

Oregon State Bar
2007 House of Delegates Meeting

Salishan Resort
7760 Highway 101
Gleneden Beach, OR 97388
Saturday, September 29, 2007
10:00 a.m.



Dear Oregon State Bar Member:

Enclosed is your agenda for the 2007 Oregon State Bar House of Delegates Meeting, which will begin at 10:00 a.m. on Saturday, September 29, 2007, at Salishan Resort, 7760 Highway 101 North, Gleneden Beach, Oregon.

Although only delegates may vote on resolutions, all bar members are welcome and are encouraged to participate in the discussion and debate of the 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:

- 2008 Membership Fee Resolution
- Mileage Reimbursement for House of Delegates members
- Amendment to ORS 12.020(1)
- Record of House of Delegates meeting to be made by video/audio recording
- Support of adequate funding for legal services for low-income Oregonians
- Support of current alcohol policy

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

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

I look forward to seeing you at Salishan!

A handwritten signature in black ink, appearing to read "Albert A. Menashe". The signature is fluid and cursive.

Albert A. Menashe
OSB President

OREGON STATE BAR
2007 House of Delegates Meeting
Salishan Resort
7760 Highway 101
Gleneden Beach, OR 97388
10:00 a.m., Saturday, September 29, 2007
Presiding Officer: Albert A. Menashe, OSB President

Agenda

1. Call to Order
Albert A. Menashe, OSB President
2. Overview of Parliamentary Procedure
Sylvia Stevens, General Counsel
3. Report of the President
Albert A. Menashe, OSB President
4. Adoption of Final Meeting Agenda
Albert A. Menashe, OSB President
5. Comments from the Chief Justice of the Oregon Supreme Court
Paul J. DeMuniz, Chief Justice, Oregon Supreme Court
6. Report of the Board of Governors Budget and Finance Committee
S. Ward Greene, Chair, BOG Budget and Finance Committee

Resolutions with Financial Impact

7. 2008 Membership Fee Resolution (Board of Governors Resolution No. 1).....Page 3
S. Ward Greene, Chair, BOG Budget and Finance Committee
8. Mileage Reimbursement for HOD Members (Board of Governors Resolution No. 2).....Page 3
Presenter: Rick Yugler, OSB President-elect

Resolutions with Legislative Impact

9. Amend ORS 12.020(1) (House of Delegates Resolution No. 1).....Page 3
Presenter: Derek D. Simmon, President, Douglas County Bar Association

Other Resolutions

10. In Memoriam (Board of Governors Resolution No. 3)..... Page 4
Presenter: Marva Fabien, Vice-president, Board of Governors
11. Record of Proceedings (Board of Governors Resolution No. 4)..... Page 4
Presenter: Tim Gerking, Chair, BOG Policy and Governance Committee
12. Support Adequate Funding for Legal Services for Low-Income Oregonians (House of Delegates Resolution No. 2) Page 5
Presenter: Dennis Karnopp, Region 1, House of Delegates
13. Continue the Current Policy Prohibiting the Use of Bar Funds for the Purchase of Alcoholic Beverages (House of Delegates Resolution No. 3) Page 6
Presenter: Donna G. Goldian, Chair, Sole and Small Firm Practitioners

Excluded Resolutions

14. Restore Decision to Ban Military Advertisement in OSB Publications (House of Delegates Resolution No. 4) Page 6
Presenter: Robert C. Joondeph, Region 5, House of Delegates

Resolutions with Financial impact

7. 2008 Membership Fee Resolution (Board of Governors Resolution No. 1)

Resolved, that the 2008 Oregon State Bar membership fees and assessments are as follows:

	If paid by due date	Paid after due date but by last business day in February 2008	Paid after the last business day in February 2008
Regular active members admitted in any jurisdiction before 1/1/06	\$482.00	\$532.00	\$582.00
Active members admitted in any jurisdiction on or after 1/1/06	\$403.00	\$453.00	\$503.00
Inactive members	\$110.00	\$135.00	\$160.00
Active Emeritus/Active Pro Bono members	\$115.00	\$115.00	\$115.00

Notes:

1. Membership fees are apportioned for members admitted in 2008; the Affirmative Action and Client Security Fund assessments are *not* apportioned.
2. Members admitted to practice law in Oregon prior to January 1, 1958 are exempt from the payment of all membership fees and assessments.

Background

This resolution does not increase the basic membership fees over the 2007 amounts. Rather, it raises the amount by which the membership fee is increased if not paid by the due date. The increased fee structure was established in 1992 to encourage members to pay promptly and to defray the additional administrative costs associated with sending the notices required by ORS 9.191. The amount of the increase has not changed since 1992, although the Bar's administrative costs have increased steadily during that period. Approximately 400 members fail to pay their dues until shortly before the suspension date established in ORS 9.191, which is approximately five months after the due date. Increasing the fees paid after the due date will help cover the bar's increased administrative costs for sending required notices and processing late payments, and the two-step structure is intended to act as an incentive to more timely payment.

*Presenter: S. Ward Greene, Chair
Board of Governors Budget and Finance Committee*

8. Mileage Reimbursement for HOD Members (Board of Governors Resolution No. 2)

Whereas, the House of Delegates (HOD) is an important body within the governance structure of the Oregon State Bar;

Whereas, the HOD is designed to represent bar members throughout the state;

Whereas, the expense of attending the HOD annual or special meetings may be a deterrent to participation; therefore, be it

Resolved, That the HOD direct the Board of Governors (BOG) to devise a policy that would reimburse all lawyer delegates who attend HOD annual or special meetings for roundtrip mileage of 400 miles or less at the allowable IRS rate. The BOG may establish deadlines and other details of the policy.

Background

A similar resolution was presented at the 2006 HOD meeting. Even though it did not pass, the Board of Governors' Member Services Committee raised the issue when it discussed volunteerism earlier this year. The committee revisited the idea and is presenting a revised resolution for the HOD's consideration. The previous resolution called for round-trip reimbursement up to 1000 miles. This one is up to 400 miles round-trip.

Financial

It is estimated that the cost based upon 100% attendance would vary from about \$27,000 if the meeting were held at the coast; \$36,000 if the meeting were held near Bend; and \$15,000 if the meeting could be accommodated at the new bar center in Tigard.

Presenter: Rick Yugler, OSB President-elect

Resolutions with Legislative Impact

9. Amend ORS 12.020(1) (House of Delegates Resolution No. 1)

Whereas, ORS 12.020(1) and ORS 12.020(2) provide that, in Oregon, for an action to be deemed commenced on the date the Complaint is filed, the Summons and Complaint must be served within 60 days of filing the Complaint;

Whereas, the brevity of the 60-day period gives rise to unnecessary procedural skirmishes and costs;

Whereas, an amendment to ORS 12.020 would bring Oregon into conformance with the Federal Rules of Civil Procedure while greatly reducing service timing issues, therefore be it

Resolved, That, the House of Delegates recommend and encourage the appropriate committees to amend ORS 12.020(1) to provide that an action shall be deemed commenced on the date the Complaint is filed or,

alternatively, to require that Summons and Complaint be served within a period of 120 days after filing the Complaint.

*Presenter: Derek D. Simmon, President
Douglas County Bar Association*

Background

The February 2006 Issue (No. 97) of the Professional Liability Fund publication “**IN BRIEF**” recites that “filing and service mistakes form a large percentage of the claims handled each year by the Professional Liability Fund.” Issues generally arise from the requirement in ORS 12.020(1) and ORS 12.020(2) that, for an action to be deemed commenced on the date the Complaint is filed, the Summons and Complaint must be served within 60 days of filing the Complaint. Many of these issues (and associated costs borne by both Plaintiffs and Defendants, via cost bill) could be avoided by separating service from the statute of limitations or by allowing additional time for service.

By providing that an action is deemed commenced upon the **filing** of the Complaint (rather than upon **service** of the Complaint) many claims handled each year by the PLF could be avoided. Alternatively, by extending the service period to 120 days, Oregon would conform to the timeline of the Federal Rules of Civil Procedure. In either case, the problem would be alleviated.

Other Resolutions

10. In Memoriam (Board of Governors Resolution No. 3)

*Warren H. Albright
Scott W. Bennett
W. Scott Bridges
Keith Burns
Mildred J. Carmack
Hugh B. Collins
Donald H. Coulter
Keith A. Cushing
Theodore W. Delooze
Russell M. Dickson
Thomas C. Donaca
Kathryn E. Eaton
G. Bernhard Fedde
James F. Fel
The Honorable Clifford L. Freeman
S. E. Gjerde
Susan Y. Hager
Omar W. Halvorson
Carolyn V. Hansen
Harold C. Hart
Herman P. Hendershott
Marshall C. Hjelte
Robert R. Howe
Mark K. Irick
Frederick A. Jahnke
Margy J. Lampkin*

*Garth S. Ledwidge
Mary Porter Leistner
The Honorable Harlow F. Lenon
The Honorable Howard S. Lichtig
R. William Linden
William Timothy Lyons
Doreen Stamm Margolin
Jeannette Thatcher Marshall
Barney J. Mason
Rodney R. Mills
Malcolm J. Montague
Laurie Ann Mounts
Michael T. Muniz
The Honorable Albert R. Musick
James A. Pearson
A. Duane Pinkerton
Lois J. Portmoy
Thomas J. Reeder
Raymond R. Reif
Paul Robben
Edward A. Rosenberg
John P. Salisbury
Harold M. Sliger
Gordon W. Sloan
Justin M. Smith
Nancy J. Snow
Caroline P. Stoel
Edwin N. Storz
Constance E. Sullivan
Grant E. Tanner
Jonathan H. Tressler
Robert R. Trethewy
William E. Van Atta
Shaun M. Wardinsky
Joseph Wetzell
Grace K. Williams
Thomas D. Wood*

*Presenter: Marva Fabien, Vice-president
Board of Governors*

11. Record of Proceedings (Board of Governors Resolution No. 4)

Whereas, HOD Rule 4.1 requires that the proceedings be recorded stenographically;

Whereas, the transcript that is made from the HOD meeting sometimes has blank spots because the reporter is unable to identify or hear the speaker;

Whereas, there is no audio recording or video recording to review to fill in the gaps;

Whereas, the cost of video recording the meeting would be a more cost-effective process; therefore be it

Resolved, That House of Delegates Rule 4.1 be changed as follows:

House of Delegates Rule 4 – Record of Proceedings

4.1 Proceedings of the House of Delegates shall be recorded. Meeting recordings shall be maintained at the OSB Center.

*Presenter: Timothy C. Gerking, Chair
Board of Governors Policy and Governance Committee*

Background

The Court Reporters Association has recorded the House of Delegates meeting each year. The bar, in exchange, has given them a donation of \$700 and has reimbursed their expenses for travel to the meeting. The recording of the HOD meeting is not easy as people often do not identify themselves and speakers sometimes either do not go to the microphone or do not speak clearly. Without any audio or video recording, it is impossible to go back and try to figure out who and what was said. With a video recording, a permanent record of the proceedings will be maintained. With both video and audio, it should be clearer who spoke and what they said. If a person wants a portion of the recording, it can be provided either in whole or in part digitally. In addition, it can be placed on the website for bar members to watch if they were unable to attend the meeting. As a recording, it will also be available immediately after the HOD meeting when most of the questions arise. Finally, as an historical record, it will be really interesting to watch 20 years from now.

The HOD was polled in February to see who might be in favor of the resolution. Because of the overwhelming support, the board decided to try a video recording for this HOD meeting.

Financial

The amount for the current process is about \$1000 with the video about \$500. However, this is more an issue of a complete record that is digitally available right after the meeting, rather than a financial savings.

12. Support Adequate Funding for Legal Services for Low-Income Oregonians (House of Delegates Resolution No. 2)

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

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

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

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

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, therefore, be it

Resolved, That the Oregon State Bar strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for civil legal services programs for low-income Oregonians.

Request that Congress and the President of the United States make a genuine commitment to equal justice by adequately funding the Legal Services Corporation.

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.

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

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

*Presenter: Dennis Karnopp
Region 1, House of Delegates*

Background

"The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice." Section 1.2 of the Oregon State Bar Bylaws. One of the four main functions of the Bar is to be, "A provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all * * *." *Id.*

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolution No. 14 in 2006, 7 in 2005, BOG Resolution No. 7 in 2002, BOG Resolution No. 6 in 1999, BOG Resolution No. 3 in 1997, and Delegate Resolution No. 11 in 1996). The 2006 resolution is identical to the one being proposed here.

The legal services organizations in Oregon were established by the State and local bar associations to increase access for low-income clients. The majority of the boards of the legal aid programs are appointed by State and local bar associations. The Oregon State Bar operates the Legal Services Program pursuant to ORS 9.572 to distribute filing fees for civil legal services and provide methods for evaluating the legal services programs. Finally, the Bar, the Oregon Law Foundation,

and the Campaign for Equal Justice, have jointly operated the Access to Justice Endowment Fund.

In a comprehensive assessment of legal needs study, which was commissioned by the Oregon State Bar, the Office of the Governor, and the Oregon Judicial Department found that equal access to justice plays an important role in the perception of fairness of the justice system. *The State of Access to Justice in Oregon* (2000). Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. The study also concluded that individuals who have access to a legal aid lawyer have a much-improved view of the legal system compared with those who do not have such access. A fall 2005 study by the national Legal Services Corporation confirms that in Oregon we are continuing to meet less than 20% of the legal needs of low-income Oregonians. Legal Services Corporation, "Documenting the Justice Gap in America: The unmet Civil Legal Needs of the Low-Income Americans" (Fall 2005). Although we have made great strides in increasing lawyer contributions to legal aid, there remains a significant deficit in providing access to justice to low-income Oregonians.

Currently, only about 20% of lawyers contribute to the Campaign for Equal Justice. Last year, about 50% of HOD members contributed, and 100% of the Board of Governors. The Campaign supports statewide legal aid programs in Oregon which have offices in 16 different Oregon communities. The offices focus on the most critical areas of need for low-income clients. About 40% of legal aid's cases involve family law issues relating to domestic violence.

13. Continue the Current Policy Prohibiting the Use of Bar Funds for the Purchase of Alcoholic Beverages (House of Delegates Resolution No. 3)

Whereas, the OSB Bylaws prohibit the use of bar funds for the purchase of alcoholic beverages, a policy that has worked for years and is easy to understand and administer; and,

Whereas, the Board of Governors is considering a change to that policy to allow the use of bar funds to pay for alcohol at official bar events, therefore, be it

Resolved, That the Board of Governors should continue the current policy prohibiting the use of bar funds for the purchase of alcoholic beverages.

*Presenter: Donna G. Goldian, Chair
Sole and Small Firm Practitioners*

Background

OSB bylaw subsection 7.501(e) prohibits the use of bar funds, including section funds, for the purchase of alcoholic beverages.

"Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. Bar funds must not be used to pay the cost of alcoholic beverages."

The Board of Governors is considering a change to the policy, so that "Bar funds may be used to pay the cost of alcoholic beverages only if there is an official bar event that is sponsored by a bar entity." We believe that such a change is ill-advised.

First, it is a waste of member dues to provide alcoholic beverages at bar functions. Each attorney is required to pay bar dues and the bar has a fiduciary obligation to its members with regard to those mandatory fees. Buying alcohol could widen the gap between bar members and those who are perceived to be running the bar.

Also, members are concerned about the liability of the OSB if an accident occurs after a bar function for which the bar provided alcohol. This is a developing area of the law and we delude ourselves if we think that no one will drink too much at a bar function or if we think that plaintiff's attorneys will refrain from suing the bar and potentially the individual members of the Board of Governors. Any change in policy will open us up to unlimited liability and increased insurance premiums to protect the HOD, BOG, staff or others if the current alcohol policy is changed.

Furthermore, the bar is a diverse organization with many divergent views about the use of alcoholic beverages. This would be a slap in the face to those who do not favor the use of intoxicants. Since bar membership is mandatory with mandatory fees, we need to respect those of our members who oppose the use of alcohol on moral or religious grounds. Members should not have to forego their religious or moral precepts in order to participate in bar activities;

There also is a concern that decision-making is compromised when intoxicating beverages are provided and member confidence is undermined when there is perception that executive decisions are alcohol fueled.

Finally, changing the policy would be inconsistent with the mission of the bar. The bar currently funds and encourages treatment programs for impaired attorneys. We should support the continued sobriety of our members by not providing alcohol at official bar programs. We need to support our colleagues in recovery.

Excluded Resolutions

The Board of Governors has excluded the following resolution on the ground that it is not within the authority of the House of Delegates.

At the 2006 HOD meeting, the HOD voted down a resolution that would have required the OSB to allow military recruitment advertising notwithstanding the anti-discrimination policy articulated in OSB Bylaw 10. Subsequently, a membership petition requested that the Board of Governors put to a membership vote the question of whether the Bar should accept military advertising. The membership vote approved military advertising; following the membership vote, the BOG amended OSB Bylaw 10 to remove the language in Bylaw 10 that applied the anti-discrimination policy to OSB publications.

The respective authority of the HOD and the OSB membership on bar governance issues is established by statute. No court case has ever analyzed the statutory scheme or otherwise decided that the membership has primacy over the HOD or vice versa. However, the language of the statutory scheme and OSB history offers guidance.

ORS 9.025 states that the Oregon State Bar “shall be governed by a board of governors...,” but the Board’s governance power is not exclusive. ORS 9.139(1) authorizes the House of Delegates, to “modify or rescind an action or decision of the board of governors” or “direct the board of governors as to future action.”¹ The Board of Governors is bound by a properly made decision of the HOD. ORS 9.139(2).

At the same time, ORS 9.148(4) provides that “active members of the state bar, by written petition ..., may request that the board of governors submit to a vote of the members any question or measure.” The Board of Governors must comply with the request if the proposed question or measure “is appropriate for a vote of the members,” but the statute does not indicate that the board is bound by the membership vote.

Prior to the creation of the HOD in 1995, governance decisions were made by the membership as a whole at the annual “town hall” meeting under the authority of *former* ORS 9.130. Under the pre-1995 statutory scheme, the vote of the attendees at the town hall meeting would bind the Board of Governors on the issue unless the issue was referred to a vote of the full membership at the request of the board or by member petition. Unstated, but implicit, in the referral process was that the membership vote would be binding on the Board of Governors. *Former* ORS 9.130 was also silent on the binding effect of issues brought to a membership vote by member initiative. The only logical interpretation of *former* ORS 9.130, however, is that membership votes were meant to be binding so long as they didn’t exceed the limitations of membership’s authority.²

¹ The HOD’s authority does not extend to invalidating payments previously made by the board; to directing, modifying or rescinding assessments for the PLF established by the board; or to actions or decisions by the board that are subject to the control or approval of the Supreme Court. ORS 9.139(3).

² Essentially the same as the current authority of the HOD; see note 1.

The question of whether to create a House of Delegates was itself submitted by the Board to the membership by a mail ballot in July 1992 pursuant to *former* ORS 9.130(2). There was considerable member discussion about the pros and cons of eliminating the town hall structure and replacing it with the HOD. From a review of the bar’s records relating to the creation of the HOD, it is apparent that the creation of the HOD was meant only to replace the town hall, and not to eliminate the members’ initiative power.

Because an all-member vote could override a town hall vote before the creation of the HOD, it follows that an all-member vote now can override a HOD decision and the subsequent membership vote is what binds the BOG.

The HOD may elect to include the excluded resolution on the agenda; the BOG is satisfied, however, that an affirmative vote on the resolution will be a nullity, as the HOD lacks the authority to override a decision of the membership.

14. Restore Decision to Ban Military Advertisement in OSB Publications (House of Delegates Resolution No. 4)

Whereas, ORS 9.139(1) states that:

The Delegates at a meeting of the House of Delegates may, by a vote of the majority of the Delegates attending the meeting, do either of the following:

- (a) Modify or rescind an action or decision of the Board of Governors.
- (b) Direct the Board of Governors as to future action.

Whereas, ORS 9.139(2) states that:

The Board of Governors is bound by a decision of the House of Delegates made in the manner prescribed by subsection (1) of this section.

Whereas, the House of Delegates, at its 2006 meeting, voted to maintain the OSB’s policy, pursuant to Article 10 of the OSB Bylaws, to ban military advertisement in bar publications.

Whereas, the Board of Governors, by action at its April 20-21, 2007, meeting, voted to amend Bylaws 10 and 11.2 to allow military ads in bar publications, in direct contradiction of the decision of the House of Delegates, therefore, be it

Resolved, That, the House of Delegates hereby rescinds the action of the Board of Governors and restores its prior decision to maintain the ban on military advertisement in OSB publications.

*Present: Robert C. Joondeph
Region 5, House of Delegates Member*

Whereas, Oregon Revised Statutes 9.080(1) charges the Board of Governors to “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice”; and

Whereas, the Oregon State Bar’s purposes include promoting the application of the knowledge and experience of the profession to the public good; and

Whereas, four initiative petitions have been filed which if enacted in November 2008 could adversely affect the administration of justice; and

Whereas, initiative petition #2 would prohibit an appointed judge from being considered an incumbent in the first election following the judge’s appointment and would prohibit incumbent designation on the ballot; and

Whereas, the designation of office-holding judges as incumbents is important, objective information for voters to possess in deciding for whom to vote; and

Whereas, initiative petitions #51 and #55 would impose arbitrary limits on contingent fee agreements between attorneys and their clients; and

Whereas, contingent fee agreements between attorneys and clients have been well regulated by the free market, have proven effective in encouraging litigation of cases with merit, and have provided the public with access to justice; and

Whereas, initiative petition #53 would establish a mechanism for imposing sanctions against attorneys and parties for frivolous use of the legal system; and

Whereas, Oregon Rule of Civil Procedure 17 was drafted by the Council on Court Procedures, a balanced group of expert litigators and judges, and already provides full authority for courts to sanction frivolous use of the legal system; now, therefore be it

Resolved, That:

1. The Oregon State Bar opposes placement of initiative petitions #2, 51, 53 and 55 on the November 2008 ballot; and
2. All members of the Oregon State Bar are urged to communicate to their clients, family, staff members and others the harmful effect that these initiatives would have on informed choices in judicial elections, the public’s access to justice, the operation of the free market to regulate contracts, and the orderly administration of justice.