <p>13. CLE Credit for HOD Delegates
(Delegate Resolution No. 2)
<i>Danny Lang, HOD, Region 3</i></p> <p>14. Study the PLF Program Flat Per Capita Rate Structure
(Delegate Resolution No. 3)
<i>John Gear, HOD, Region 6</i></p> <p>15. Give Members the Right to Redirect Funds Directed for Them to LRAP
(Delegate Resolution No. 4)
<i>John Gear, HOD, Region 6</i></p> |
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7. In Memoriam
(Board of Governors Resolution No. 1)

Resolved, That the OSB House of Delegates and members assembled stand for a moment of silence in honor of the members of the Oregon State Bar who have died since the 2016 House of Delegates Meeting.

John D. Albert	Charles S. Evans	Richard D. Lee	Harold A. Snow
Richard D. Barber	Walter H. Evans	Hon. Michael H. Marcus	Katherine S. Somervell
Melvin J. Beck	William O. Geny	James E. McCobb	Robert E. Thompson
John W. Billington	Clarence H. Greenwood	Deborah J. Mitchell	James L. Wolfe
William D. Brewer	Dale M. Harlan	Daryl M. Pulley	Denny Z. Zikes
Sid Brockley	Isaac R. Jackson	Garret L. Romaine	
Melinda J. Davison	Henry Kane	Sheldon I. Rubin	
Richard Egner	Hon. William L. Lasswell	Robert J. Smith	

Presenters:
Tom Peachey, BOG, Region 1
Guy Greco, BOG, Region 4
Chris Costantino, BOG, Region 5

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

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

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

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

Presenter: Jim Chaney
Board of Governors, Region 2

9. Amendment to ORPC 5.4(a)(5) and 7.2(b)(2) re: Professional Independence of a Lawyer, and Advertising
(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 are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, that the amendment of Oregon Rule of Professional Conduct 5.4(a)(5) and 7.2(b)(2) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(5) a lawyer may pay the usual charges of a ~~bar-sponsored or operated not-for-profit-lawyer-referral service~~, **including sharing legal fees with the service, only if:**

(i) the lawyer communicates to the client in writing at the outset of the representation the amount of the charge and the manner of its calculation, and

(ii) the total fee for legal services rendered to the client combined with the amount of the charge would not be a clearly excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

RULE 7.2 ADVERTISING

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

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

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;
- (2) pay the usual charges of a legal_service plan or a lawyer-referral service in accordance with Rule 5.4; and
- (3) pay for a law practice in accordance with Rule 1.17.

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

Financial Impact

None stated.

Presenter: Amber Hollister
OSB General Counsel

10. Amendment to ORPC 7.3 re: Solicitation of Clients (Board of Governors Resolution No. 4)

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

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

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

RULE 7.3 SOLICITATION OF CLIENTS

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

- ~~(1) is a lawyer; or~~
- ~~(2) has a family, close personal, or prior professional relationship with the lawyer.~~

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

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

~~(b)~~ ~~(2)~~ the person who is the subject ~~target~~ of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

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

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

Financial Impact

None stated.

*Presenter: Amber Hollister
OSB General Counsel*

**11. Amendments to ORPC 8.3 re: Reporting Professional Misconduct
(Board of Governors Resolution No. 5)**

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

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

Resolved, that the amendment of Oregon Rule of Professional Conduct 8.3 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:

(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

(2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or

(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.

Financial Impact

None stated.

*Presenter: Amber Hollister
OSB General Counsel*

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

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

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

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

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

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

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

Whereas, Oregon currently has 2 legal aid lawyers for every 17,000 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 legal aid lawyers for every 10,000 low-income Oregonians;

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

Resolved, that the Oregon State Bar;

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

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

(3) Work with Oregon's legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.

(4) Actively participate in the efforts of the Campaign for Equal Justice to increase contributions by the Oregon legal community, by establishing goals of a 100% participation rate by members of the House of Delegates, 75% of Oregon State Bar Sections contributing \$50,000, and a 50% contribution rate by all lawyers.

(5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank at OLF Leadership Banks that pay the highest IOLTA rates.

(6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.

(7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

(8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

Presenters:

**13. CLE Credit for HOD Delegates
(Delegate Resolution No. 2)**

Whereas, Members of the House of Delegates, who are also Members of the Oregon State Bar, have and continue to generously donate travel time, preparation, and participation at the Annual Meeting of the House of Delegates;

Whereas, the foregoing voluntary contribution by Delegates, on behalf of the Membership in General, benefits all Members of the Oregon State Bar;

Whereas, Delegates, who participate by attending the Annual HOD Meeting, voluntarily contribute time that Delegates could otherwise devote to Professional Practice, Community Service, or other Personal Interests;

Whereas, the Annual HOD Meeting provides a forum that includes presentations by the Chief Justice of the Oregon Supreme Court [Report of the Judicial Branch]; President of the Oregon State Bar; Executive Director of the Oregon State Bar and Members of the Board of Governors;

Whereas, such Presentations, and Debate of Agenda Items, address past, present, and future significant issues, practices, and policies have substantial Professional Legal Educational Value;

Whereas, in prior years Delegates attending Annual HOD Meetings were courteously provided with a complimentary CLE Program [i.e. scheduled earlier on the morning of the HOD Meeting]; which, provided both a benefit and incentive for attendance needed to ensure a Quorum; now, therefore, be it;

Resolved, that the House of Delegates recommend that the Board of Governors provide Delegates, who are Members of the Oregon State Bar, a “CLE Credit for an appropriate amount of hours” in consideration of the Educational Value derived from attending the Annual House of Delegates Meeting.

Financial Impact

None stated.

Presenter:
Danny Lang, HOD, Region 3

**14. Study the Professional Liability Fund Program Flat Per Capita Rate Structure
(Delegate Resolution No. 3)**

Whereas, the flat-rate, per-capita Professional Liability Fund assessment ignores differences in payout risks across attorney practice areas, practice volume (full- vs. part-time vs. occasional practice), firm revenue and case size, and clientele (such as attorneys serving clients with modest means for small cases);

Whereas, the current PLF fee structure may be creating a barrier to newer lawyers, lawyers who primarily serve the poor with low-value but very real problems of poverty, and lawyers who would like to maintain a reduced caseload without sacrificing the ability to remain in private practice; now, therefore, be it;

Resolved, that the Board of Directors shall form a committee to carefully survey the entire PLF-paying bar membership and study the effects of the current PLF rate structure on new lawyers, lawyers who predominantly serve low-income clientele, lawyers who wish to reduce their caseloads while remaining in active practice and quantify the cost-benefit ratio of the PLF assessment on each income quintile of the bar’s members who pay into the PLF.

Financial Impact

None stated.

*Presenter:
John Gear, HOD, Region 6*

Pursuant to OSB Bylaw Section 3.3, the OSB Board of Governors provides the following financial impact statement:

(Staff will provide the financial impact estimate.)

**15. Give Members the Right to Redirect Funds Currently Directed for them to the Loan Repayment Assistance Program (LRAP)
(Delegate Resolution No. 4)**

Whereas, the Loan Repayment Assistance Program offers a select few attorneys who are employed in public service positions a series of forgivable loans of up to \$22,500 to reduce their student loan debts;

Whereas, attorneys eligible for LRAP typically do not pay their own Professional Liability Fund premium or are not required to carry it at all (government service exemption); do not pay their own bar dues in many instances; and hold steady, gainful employment with good to excellent benefits;

Whereas, the funds for LRAP are provided by all attorney members of OSB;

Whereas, many attorneys ineligible for LRAP have the same student loan debt loads, pay their own annual PLF premium, their own bar dues, and have no employment benefits or salary;

Whereas, there are attorneys ineligible for LRAP who are earning so little that they are eligible for SNAP (“food stamp”) benefits and who are working non-law jobs just to earn the money to pay bar dues and PLF assessments; now, therefore, be it;

Resolved, the Board of Directors shall either discontinue the LRAP or develop a program by which each bar member can designate whether they want their share of the LRAP grants to be used for that purpose or to designate instead a particular grant recipient whose work increases access to justice in Oregon (such as the Northwest Workers Justice Project, the ACLU, the NAACP Legal Defense Fund, the Institute for Justice, etc.)

Financial Impact

None stated.

*Presenter:
John Gear, HOD, Region 6*

Pursuant to OSB Bylaw Section 3.3, the OSB Board of Governors provides the following financial impact statement:

(Staff will provide the financial impact estimate.)