

Oregon State Bar
2005 House of Delegates Meeting

*Salem Conference Center
200 Commercial Street, S.E.
Salem, OR 97310
Saturday, October 1, 2005, 10:00 a.m.*



Dear Oregon State Bar Member:

Enclosed is your agenda for the 2005 Oregon State Bar House of Delegates Meeting, which will begin at 10:00 a.m. on Saturday, October 1, 2005, at the Salem Conference Center, 200 Commercial Street, S.E., Salem, Oregon 97310.

Although only delegates may vote on the resolutions, all members are welcome and are encouraged to participate in the discussion and debate of agenda items. If you are unable to attend, please contact one or more of your delegates to express your views on the items to be considered. Delegates are listed on the bar's webpage at www.osbar.org.

Matters that will be considered by the House of Delegates include:

- \$50 active membership fee increase for 2006 to cover general operating expenses of OSB.
- Changes to Oregon Rules of Professional Conduct 1.15-1 and 1.15-2 clarifying the rules that govern IOLTA accounts (Interest on Lawyer Trust Accounts).
- Development of a subscription or licensing model for delivery of online CLE publications to members.

The full text and explanatory statements for all resolutions are in the enclosed agenda.

I also encourage you to attend other great events held in conjunction with this year's House of Delegates meeting, including:

- A three-credit Elimination of Bias CLE.
- A CLE reviewing the actions of the 2005 Legislature with four general CLE credits.
- A reception immediately following the 2005 Legislative Review.

If you have questions about the House of Delegates meeting, please contact Teresa Wenzel, Executive Assistant, at 800-452-8260, extension 386 (in Oregon only), at 503-620-0222, extension 386, or by e-mail at twenzel@osbar.org, or Alecia Cox, Administrative Assistant, at 800-452-8260, extension 309 (in Oregon only), at 503-620-0222, extension 309, or by e-mail at acox@osbar.org.

I look forward to seeing you in Salem!

A handwritten signature in black ink that reads "Nena Cook". The signature is fluid and cursive, with the first name "Nena" and the last name "Cook" clearly distinguishable.

Nena Cook, President
Oregon State Bar

OREGON STATE BAR
2005 House of Delegates Meeting
Salem Conference Center
200 Commercial Street, S.E.
Salem, OR 97310
Saturday, October 1, 2005, 10:00 a.m.
Presiding Officer: Nena Cook, OSB President

Agenda

1. Call to Order
Nena Cook, President
2. Overview of Parliamentary Procedure
George A. Riemer, General Counsel
3. Report of the President
Nena Cook, President
4. Adoption of Final Meeting Agenda
Nena Cook, President
5. Comments from the Chief Justice of the Oregon Supreme Court
Wallace P. Carson, Jr., Chief Justice, Oregon Supreme Court
6. Report of the Board of Governors Budget and Finance Committee
Frank H. Hilton, Chair, Board of Governors Budget and Finance Committee

Notice of 2006 Membership Fees

7. Increase 2006 Active Membership Fees by \$50. (Board of Governors Resolution No. 1) Page 4
Presenter: Frank H. Hilton, Chair, Board of Governors Budget and Finance Committee

Items with Financial Impact

8. Accommodate MCLE Programs by Local Bar Associations (House of Delegates Resolution No. 1) Pages 4-5
Presenter: Danny Lang, President, Douglas County Bar Association
9. Teleconference Access to CLEs (House of Delegates Resolution No. 2) Pages 5-6
Presenter: Diane Henkels, President, Lincoln County Bar Association, on behalf of the Environmental and Natural Resources Section
10. Post-consumer Recycled Paper Use (House of Delegates Resolution No. 3) Page 6
Presenter: Diane Henkels, President, Lincoln County Bar Association, on behalf of the Environmental and Natural Resources Section

Items with Legislative Implications

11. Encourage State of Oregon and Oregon Revised Statutes Committee to Revise ORS Statutes Governing Independent Contractor(s) (House of Delegates Resolution No. 4) Pages 6-7
Presenter: Danny Lang, President, Douglas County Bar Association

Other Resolutions

12. In Memoriam (Board of Governors Resolution No. 2) Page 7
Presenter: Timothy Gerking, Board of Governors, Region 3
13. Proposed Amendments to Oregon Rules of Professional Conduct 1.15-1 and 1.15-2 (Board of Governors Resolution No. 3) Pages 7-10
Presenter: Mark Comstock, Chair, Board of Governors Policy and Governance Committee
14. Expression of OSB's Appreciation to Members of the Seventy-Three Legislative Assembly (Board of Governors Resolution No. 4) Pages 10-11
Presenter: Gerry Gaydos, Chair, Board of Governors Public Affairs Committee
15. Online CLE by Subscription or License (Board of Governors Resolution No. 5) Pages 11-12
Presenter: Richard S. Yugler, Board of Governors, Region 5
16. Encourage the Uniform Trial Court Rules Committee to Eliminate the Certification Requirement in Rule 7A (House of Delegates Resolution No. 5) Page 12
Presenter: Danny Lang, President, Douglas County Bar Association
17. Encourage the Uniform Trial Court Rules Committee to Generate Form Pleadings (House of Delegates Resolution No. 6) Pages 12-13
Presenter: Danny Lang, President, Douglas County Bar Associations

18. Support of Adequate Funding for Legal Services for Low-Income Oregonians (House of Delegates Resolution No. 7) Page 13

Presenter: Sid Lezak, House of Delegates, Region 5, on behalf of the Campaign for Equal Justice

19. Amend MCLE Rules to Delete “Elimination of Bias” Requirement (House of Delegates Resolution No. 8) Pages 13-14

Presenter: Gary Georgeff, House of Delegates, Region 3

20. Put Question of Amending MCLE Rules to Delete “Elimination of Bias” Requirement to a Vote of the Membership (House of Delegates Resolution No. 9) Pages 14-15

Presenter: Gary Georgeff, House of Delegates, Region 3

Notice of 2006 Membership Fees

7. Increase 2006 Active Membership Fees by \$50. This notice is provided pursuant to ORS 9.191. (Board of Governors Resolution No. 1)

2006 Membership Fee Resolution

Resolved, That the 2006 Oregon State Bar membership fees and Client Security Fund assessment are as follows:

1. Active Members.

A. For members admitted in any jurisdiction before January 1, 2004: \$447.00 for the basic membership fee; \$30.00 for the Affirmative Action Program fee; and \$5.00 for the Client Security Fund assessment; for a total of \$482.00.

B. For members admitted in any jurisdiction before January 1, 2004, who fail to pay their active fees and assessments of \$482.00 by the due date: \$532.00.

C. For members admitted in any jurisdiction on or after January 1, 2004: \$383.00 for the basic membership fee; \$15.00 for the Affirmative Action Program fee; and \$5.00 for the Client Security Fund assessment; for a total of \$403.00.

D. For members admitted in any jurisdiction on or after January 1, 2004, who fail to pay their active fees and assessments of \$403.00 by the due date: \$445.00.

E. For those members admitted in Oregon in 2006, the fees shall be apportioned. The Client Security Fund assessment of \$5.00 shall be paid in full by each new admittee.

F. For those members who pass away in 2006, the fees shall be apportioned upon request of appropriate representatives. The Client Security Fund assessment of \$5.00 and the increase of fees due to payment made after the due date shall not be included in the apportioned refund.

G. Exemptions to active member fees:

(1) Members who were admitted to practice law in Oregon prior to January 1, 1956, are exempt from the payment of all active membership fees and assessments.

(2) Members who are on active military duty in compliance with the terms of ORS 408.450 are exempt from the payment of all active membership fees and assessments. Members who are in the VISTA or Peace Corps programs in compliance with Bar Bylaw 6.6 are exempt from the payment of all active membership fees and assessments. The payment of active membership fees may also be waived if members satisfy the requirements of Bar Bylaw 6.5 on hardship exemptions.

2. Active Pro Bono and Active Emeritus Members.

A. For members who qualify under Bar Bylaw 6.101 for Active Pro Bono or Active Emeritus membership: \$110.00 for the basic membership fee and \$5.00 for the Client Security Fund assessment, for a total of \$115.00.

B. For Active Pro Bono or Active Emeritus members who fail to pay their fees and assessments of \$115.00 by the due date: \$140.00.

3. Inactive Members.

A. The 2006 membership fee for inactive members shall be \$110.00.

B. For those inactive members who fail to pay their fees of \$110.00 by the due date: \$135.00.

C. Exemptions to inactive member fees:

(1) Members who were admitted in Oregon prior to January 1, 1956.

(2) Members in active military duty in compliance with the terms of ORS 408.450 are exempt from the payment of inactive membership fees. Members who are in the VISTA or Peace Corps programs in compliance with Bar Bylaw 6.6 are exempt from the payment of inactive membership fees. The payment of inactive membership fees may also be waived if members satisfy the requirements of Bar Bylaw 6.5 on hardship exemptions.

4. Payment Date: All fees and assessments shall be paid simultaneously, in one remittance, not later than the due date, or within 60 days of date of admission to the Oregon State Bar, whichever occurs last.

5. Definitions: Apportioned fees pertain only to those members admitted in Oregon or who passed away during calendar year 2006. If the member is admitted or passes away in January, the apportioned fee or refund, as the case may be, shall be 12/12; February shall be 11/12; ...; December shall be 1/12. The calculation shall be rounded up to the nearest dollar for each fee allocation.

The due date for 2006 membership fees is Tuesday, January 31, 2006. Approved by the Board of Governors on Friday, August 19, 2005.

Background

The Board of Governors will be submitting a detailed explanation of the need for a \$50.00 increase in active membership fees to the members of the House of Delegates by separate cover. This material will also be posted on the bar's website (www.osbar.org) for review by the general membership. Members who would like a copy of the material sent to the House of Delegates can contact Teresa Wenzel, Executive Assistant, by phone at 503-431-6386 or via e-mail at twenzel@osbar.org.

Presenter: Frank H. Hilton, Chair, Board of Governors Budget and Finance Committee

Items with Financial Impact

8. Accommodate MCLE Programs by Local Bar Associations (House of Delegates Resolution No. 1)

Whereas, County Sponsored Bar Associations "Local Bar Associations" in Oregon are run by OSB members and provide CLE activities on topics of interest to their membership. They are a separate recognized component of the OSB and are represented at the House of Delegates.

Whereas, Attendance at Local Bar Association CLE activities are important to encourage education of members and collegiality of attorneys in each county;

Whereas, Current OSB policies, which do not permit, advance accreditation of Local Bar Association CLE activities and require a subsequent application for accreditation and payment of a \$40 fee discourage attendance at such CLE activities and

imposes an administrative and financial burden on Local Bar Associations; now, therefore, be it

Resolved, That the OSB Minimum Continuing Legal Education Rules and Regulations be amended to provide for automatic accreditation for any program sponsored by a Local Bar Association based solely upon certification of an officer of the Local Bar Association that the program complied with the Rules and Regulations for MCLE adopted by the OSB as set forth in Rule 5. There shall be no fee paid by a County sponsored Bar Association CLE activity for such approval.

The Local Bar Association shall submit the reports of attendance and description of the activities as required by Rule 4.

The MCLE Administrator or a member of the MCLE Committee may audit compliance as provided in Rule 4.1, and if it is determined that the programs of the Local County Bar Association do not meet the requirements for CLE credit, that Association may lose its Accredited Status for a probationary period of 6 months during which time it must follow the Group Activity Accreditation process as described in section 4.3.

Background

County sponsored CLE activities are the backbone of the OSB MCLE program. In larger counties, which have staffs and funding for such programs, Accredited Sponsors are everywhere. In smaller counties, an attorney must attend a proposed CLE program on faith that the Local Bar Association officers will, in their spare time, seek accreditation of the program after it occurs. The \$40 fee often represents a significant expense. The Bar Association must later track approvals, advise members, and circulate CLE approvals months after the program occurs.

Local Bar Associations diligently seek speakers and programs worthy of CLE credit and should be trusted to assure their members that such credit will be given at the program. This resolution provides for a loss of accredited status if the Local Bar Association programs fail to meet the MCLE Administrators standards. The financial impact on the OSB is small due to loss of the \$40 income for applications, but this would be offset by the large timesavings by OSB staff to screen and approve all of the applications for MCLE programs by Local Bar Associations.

Presenter: Danny Lang, President, Douglas County Bar Association

Board of Governors' Estimate of Financial Impact

Time did not permit the Board of Governors and staff to prepare a financial impact statement for this resolution before the deadline to mail the preliminary HOD agenda to all members. The House of Delegates will be provided with such information before the October 1, 2005 HOD meeting. This information will also be posted to the bar's website (www.osbar.org). Members who would like to have a copy of the material sent to the House of Delegates can contact Teresa Wenzel, Executive Assistant, by phone at 503-431-6386 or via e-mail at twenzel@osbar.org.

Note by Board of Governors

ORS 9.139(3) provides, in part, as follows:

The power of the house of delegates to direct, modify or rescind an action or decision of the board of governors under subsection (1) of this section does not include the power:

* * *

(c) To direct, modify or rescind any other action or decision by the board that is subject to control, approval, or review by the Supreme Court.

The Oregon State Bar Minimum Continuing Education Rules, Rule 10 provides as follows:

Amendment

These Rules may be amended by the BOG subject to approval by the Supreme Court. Amendments may be proposed by the MCLE Committee, the executive director, or any active member. Proposed amendments shall be submitted and considered in compliance with any regulations adopted by the BOG.

9. Teleconference Access to CLEs (House of Delegates Resolution No. 2)

Whereas, The OSB respects the diversity of its membership and no bar entity may discriminate on the basis of geographic location (OSB Bylaws, Article 10);

Whereas, All OSB members have equal rights and privileges (OSB 2.3);

Whereas, The OSB comprises many lawyers of which many reside and practice outside of the Portland metro area;

Whereas, The several Oregon State Bar Sections have many member lawyers, serving clients throughout the state and outside the state's geographic boundaries;

Whereas, Communications should advance the public understanding of the law, legal ethics, and the professionalism and collegiality of the bench and Bar (OSB 11.1);

Whereas, The OSB communications include printed material and electronic communications (OSB 11.1);

Whereas, The OSB seeks to improve its outreach to membership;

Whereas, The OSB offices are located in the Portland metro area yet serve lawyers throughout the state and beyond;

Whereas, Every member of the OSB pays the same amount in dues and should have similar access to section and bar services;

Whereas, Each section's receipts and expenditures are handled by the OSB (OSB 15.4);

Whereas, Interest on section account accrues to the Bar's general fund is used to offset the calculation of per capita fee;

Whereas, The dominant mode of transportation in Oregon is the automobile;

Whereas, The increase in costs of fuel have increased transportation costs recently and before;

Whereas, Time is a resource consumed by travel of between one and eight hours from areas of Oregon outside the Portland metro areas, and many of these areas are not served practically by public or other means of mass transportation; now, therefore, be it

Resolved, That the OSB and its sections shall

1) Achieve long distance interactive teleconference access to 50% of OSB sponsored or co-sponsored CLEs by 2007, and 100% by 2009; and

2) Include as mandatory information on applications for CLE accreditation information for CLEs of four or more credits how

the sponsor(s) will provide long-distance interactive communication;

3) Provided that requirements 1 and 2 above do not apply to CLEs approved by, but not sponsored by, the OSB.

Background

Costs associated with participating in OSB sponsored activities live include the cost of travel to the CLE. An estimated _____ live CLEs are held in the Portland metro area, _____ in the Willamette Valley, or _____ in the I-5 corridor. _____ % of OSB members reside outside of these areas, yet dues are equal for all active members. Currently the OSB utilizes a service, Raindance to provide teleconference access to OSB. The charge for such access is a one-time per conference \$10 upload fee per power point presentation plus \$.10 per minute per person. For example, a one hour meeting with a power point presentation with 100 people attending would cost $\$10 + \$0.10 \times 100 \times 60 = \610.00 . Standard OSB teleconferencing service, without visual, costs _____. The OSB sponsors or co-sponsors _____ CLEs per year for a total of _____ hours of CLE material. Though the Bar has attempted to utilize Raindance as a way to improve electronic access, this has met with sluggish success and some failure. Requiring the bar and sections to make CLEs distance interaction happen implements the geographic diversity goal of the bar and improves the quality of the CLEs by permitting more people to participate in questions and comments during CLE programs. This also is in step with private practice, which currently includes, for example, interactive web-based settlement conferences. By mastering this technology, the bar will level the playing field for those practitioners who cannot afford the travel time or costs to attend CLEs out of town. Prioritizing this process should be a primary goal of the different bar offices involved in reaching members and in providing Continuing Legal Education.

Presenter: Diane Henkels, President, Lincoln County Bar Association, on behalf of the Environmental and Natural Resources Section

Board of Governors' Estimate of Financial Impact

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10. Post-consumer Recycled Paper Use (House of Delegates Resolution No. 3)

Whereas, Conservation of resources including paper is recognized by various state and federal policies as a positive step for organizations to take;

Whereas, The OSB does not have a stated policy regarding conservation of paper resources;

Whereas, OSB Environmental and Natural Resources Section has secured a supply of post-consumer paper products for use in the Environmental and Natural Resource Section newsletters;

Whereas, Part of the Environmental and Natural Resources Section's mission is to provide a forum for communication and action in matters of common interest;

Whereas, The practice of law entails extensive use of paper resources;

Whereas, The Oregon judiciary encourages efficient use of paper in permitting double-sided court submissions; now, therefore, be it

Resolved, That OSB shall take all appropriate actions to conserve paper resources, including promoting use of 100% post-consumer use recycled paper for all publications produced by the OSB for its general and section publications.

Background

OSB is currently using a 30% post consumer paper that is available in a variety of colors that are used for both sections and in-house printing needs. This stock is also standard sized to both letter and tabloid dimensions, the latter of which is necessary for OSB's 2-sided/4-up newsletter production, like the one for the ENR section newsletter. In August 2004, the ENR section approved the purchase of a year's supply of the 100% recycled paper. The section paid \$809.76 for four cases of 2,500 sheets / 10,000 total sheets ($\$197.44 \times 4 + \20.00 trim to 11x17 = \$809.76). The OSB covered the purchase and storage of this special paper, which has been reserved for the exclusive use of the ENR section. The stock preferred by the ENR section is Nena 100% post consumer. It is available in only two colors (beige and white) and must be special cut to the tabloid size, which adds another \$20 per cut to the additional paper costs. For these cost and storage reasons, OSB Publications has concluded that the 100% stock does not fit the needs of the OSB's overall printing program due to cost and storage. OSB should investigate the possibility of lowering cost and eliminating storage problems if OSB increased its order size to include entire OSB operations.

Presenter: Diane Henkels, President, Lincoln County Bar Association, on behalf of the Environmental and Natural Resources Section

Board of Governors' Estimate of Financial Impact

Time did not permit the Board of Governors and staff to prepare a financial impact statement for this resolution before the deadline to mail the preliminary HOD agenda to all members. The House of Delegates will be provided with such information before the October 1, 2005 HOD meeting. This information will also be posted to the bar's website (www.osbar.org). Members who would like to have a copy of the material sent to the House of Delegates can contact Teresa Wenzel, Executive Assistant, by phone at 503-431-6386 or via e-mail at twenzel@osbar.org.

Items with Legislative Implications

11. Encourage State of Oregon and Oregon Revised Statutes Committee to Revise ORS Statutes Governing Independent Contractor(s) (House of Delegates Resolution No. 4)

Whereas, Attorneys as Members of the legal profession should be allowed the freedom to enter into various professional relationships with other Members of the Bar allowing attorneys and other law firms are to contract for services with same

without creating an employee-employer relationship; now, therefore, be it

Resolved, That the Oregon State Bar should seek an amendment to existing Legislation/Statutes relating to and defining the status of employer-employees in Oregon, and therefore Members of the Oregon State Bar and Oregon law firms should be granted an exemption from the tests and restrictions and presumptions of an employment relationship similar to the exemptions granted in other Statutes such as Licensed Construction Contractors.

Members of the Oregon State Bar and Oregon law firms should not be required to meet the tests set forth in ORS 657.040 (Service for Pay Excluded in Certain Employment Situation) and ORS 670.600 (Independent Contractor; Nature of Relationship) and instead should be granted statutory exemption so as to provide greater freedom to enter into a professional relationship within the profession [Example: "Of Counsel"] without creating a presumption of an employer-employee relationship being created under the tests set forth in ORS 657.040 (Service for Pay Excluded in Certain Employment Situation) and ORS 670.600 - (Independent Contractor: Nature of Relationship).

Presenter: Danny Lang, President, Douglas County Bar Association

Other Resolutions

12. In Memoriam (Board of Governors Resolution No. 2)

Resolved, That the Oregon State Bar House of Delegates and members assembled stand for a moment of silence in honor of the members of the Oregon State Bar whose deaths have been reported since the 2004 House of Delegates Meeting (through August 24, 2005).

*Jeffrey L. Adatto
Kenneth E. Anderson
Norman E. Anderson
Alan Baily
James E. Beard
Joseph A. Berg
George E. Birnie
Vernon L. Burda
Nancy R. Carter
Charles R. Cater
Harry S. Chandler
John M. Copenhaver
Charles S. Crookham
Deborah J. Dealy- Browning
Thomas P. Deering
Nickolas J. Dibert
James E. Dicey
Glen H. Downs
Paul W. Dudley
H. Philip Eder
James Erlen Flanagan
William Ganong
Janis L. Hardman
The Honorable John W. Hitchcock
James D. Horton
Charles W. Kettlewell
William J. Keys
Barry Marks*

*Joseph J. McCarthy
Richard J. McNerney
Christine V. Olsen
John D. Picco
Wayne C. Rapp
Donald S. Richardson
The Honorable Roosevelt Robinson
Martin W. Rohrer
Jacquelyn Romm
The Honorable Kurt C. Rossman
David Slagle
A. Terry Slocum
Douglas A. Swanson
Orval N. Thompson
Wayne M. Thompson
Robert J. Thorbeck
The Honorable Robert Y. Thornton
Dennis F. Tripp
John C. Veatch
J. Davis Walker
R. Alan Wight
The Honorable Lyle R. Wolff
David L. Wright
Renee C. Wyser-Pratte*

Presenter: Timothy Gerking,

Board of Governors, Region 3

13. Proposed Amendments to Oregon Rules of Professional Conduct 1.15-1 and 1.15-2 (Board of Governors Resolution No. 3)

Whereas, The Board of Governors has formulated the following amendments 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 Oregon Rules of Professional Conduct 1.15-1 and 1.15-2 be amended as set forth below and submitted to the Oregon Supreme Court for adoption.

Rule 1.15-1 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the ~~state~~ jurisdiction where the lawyer's office is situated, ~~or elsewhere with the consent of the client or third person.~~ Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to ~~Rule 1.15-2~~ the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a lawyer trust account for the sole purposes of paying bank service charges or meeting minimum balance requirements on that account, but only in ~~an amount~~ necessary for ~~that~~ those purposes.

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

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. ~~A lawyer or law firm establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of its establishment.~~ **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.**

(b) All client funds shall be deposited in the lawyer's or law firm's IOLTA account unless a particular client's funds can earn net interest. All interest earned by funds held in the IOLTA account shall be paid to the Oregon Law Foundation as provided in this rule.

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client's benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

(1) a separate account for each particular client or client matter; or

(2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any bank service charges, to each client.

(d) In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:

(1) the amount of the funds to be deposited;

(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) the rates of interest at financial institutions where the funds are to be deposited;

(4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client's benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm's services, and the cost of preparing any tax-related documents to report or account for income accruing to the client's benefit;

(5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and

(6) any other circumstances that affect the ability of the client's funds to earn a net return for the client.

(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine whether circumstances have changed that require further action with respect to the funds of a particular client.

(f) If a lawyer or law firm determines that a particular client's funds in an IOLTA account either did or can earn net interest, the lawyer shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for any interest earned by the client's funds that may have been remitted to the Oregon Law Foundation.

(1) The request shall be made in writing to the Oregon Law Foundation within a reasonable period of time after the interest was remitted to the Foundation and shall be accompanied by written verification from the financial institution of the interest amount.

(2) The Oregon Law Foundation will not refund more than the amount of interest it received from the client's funds in question. The refund shall be remitted to the financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.

(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer's firm.

(h) A lawyer or law firm may maintain a lawyer trust account only at a financial institution that:

(1) is authorized by state or federal banking laws to transact banking business in the state where the account is maintained;

(2) is insured by the Federal Deposit Insurance Corporation or an analogous federal government agency;

(3) has entered into an agreement with the Oregon Law Foundation:

(i) to remit to the Oregon Law Foundation, at least quarterly, interest earned ~~on the average daily balance in the lawyer's or law firm's~~ by the IOLTA account, computed in accordance with the institution's standard accounting practices, less reasonable service charges, if any; and

(ii) to deliver to the Oregon Law Foundation a report with each remittance showing the name of the lawyer or law firm for whom the remittance is sent, the number of the IOLTA account as assigned by the financial institution, the average daily collected account balance or the balance on which the interest remitted was otherwise computed for each month for which the remittance is made, the rate of interest applied, the period for which the remittance is made, and the amount and description of any service charges deducted during the remittance period; and

(4) has entered into an overdraft notification agreement with the Oregon State Bar requiring the financial institution to report to the Oregon State Bar Disciplinary Counsel when any properly payable instrument is presented against such account containing insufficient funds, whether or not the instrument is honored.

(i) Overdraft notification agreements with financial institutions shall require that the following information be provided in writing to Disciplinary Counsel within ten banking days of the date the item was returned unpaid:

(1) the identity of the financial institution;

(2) the identity of the lawyer or law firm;

(3) the account number; and

(4) either (i) the amount of the overdraft and the date it was created; or (ii) the amount of the returned instrument and the date it was returned.

(j) Agreements between financial institutions and the Oregon State Bar **or the Oregon Law Foundation** shall apply to all branches of the financial institution. **Such agreements** and shall not be canceled except upon a thirty-day notice in writing to **OSB Disciplinary Counsel in the case of a trust account overdraft notification agreement or to the Oregon Law Foundation in the case of an IOLTA agreement.**

(k) Nothing in this rule shall preclude financial institutions which participate in any trust account overdraft notification program from charging lawyers or law firms for the reasonable costs incurred by the financial institutions in participating in such program.

(l) Every lawyer who receives notification from a financial institution that any instrument presented against his or her lawyer trust account was presented against insufficient funds, whether or not the instrument was honored, shall promptly notify Disciplinary Counsel in writing of the same information required by paragraph (i). The lawyer shall include a full explanation of the cause of the overdraft.

(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) 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.

Background

Oregon RPC 1.15-1 replaces part of *former* DR 9-101; it parallels ABA Model Rule 1.15 and governs the segregation, safekeeping, and delivery of funds held for a client or third person. Oregon RPC 1.15-2 has no counterpart in the ABA Model Rules. It contains the IOLTA and trust account overdraft notification provisions that were found in *former* DRs 9-101 and 9-102. For convenience, those provisions were placed in a separate rule in the Oregon RPCs.

The Oregon Law Foundation staff and board, assisted by General Counsel and Disciplinary Counsel, have had several discussions in recent months about Oregon RPCs 1.15-1 and 1.15-2. The discussions began in an effort to ensure that the Bar and the OLF were gathering and maintaining sufficient information to ensure that members were in compliance with the rules and that cooperating banks were properly paying interest on IOLTA accounts. During the course of the discussions, questions were raised about the application of the rules to lawyers who were licensed in more than one jurisdiction. There were also some questions about whether the language of 1.15-2 properly described the computation of interest payable to the OLF.

The amendments proposed here are intended to address the concerns identified. A brief explanation of each specific change follows:

Oregon RPC 1.15-1(a)

Former DR 9-101(A) required lawyers to maintain client funds in a trust account "in the state in which the law office is situated." The new Oregon RPCs follow the ABA Model Rule, which also requires that the account be in the state in which the lawyer's office is situated, but also permits the funds to be held elsewhere "with the consent of the client."¹

After adoption of the new rules, questions arose regarding how to reconcile the two parts of RPC 1.15 for an Oregon lawyer who maintained a trust account in another jurisdiction, yet was required to have the account with a bank that agreed to pay the interest on the pooled IOLTA account to the Oregon Law Foundation and to inform OSB Disciplinary Counsel of any overdraft. Concern was expressed that out-of-state banks might not be willing to enter into such agreements; moreover, the lawyer's home state might have conflicting requirements.

For example: a lawyer licensed in Washington and Oregon whose office is in Washington is required by Oregon RPC 1.15-1(a) to maintain a trust account in Washington, but also to have the interest on the trust account paid to the OLF. At the same time, Washington requires its lawyers to deposit client funds into accounts in Washington banks and to have the interest paid to the Washington law foundation. (Washington has an informal ethics opinion that advises dual-licensed lawyers that the Washington trust account rules apply when a lawyer is "using his Washington license" in the course of the representation; otherwise the lawyer is permitted to follow the rules of the other licensing body.)

After considerable study and discussion, the Board of Governors proposes two changes to RPC 1.15-1(a). The first eliminates the permission to have a trust account other than in the jurisdiction in which the lawyer maintains an office. The second requires that trust accounts conform to the rules of the jurisdictions in which the accounts are maintained (rather than requiring conformity with Oregon RPC 1.15-2). Any inconsistencies between the rules of various jurisdictions will be resolved by Oregon RPC 8.5(b), which provides:

¹ The ABA Model Rules, the Oregon RPCs, and *former* DR 9-101 also apply to funds of third persons held by a lawyer; for simplicity in this discussion, reference is made only to client funds, although the rules and any changes will continue to apply to funds of third persons.

RULE 8.5 DISCIPLINARY AUTHORITY;

CHOICE OF LAW

* * *

(b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:

(1) For conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and

(2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

Under RPC 8.5(b)(2), the hypothetical Oregon lawyer practicing in Washington will maintain the trust account in Washington in accordance with Washington's rules; assuming that the representation occurs in or has its predominant effect in Washington, then Washington's rules about IOLTA accounts would govern and there would be no violation of RPC 1.15-2.

The Board has also substituted the word "jurisdiction" for "state" in the second sentence of Oregon RPC 1.15-1(a). This is consistent with the use of "jurisdiction" in the fourth sentence. It also broadens the application to foreign lawyers who might also be subject to Oregon's Rules of Professional Conduct.

Oregon RPC 1.15-1(b)

This part of the rule, like its predecessor, *former* DR 9-101(A)(1), prohibits a lawyer from depositing the lawyer's own funds into the trust account except as reasonably necessary to pay bank charges on the account. In rendering advice to inquiring members, General Counsel's Office has taken the position that there should be no violation of the rule to deposit a lawyer's own funds in an amount required to keep the account open. The proposed amendment would make that an express permission.

Oregon RPC 1.15-2(a)

This paragraph is a general statement about IOLTA accounts. The language requiring notice to the Bar when an IOLTA account is established has been deleted here and moved to a new section at the end of the rule. New language is added to require compliance with any regulations adopted by the Bar for the operation of trust accounts. In 1989, the Supreme Court issued regulations for the operation of trust accounts, but they do not appear to have been widely distributed and were largely unknown among practitioners. There was also no readily available means for enforcing the regulations. Making clear in the rule that such regulations may be adopted will help to ensure that they are publicized and that members are subject to discipline for noncompliance.

Oregon RPC 1.15-2(h)(3)(i)

Former DR 9-101(D)(2)(c) required that "all earnings from the lawyer trust account, net of any transaction costs" be remitted to the OLF. When the Oregon RPCs were adopted, more specifics were added to the rule in an effort to ensure it complied with the US Supreme Court's decision in *Brown v. Washington Legal Foundation*, 538 US 216, 123 SCt 1405, 155 L Ed2d 376 (2003) (only client funds that cannot earn "net interest" can be deposited into an IOLTA account). It turns out, however, that

the language chosen is too restrictive and does not correspond to the way that many banks actually compute interest. The new language is broader and should accommodate various banking practices.

Oregon RPC 1.15-2(h)(3)(ii)

This change is intended to allow compliance with the rule in accordance with an institution's standard practices, rather than mandating a single process.

Oregon RPC 1.15-2(j)

The new language clarifies how notice is to be given in the event of cancellation of an agreement between financial institutions and the Bar, in the case of overdraft notice agreements, and the OLF, in the case of IOLTA agreements.

Oregon RPC 1.15-2(m)

The first sentence of this paragraph is a new provision that requires annual certification of compliance. The existing requirement of notifying the Bar and the OLF when an IOLTA account is opened is insufficient for monitoring compliance over the long term. Washington and several other jurisdictions require this certification as part of the annual dues payment process. The Board is planning to do the same in Oregon.

The second sentence requires notice when a new account is opened between annual reporting periods. This language is moved from paragraph (a) and expanded to clarify that the notice must be on a form prescribed by the Bar.

Oregon RPC 1.15-2(n)

This new language defines "service charges" for purposes of paragraph (h)(3)(ii) and was derived from Washington's rule. The purpose is to ensure that lawyers bear the cost of maintaining and operating the account that are in excess of the bank's reasonable account charges. For instance, lawyers (and not the OLF) should bear the cost of wire transfer fees or overdraft charges.

Presenter: Mark Comstock, Chair, Board of Governors Policy and Governance Committee

14. Expression of OSB's Appreciation to Members of the Seventy-Third Legislative Assembly (Board of Governors Resolution No. 4)

Whereas, in light of the outstanding work by so many members of the 2005 Legislative Assembly, the Oregon State Bar would like to acknowledge the contributions of all of the members of the legal community who served during the 2005 Legislative Session; and in particular:

Whereas, Senator Peter Courtney has been a member of the Oregon State Bar since 1973, has served as a legislator since 1981, has effectively served two terms as President of the Senate during difficult and contentious sessions, and was instrumental in crafting a state budget that met divergent and sometimes conflicting goals; and

Whereas, Senator Kate Brown has been a member of the Oregon State Bar since 1985, has served as Senate Democratic Leader for the 2001, 2003, and 2005 Legislative Sessions, and has long been a supporter of the Oregon State Bar, of improving the laws of the State of Oregon and of protecting the rights of all Oregonians; and

Whereas, Senator Charlie Ringo has been a member of the Oregon State Bar since 1989, served on the Judiciary and Rules Committees, and was effective in bringing the perspective of the practicing lawyer to these committees; and

Whereas, Senator Floyd Prozanski has been a member of the Oregon State Bar since 1984, chaired the Senate Commerce Committee, served on the Judiciary Committee, brought his valuable expertise as a prosecutor to that committee, and engineered passage of a comprehensive civil forfeiture bill; and

Whereas, Representative Dennis Richardson has been a member of the Oregon State Bar since 1979, served as Speaker Pro Tem of the House and as a member of the Joint Ways and Means and House Budget Committees, and was instrumental in gaining adequate funding for the justice system and for the creation of four new circuit judgeships; and

Whereas, Representative Robert Ackerman has been a member of the Oregon State Bar since 1963, served as Chair of the House Judiciary Sub-Committee on Civil Law, and lent his valuable legal expertise to the deliberations of that committee and others; and

Whereas, Representative Greg Macpherson has been a member of the Oregon State Bar since 1975, served on the House Judiciary Committee Criminal Law Sub-Committee and on the Civil Law Sub-Committee as an advisory member, and on the Committee on State and Federal Affairs and brought thorough analysis and invaluable expertise to all; and further

Whereas, in the 2005 Legislative Assembly non-lawyers played crucial and supportive roles in improving the law and the justice system, the Oregon State Bar would like to acknowledge the contributions of other members of the Legislative Assembly, in particular:

Whereas, Senator Ginny Burdick chaired the Senate Judiciary Committee with grace and as chair played a central role in passing many justice system improvements and crucial measures involving sentencing guidelines and methamphetamine use; and

Whereas, Senator Avel Gordly chaired the Joint Ways and Means and Senate Budget Sub-Committees on Public Safety and was an effective and outstanding advocate for adequate funding for courts, indigent defense services, and the justice system as a whole; and

Whereas, Sen. Jackie Winters served on the Joint Ways and Means and Senate Budget Public Safety Sub-Committees, brought valuable expertise to the committee's deliberations, and advocated effectively for adequate funds for the justice system in general and bills to curb the use of methamphetamine in particular; and

Whereas, Representative Wayne Krieger chaired the House Judiciary Committee and the House Committee on State and Federal Affairs, worked consistently to improve the justice system, and engineered passage of bills to curb the use and availability of methamphetamine; now, therefore, be it

Resolved, the Oregon State Bar House of Delegates expresses its sincere appreciation to Senate President Peter Courtney, Senator Kate Brown, Senator Charlie Ringo, Senator Floyd Prozanski,

Representative Dennis Richardson, Representative Robert Ackerman, and Representative Greg Macpherson; and to Senator Ginny Burdick, Senator Avel Gordly, Senator Jackie Winters, and Representative Wayne Krieger, for their support of the legal profession, for their dedication to the cause of law improvement, and for their stewardship of Oregon's judicial system throughout a challenging Legislative Session;

Resolved, That the Oregon State Bar's members owe a debt of gratitude to all of these legislators for their work and for their sacrifice of professional and financial gain throughout the last year.

Presenter: Gerry Gaydos, Chair, Board of Governors Public Affairs Committee

15. Online CLE by Subscription or License (Board of Governors Resolution No. 5)

Whereas, In 2004 the Oregon State Bar Board of Governors presented a resolution to the bar's House of Delegates asking for a membership referendum on a proposal to place all CLE books online at an estimated annual cost of \$70 per active member per year, and

Whereas, The house deferred voting on the proposal and directed the board to conduct an advisory vote of the membership to assess overall support for the proposal; and

Whereas, With only about 10% of eligible members voting, the advisory vote results showed 60% favoring the proposal and 40% opposed; and

Whereas, The Board of Governors believes that active members who do not practice law and oppose the proposal may transfer to inactive status rather than pay increased regular membership fees; and

Whereas, A mandatory fee increase that encourages members to take inactive status could result in a substantial financial loss to the bar; and

Whereas, An online CLE book library would benefit primarily lawyers who are in private practice; now, therefore, be it

Resolved, That

1. The Board of Governors develop a subscription or licensing model for online CLE publications in lieu of the mandatory fee program proposed in 2004; and
2. The Board of Governors will solicit three members of the House of Delegates to work with the board's Member Services Committee in developing the new delivery model for online CLE publications.

Background

At its 2004 meeting, the OSB House of Delegates discussed a resolution from the Board of Governors asking for a membership referendum on a proposal to place all CLE books online. The books would be available and searchable through the bar's website at an estimated annual cost of \$70 per active member per year, beginning January 1, 2006.

The house held a lengthy discussion, ultimately deferring a vote until 2005. It directed the board to conduct an advisory vote of the membership to assess overall support for the proposal. The advisory vote was held as part of the annual OSB House of Delegates election in April.

The baseline results of the advisory vote showed fairly strong support for the proposal, with 60% voting “yes” and 40% voting “no.” Very low voter turnout, however, suggests a lack of member interest and awareness. In addition, the results were likely skewed by the ballot’s preference for online voting, which was the default method for most members. Of those who voted online 81% supported the proposal; in comparison, only 36% of those casting paper ballots supported the proposal. Comments from a 2004 survey as well as the advisory vote show many voters did not fully understand the proposal.

The Board of Governors has concluded that the benefits of a mandatory program do not outweigh the cost of alienating members who do not want and will not use online CLE publications.

A fundamental flaw in the proposal presented to the house was that in order to keep the fee at \$70 per active member, each active member would have to be assessed, regardless of whether they are in the private practice of law or not. As of August 2005, there are approximately 12,500 active members of the Oregon State Bar. Of those, approximately 7,000 are covered by PLF. In addition to the latter number, there are corporate counsel and government lawyers who are not required to have PLF coverage. Assuming 1,900 corporate counsel and government lawyers (this is double the membership in those two sections) that leaves 3,600 or 29% of active members who do not practice law.

The 2005 membership fee is \$432 for active bar members. It is \$110 for inactive bar members. If even 30% of those active members switch to inactive status because of the \$70 increase, that will be a loss of \$347,000 annually to the budget. At some price point, these active members will switch to inactive status, as there is little to be gained by staying active if they do not intend to practice law in the near future.

The board is asking the House of Delegates to approve a \$50 active membership fee increase for 2006 for the regular cost of bar operations. In 2006, there will be a proposal to reauthorize the bar's Affirmative Action Program and keep the existing \$30 fee to fund the program. It is the accumulation of these increases and continuations, coupled with recent increases to the PLF assessment, that causes the board to be concerned about imposing a mandatory \$70 fee at this time to fund online CLE publications.

Based on financial considerations and the best interests of all bar members, the Board of Governors recommends creating a voluntary online CLE publications library.

*Presenter: Richard S. Yugler, Board of Governors,
Region 5*

16. Encourage the Uniform Trial Court Rules Committee to Eliminate the Certification Requirement in Rule 7A (House of Delegates Resolution No. 5)

Whereas, ORCP 7A requires a “true copy” of a summons and complaint be served;

Whereas, ORCP 7A further requires the copy to be served also contain a certificate by the Attorney of record or a party that the copy served is “exact and complete”;

Whereas, The use of the certificate is archaic and unnecessary when an attorney is involved in the service of the complaint as modern duplication machines are reliable and a rule requiring service of a “true copy” is sufficient. The use of the attorney certificate only leads to contention or disputes when it is omitted; now, therefore, be it

Resolved, That the House of Delegates of the State Bar of Oregon requests the UTCR Committee to eliminate the requirement of the certificate when the plaintiff is represented by an attorney licensed to practice in Oregon.

Background

ORCP 7A contains the requirement that all are familiar with. It requires the attorney certify that the copies of the summons and complaint to be served are “exact and complete”. Due to the inconvenience of this requirement, it has become practice in some counties to have this certificate completed by a paralegal or notary. Where the plaintiff is represented by an attorney, the rule that a “true copy” be served is sufficient to require the documents served are exact and complete. The rule may be left as originally created for unrepresented parties.

Presenter: Danny Lang, President Douglas County Bar Association

17. Encourage the Uniform Trial Court Rules Committee to Generate Form Pleadings (House of Delegates Resolution No. 6)

Whereas, The use of forms created by the UTCR Committee has become commonplace;

Whereas, The number of persons not represented by counsel is increasing dramatically;

Whereas, The use of form pleadings has been used satisfactorily in other states to accommodate busy attorneys and persons representing themselves; now, therefore, be it

Resolved, That the House of Delegates of the State Bar of Oregon requests the UTCR Committee to generate form pleadings for Complaints and Answers, which can be used for typical cases, which set forth the basic allegations of fact required to state a claim for relief or defense.

Background

The elements of a cause action are well known to Courts and attorneys and have been set forth in the Uniform Civil Jury Instructions. These elements can be used to create form complaints and answers.

For example, ORS 105.124 has a rudimentary form of a complaint for eviction. Many variations on this form have been created. The UTCR Committee should create a complete form,

which can be recommended for use. Likewise, an answer to the FED complaint is also set forth in 105.137. This should be generated on an approved form. Sample complaints for Breach of Contract, Personal Injury, Fraud and other routine causes of action should be created. Similarly, a form answer to complaint should be developed which has blanks that can be filled in describing the paragraphs, which are admitted, denied, and blanks left for Affirmative Defenses.

Presenter: Danny Lang, President Douglas County Bar Association

18. Support of Adequate Funding for Legal Services for Low-Income Oregonians (House of Delegates Resolution No. 7)

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, Legal services is unavailable for 80% of eligible clients needing help;

Whereas, Federal funding for Oregon's civil legal services programs is substantially less than it was in 1980 and there have been severe restrictions imposed on the work that programs, receiving LSC funding, may undertake on behalf of their clients;

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 of 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 and of a 50% contribution rate by all lawyers.

(4) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program.

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

Presenter: Sid Lezak, House of Delegates Region 5, on behalf of the Campaign for Equal Justice

19. Amend MCLE Rules to Delete "Elimination of Bias" Requirement (House of Delegates Resolution No. 8)

Whereas, The Oregon State Bar Minimum Continuing Legal Education Rules and Regulations currently require each active member of the Oregon State Bar to complete three credit hours for each reporting period in programs accredited for elimination of bias. MCLE Rule 3.2 (b), see also MCLE Rules 3.3 and 5.5(b) and (c), and Regulations 3.300, 5.500, and 6.100.

Whereas, MCLE Rule 3.2(b) currently reads:

"3.2 Active Members.

"(a) Minimum Hours. Except as provided in Rules 3.3 and 3.4, all active members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules.

"(b) Professional Responsibility. At least nine of the required hours shall be in subjects relating to professional responsibility. Five hours must be in programs accredited for ethics pursuant to Rule 5.5(a); one hour must be on the subject of a lawyer's statutory duty to report child abuse; and three hours must be in programs accredited for elimination of bias pursuant to Rule 5.5(b)."

Whereas, MCLE Rule 3.3 currently reads:

"3.3 Reinstatements and New Admittees. An active member whose reporting period is established in Rule 3.8(d)(2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement, admission as an active member, or resumption of the practice of law. Two of the 15 credit hours shall be devoted to ethics (including one in child abuse reporting) and one shall be devoted to elimination of bias. New admittees must also comply with Rule 3.7. Thereafter the requirement in Rule 3.2(a) shall apply."

Whereas, MCLE Rule 5.5 currently reads:

"5.5 Ethics and Elimination of Bias

"(a) In order to be accredited as an activity in legal ethics under Rule 3.2(b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism.

"(b) In order to be accredited as an activity pertaining to the elimination of bias under Rule 3.2(b), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

"(c) Portions of activities may be accredited for purposes of satisfying the ethics and elimination of bias requirements of Rule 3.2, if the applicable content of the activity is clearly defined."

Whereas, The elimination of bias requirements currently required under the MCLE Rules and Regulations are not supported or viewed as necessary or desirable by a majority of the active members of the Oregon State Bar.

Whereas, The elimination of bias requirements currently required under the MCLE Rules and Regulations do not

necessarily have any direct relationship to the practice of law, the competency or ethical integrity of the legal profession, or protection of the public; now, therefore, be it

Resolved, That the MCLE Rules and Regulations be amended to delete any and all requirements that an active member must complete or report any credit hours on the subject of elimination of bias. Nothing in this Resolution shall preclude adoption of provisions in the MCLE Rules and Regulations that allow for accreditation of programs on the subject of elimination of bias as ethics, general, or practical skills credits, provided that an active member is not required to complete and report any credit hours on the subject of elimination of bias in order to satisfy the member's Minimum Continuing Legal Education requirements;

Resolved, That the Board of Governors takes all steps, which may reasonably be required to implement this Resolution, effective for all member reporting periods closing after December 31, 2005.

[Presenter's] estimated budgetary impact: None, other than the normal administrative cost of implementing the change to the MCLE Rules.

Presenter: Gary M. Georgeff, House of Delegates, Region 3

Note by Board of Governors

ORS 9.139(3) provides, in part, as follows:

The power of the house of delegates to direct, modify or rescind an action or decision of the board of governors under subsection (1) of this section does not include the power:

* * *

(c) To direct, modify or rescind any other action or decision by the board that is subject to control, approval or review by the Supreme Court.

The Oregon State Bar Minimum Continuing Education Rules, Rule 10 provides as follows:

Amendment

These Rules may be amended by the BOG subject to approval by the Supreme Court. Amendments may be proposed by the MCLE Committee, the executive director, or any active member. Proposed amendments shall be submitted and considered in compliance with any regulations adopted by the BOG.

20. Put Question of Amending MCLE Rules to Delete "Elimination of Bias" Requirement to a Vote of the Membership (House of Delegates Resolution No. 9)

Whereas, The Oregon State Bar Minimum Continuing Legal Education Rules and Regulations currently require each active member of the Oregon State Bar to complete three credit hours for each reporting period in programs accredited for elimination of bias. MCLE Rule 3.2 (b), see also MCLE Rules 3.3 and 5.5 (b) and (c), and Regulations 3.300, 5.500, and 6.100.

Whereas, MCLE Rule 3.2 (b) currently reads:

"3.2 Active Members

"(a) Minimum hours except as provided in Rules 3.3 and 3.4, all active members shall complete a minimum of 45 credit hours of accredited CLE activity every three years as provided in these Rules.

"(b) Professional Responsibility. At least nine of the required hours shall be in subjects relating to professional responsibility. Five hours must be in programs accredited for ethics pursuant to Rule 5.5 (a); one hour must be on the subject of a lawyer's statutory duty to report child abuse; and three hours must be in programs accredited for elimination of bias pursuant to Rule 5.5 (b)."

Whereas, MCLE Rule 3.3 currently reads:

"3.3 Reinstatements and New Admittees.

An active member whose reporting period is established in Rule 3.8 (d) (2) shall complete 15 credit hours of accredited CLE activity in the first reporting period after reinstatement, admission as an active member, or resumption of the practice of law. Two of the 15 credit hours shall be devoted to ethics (including one in child abuse reporting) and one shall be devoted to elimination of bias. New admittees must also comply with Rule 3.7. Thereafter the requirement in Rule 3.2 (a) shall apply."

Whereas, MCLE Rule 5.5 currently reads:

"5.5 Ethics and Elimination of Bias.

"(a) In order to be accredited as an activity in legal ethics under Rule 3.2 (b), an activity shall be devoted to the study of judicial or legal ethics or professionalism, and shall include discussion of applicable judicial conduct codes, disciplinary rules, or statements of professionalism.

"(b) In order to be accredited as an activity pertaining to the elimination of bias under Rule 3.2(b), an activity shall be directly related to the practice of law and designed to educate attorneys to identify and eliminate from the legal profession and from the practice of law, biases against persons because of race, gender, economic status, creed, color, religion, national origin, disability, age or sexual orientation.

"(c) Portions of activities may be accredited for purposes of satisfying the ethics and elimination of bias requirements of Rule 3.2, if the applicable content of the activity is clearly defined."

Whereas, The question has been raised as to whether the elimination of bias requirements currently required under the MCLE Rules are supported by a majority of the active members of the Oregon State Bar; now, therefore, be it

Resolved, That the following question should be put to a vote of the membership by mail ballot, which may include email balloting for those members who have email:

"Should the Oregon State Bar MCLE Rules and Regulations be amended to delete any and all requirements that an active member must complete or report any credit hours on the subject of elimination of bias?";

Resolved, That the Board of Governors shall take all steps, which may reasonably be required in order to conclude the vote of the membership no later than April 30, 2006;

Resolved, That if the majority vote of the membership is in favor of deleting the elimination of bias requirement, that the Board of Governors take all steps, which may reasonably be required to implement the changes to the MCLE Rules and Regulations, effective for all reporting periods closing after December 31, 2006.

[Presenter's] estimated budgetary impact: None, other than the normal administrative cost of submitting the question to a vote

of the membership and the normal cost of implementing the change to the MCLE Rules if the membership votes in favor of changing the rules. The vote may be conducted concurrently with the next House of Delegates election, so the additional cost to the Bar should be no more than the cost of printing paper ballots for those members who do not use email. The member submitting this resolution has been advised that the Bar currently has approximately 12,000 members and that about thirty percent do not use email. The cost of printing a paper ballot is estimated at twenty-five cents per ballot. The additional cost of conducting the vote, therefore, is estimated at \$1,000 or less.

Presenter: Gary M. Georgeff, House of Delegates, Region 3



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