

Oregon State Bar
2008 House of Delegates Meeting

Sunriver Resort

17600 Center Drive

Sunriver, OR 97707

Saturday, September 13, 2008

10:00 a.m.

Oregon State Bar

Dear Oregon State Bar Member:

Enclosed is your agenda for the 2008 Oregon State Bar House of Delegates Meeting, which will begin at 10:00 a.m. on Saturday, September 13, 2008, at Sunriver Resort, Sunriver, Oregon. Please note the following:

1. HOD members are entitled to reimbursement for roundtrip mileage expense for travel to and from the HOD meeting of 400 miles or less at the allowable IRS rate. An expense reimbursement form must be submitted within 30 days of the meeting.
2. The HOD meeting will be preceded by the bar's Futures Conference on Friday, September 12, 2008 at the Riverhouse in Bend, Oregon. The conference will have a vendor trade show, evening reception, and features keynote speakers Glen Hiemstra and Professor Ana Marie Merico. It includes sessions on changes in law practice, bar demographics and diversity, and technology. Futures Conference registration is open to all bar members.
3. Only delegates may vote on resolutions, but 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.
4. Matters that will be considered by the House of Delegates include:
 - New court rule for provision of legal services following a major disaster
 - Proposal for alternate HOD delegates
 - Adoption of ORPC 1.6(b)(7), an additional exception to the duty of confidentiality
 - Promotion of sustainability by encouraging telephonic and video court appearances
 - Consideration of OSB paralegal certification
 - Support for fiscal impact statements on sentencing
 - Creation of House of Delegates Executive Committee
 - Amending HOD quorum requirement
 - Fair compensation for public defense lawyers
 - Adequate funding of legal services (two resolutions)

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 Sunriver!



Richard S. Yugler
OSB President

OREGON STATE BAR
2008 House of Delegates Meeting
Sunriver Resort
17600 Center Drive
Sunriver, OR 97707
10:00 a.m., Saturday, September 13, 2008
Presiding Officer: Richard S. Yugler, OSB President

Agenda

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<i>James N. Westwood,
Stoel Rives LLP</i></p> <p>3. Report of the President
<i>Richard S. Yugler,
OSB President</i></p> <p>4. Adoption of Final Meeting Agenda
<i>Richard S. Yugler,
OSB President</i></p> <p>5. Comments from the Chief Justice of the Oregon Supreme Court
<i>Paul J. DeMuniz, Chief Justice,
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7. Notice of 2009 Membership Fees

The 2009 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 2009	Paid after the last business day in February 2009
Regular active members admitted in any jurisdiction before 1/1/07	\$482.00	\$532.00	\$582.00
Active members admitted in any jurisdiction on or after 1/1/07	\$403.00	\$445.00	\$467.00
Inactive members	\$110.00	\$135.00	\$160.00
Active Emeritus/Active Pro Bono members	\$115.00	\$115.00	\$115.00

*Presenter: S. Ward Greene
Region 5, Board of Governors*

Other Resolutions

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

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 to the Bar since the 2007 House of Delegates Meeting.

*Kenneth M. Abraham
Clemens E. Ady
Deane S. Bennett
Bryan Kent Blackhurst
Terrell G. Brixius
John R. Brooke
Carl M. Brophy
Virgil Colombo
Lewis Bryan Coover
Craig C. Coyner
D. G. Jason Davis
Carl M. Davis
John P. Dellett
Thomas L. Dempsey
Frank O. Diarmid
The Honorable Jeff D. Dorroh
F. Gene Farmer
The Honorable Patrick D. Gilroy*

*Glenda L. Green
Norman N. Griffith
Mark Brian Hansen
Tommy Hawk
Anthony N. Hazapis
Dennis H. Henninger
The Honorable Polly S. Higdon
Charles E. Hodges
Linda Johannsen
Gary G. Jones
Jack L. Kennedy
Jerry F. Kobelin
J. Pierre Kolisch
Robert D. Laird
The Honorable Berkeley Lent
Dennis J. Lindsay
William F. Lubersky
John L. Luvaas
Bert McCoy
J. W. McCracken
The Honorable Kathleen B. Nachtigal
William H. Nollkamper
Donald L. Paillette
Clifford W. Powers
Pamela A. Raposa
Michael Ratliff
Kenneth D. Renner
Vernon L. Richards
Daniel A. Ritter
Sandra J. Saunders
Colonel Samuel E. Sax
Willard C. Schwenn
Jerome B. Shank
James W. Shapley
Dennis W. Skarstad
Robert B. Smith
Dana R. Taylor
Scott K. Titzler
Donald R. Wilson
John F. Weisser*

*Presenter: Gerry Gaydos
President-elect, Board of Governors*

9. Provision of Legal Services Following Determination of Major Disaster (Board of Governors Resolution No. 2)

Whereas, Hurricanes Katrina and Rita in 2005 demonstrated clearly how a major disaster can cause not only catastrophic physical damage, but can also cripple the legal system of the affected area; and

Whereas, following such disasters there may be the need for lawyers from other jurisdictions to provide pro bono legal services in the affected jurisdictions and for lawyers from affected jurisdictions to provide legal services to their clients, on a temporary basis, from an office outside their home jurisdiction; and

Whereas, in February 2007 the ABA promulgated a Model Court Rule on the provision of Legal Services Following Determination of Major Disaster with a recommendation that it be adopted in

every jurisdiction; and

Whereas, the adoption of such a rule will serve the public interest in the event of a catastrophic event by facilitating the continuation of legal services; now therefore be it

Resolved, That the Oregon Supreme Court is encouraged to adopt the following rule:

**Provision of Legal Services
Following Determination of Major Disaster**

(a) *Declaration of Emergency*. Solely for purposes of this Rule, this Court shall declare an emergency when a natural or other major disaster substantially disrupts the justice system in Oregon or in another jurisdiction (after the highest court of that jurisdiction has made such a determination), as a result of which:

- (1) Oregon residents or displaced persons from another jurisdiction residing in Oregon are in need of legal services that cannot be provided by Oregon lawyers alone; or
- (2) lawyers licensed in the other jurisdiction are displaced and unable to practice law in the other jurisdiction.

(b) *Temporary Pro Bono Practice in Oregon Following Major Disaster*. Following the declaration of an emergency under paragraph (a)(1) of this Rule, a lawyer authorized to practice law in another United States jurisdiction, and not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Oregon on a temporary basis to persons in need of legal services as a result of the disaster, on a pro bono basis without compensation, expectation of compensation or other direct or indirect pecuniary gain to the lawyer, and performed under the auspices of an established not-for-profit bar association, pro bono program or legal services program or through organization(s) specifically designated by this Court.

(c) *Temporary Practice in Oregon by Displaced Lawyers from Another Jurisdiction*. Following the declaration of emergency under paragraph (a)(2) of this Rule, a lawyer who is authorized to practice law and whose principal office is in that affected jurisdiction, and who is not disbarred, suspended from practice or otherwise restricted from practice in any jurisdiction, may provide legal services in Oregon on a temporary basis to any client provided the legal services arise out of or are reasonably related to the lawyer's practice of law in the other jurisdiction.

(d) *Duration of Authority for Temporary Practice*. The authority to practice law in Oregon granted by paragraph (b) of this Rule shall end when this Court determines that the disruption of the

justice system in this or the other jurisdiction has ended, after which lawyers practicing under such authority shall not accept any new clients or matters. Notwithstanding the termination of authority, a lawyer then representing a client with a legal matter pending in Oregon is authorized to continue the provision of legal services for such time as is reasonably necessary to complete the representation. The authority to practice law in Oregon granted by paragraph (c) of this Rule shall end sixty [60] days after this Court declares that the conditions caused by the major disaster in the affected jurisdiction have ended.

(e) *Court Appearances*. The authority granted by this Rule does not include appearances in court except:

- (1) pursuant to UTCR 3.170 and, if such authority is granted, the fees for admission shall be waived; or
- (2) if this Court, in any determination made under paragraph (a), grants blanket permission to appear in all or designated courts of Oregon to lawyers providing legal services pursuant to paragraph (b). If such an authorization is included, the pro hac vice admission fees shall be waived.

(f) *Disciplinary Authority and Registration Requirement*. Lawyers providing legal services in Oregon pursuant to paragraphs (b) or (c) are subject to this Court's disciplinary authority and the Oregon Rules of Professional Conduct as provided in Rule 8.5 thereof. Lawyers providing legal services in Oregon under paragraphs (b) or (c) shall, within 30 days from the commencement of the provision of legal services, file a registration statement with the Clerk of this Court in a form prescribed by this court. A lawyer who provides legal services pursuant to this Rule shall not be considered to be engaged in the unlawful practice of law in Oregon.

(g) *Notification to Clients*. Lawyers authorized to practice law in another United States jurisdiction who provide legal services pursuant to this Rule shall inform clients in Oregon of the jurisdictional limits of their practice authority, including that they are not authorized to practice law in Oregon except as permitted by this Rule, and shall not state or imply to any person that they are otherwise authorized to practice law in Oregon.

*Presenter: Tim Gerking
Region 3, Board of Governors Member*

Background

In response to the disruption in legal services caused by Hurricanes Katrina and Rita, the highest courts in several states

took immediate steps to address the problems either by (1) suspending UPL restrictions on volunteer lawyers who came to the disaster areas to provide *pro bono* legal services or by (2) adopting rules allowing temporary practice by displaced lawyers from the disaster areas.

Following that lead, the ABA formed a Task Force, which developed the ABA Model Court Rule on Provision of Legal Services Following Determination of Major Disaster. The Model Rule was adopted by the ABA House of Delegates in February 2007, with a recommendation that it be adopted in every jurisdiction. In August 2007, the Conference of Chief Justices passed a resolution encouraging the highest court of every jurisdiction to consider adopting a rule setting forth an orderly manner for the provision of legal services following determination of major disaster. As of May 2008, three jurisdictions have done so and sixteen are in the process. Some might question whether this is a solution in search of a problem; however, this is precisely the kind of rule that needs to be in place *before* it is needed.

The proposed Court Rule addresses two situations: (a) a disaster in Oregon that disrupts the justice system and increases the demand for legal services to Oregon victims; and (b) a disaster in another jurisdiction from which displaced survivors in Oregon are in need of legal services and whose displaced lawyers need a place to practice law until they can return to their home jurisdiction. In either event, the rule authorizes the Supreme Court to declare an emergency and implement the rule. Out-of-state lawyers will be authorized to provide *pro bono* legal services in Oregon in the event of a disaster here or if displaced survivors of a disaster in another jurisdiction have relocated here. Out-of-state lawyers who have been displaced because of a disaster in their home jurisdiction will be allowed to establish an office in Oregon in order to continue serving their clients.

It is arguable that these situations are already covered by Oregon RPC 5.5(c), which authorizes temporary practice in Oregon by lawyers licensed in other jurisdictions. Seemingly, this would allow a displaced lawyer to practice in Oregon during a temporary period of dislocation from the lawyer's home state. However, there is no definition of what constitutes "temporary" practice and Oregon RPC 5.5(b) (1) prohibits an out-of-state lawyer from "establishing an office or other systematic and continuous presence" in Oregon for the practice of law, which a displaced lawyer who is in Oregon for an extended period would likely need to do. It is similarly not clear that an out-of-state lawyer coming to Oregon to provide *pro bono* services after a disaster would fall within the permission in RPC 5.5(c)(4) for services "that arise out of or are reasonably related to the lawyer's practice" in the lawyer's home jurisdiction. (Temporary practice is otherwise limited to services undertaken in association with local counsel, are related to a pending or potential proceeding where the lawyer anticipates being admitted *pro hac vice*, or are related to a pending or potential alternative dispute resolution proceeding.) The drafters of the ABA Model Court Rule obviously concluded that existing regulation was insufficient.

Lawyers coming into Oregon to help with disaster-related legal needs would be permitted to do so only on a *pro bono* basis and under the auspices of a recognized *pro bono* program. Their authority would end when the court determines that the emergency conditions no longer exist (although they would be permitted to complete any pending legal matters). Dislocated

lawyers would be allowed to represent any client provided the legal services "arise out of or are reasonably related to the lawyer's practice of law in the other jurisdiction." The authority of displaced lawyers to practice in Oregon would terminate 60 days after the court announces the end of the emergency conditions, thus allowing them time to close down their offices here and return to their home jurisdiction.

Lawyers who come to Oregon under this rule would have to be admitted *pro hac vice* to appear in court, unless the Supreme Court in declaring the emergency grants blanket permission for court appearances. Lawyers who practice under the rule would also have to register with the Clerk of the Court and would be subject to the court's disciplinary authority. Finally, the rule requires the visiting lawyers to inform clients of the limits of their practice authority and their special permission to practice in Oregon.

ORS 9.160 generally prohibits person other than members of the Oregon State Bar from practicing law in Oregon. ORS 9.241 authorizes the Supreme Court to adopt rules "pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice law in Oregon on a temporary basis...." The procedure in ORS 9.490(1) is that rules of professional conduct are formulated by the Board of Governors "with the approval of the house of delegates," and then "approved by the Supreme Court." The proposed court rule is not designed to be an addition to the Oregon Rules of Professional Conduct, but the overall statutory scheme suggests that the proposal should be approved by the HOD before submission to the Supreme Court.

10. Alternate Delegates (Board of Governors Resolution No. 3)

Whereas, attendance at HOD meetings has declined in recent years, particularly among section and local bar delegates, and

Whereas, governance issues are best decided when the broadest possible range of views is represented, and

Whereas, the prohibition against alternate delegates in HOD Rule of Procedure 3.1 limits the ability of sections and local bars to be represented at meetings, now therefore be it

Resolved, That HOD Rules of Procedure be amended as follows:

3.1. Delegates shall be selected as provided in the Bar Act and the bylaws and policies of the State Bar. There shall be no alternate delegates, except that a section or local bar association may designate an alternate delegate, provided the alternate delegate is a person duly authorized in the organization's bylaws or otherwise to act in the section chair's or bar president's stead.

*Presenter: Tim Gerking
Region 3, Board of Governors*

Background

Section chairs and local bar presidents are ex-officio members of the House of Delegates by virtue of ORS 9.136. (Members of the Board of Governors are also ex-officio delegates). Since its inception in 1996, HOD meeting attendance has slowly declined, and the groups with the lowest attendance are section chairs and

local bar presidents. In most cases the lack of attendance is due to conflicting obligations.

Alternate delegates should be distinguished from “proxy voting.” A proxy is essentially a power of attorney given by one person to another to vote in the former’s stead. The term also refers to the person who is given the power of attorney. Proxy voting is generally not allowed in deliberative assemblies, being considered incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal and nontransferable. Alternate delegates, by contrast, are frequently elected or appointed in deliberative assemblies to serve as vacancies arise.

It is common practice in deliberative assemblies where the president or chief officer of each constituent local unit is a delegate, that if the president of a constituent unit cannot be present at a meeting of the body, his place is taken by the vice-president or next ranking officer, just as for any other duty in which the vice-president acts in the president’s place. (§58, Robert’s Rules of Order, 10th Edition, p. 585)

On occasion, the vice-president or president-elect of a local bar has been seated in the HOD in place of an absent president, because the bylaws of the local bar organization authorized the vice-president or president-elect to act in the absence of the president. It is believed that we have also allowed the chair-elect of a section to substitute for the elected section chair as HOD delegate, because the Standard Section Bylaws clearly contemplate the chair-elect as a stand-in for the chair on all official duties. (The Standard Section Bylaws provide, in pertinent part: “The Chair-Elect shall aid the Chair in the performance of the Chair’s responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair’s term or disability.”)

Continuing to allow the officially-designated substitutes to attend the HOD meeting in the place of the section chairs and local bar presidents would not necessarily require a change in HOD Rules because they are not “alternate delegates” as that term is commonly used in connection with delegate assemblies. On the other hand, the distinctions between alternates and proxies are not clear to many people and amending the HOD Rules will aid in understanding. An additional benefit of amending the HOD Rules would be the opportunity to identify who could serve in the stead of an ex-officio delegate where the bylaws of the groups do not expressly designate who can act for the elected president or chair. While some sections and local bars might appreciate an even broader permission to send any member as a delegate, allowing alternates who are not in the chain-of-command of the section or local bar (even informally) would likely stray too far from the statutory designation.

11. Adoption of Oregon RPC 1.6(b)(7) (Board of Governors Resolution No. 4)

Whereas, The Board of Governors has formulated the following amendment to the Oregon Rules of Professional Conduct pursuant to ORS 9.490(1); 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 Rule of Professional Conduct 1.6(b) be amended as set forth below and submitted to the Oregon Supreme Court for adoption:

Rule 1.6 Confidentiality of Information

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
- (1) to disclose the intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime;
 - (2) to prevent reasonably certain death or substantial bodily harm;
 - (3) to secure legal advice about the lawyer’s compliance with these Rules;
 - (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer’s representation of the client;
 - (5) to comply with other law, court order, or as permitted by these Rules; *[or]*
 - (6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 with respect to each client potentially subject to the transfer: the client’s identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer; *or*
 - (7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15.

*Presenter: Tim Gerking
Region 3, Board of Governors*

Background

Lawyers who are on diversion (BR 2.10) or probation (BR 6.2), or who have been conditionally reinstated (BR 8.7) or admitted

(Adm. Rule 6.2), are subject to programs which typically include having someone monitor or the lawyer's law practice. Effectively monitoring a law practice requires actually looking at the subject lawyer's client files. Under RPC 1.6, lawyers have an obligation to keep client information confidential. While there is an exception to this duty when disclosure is required by other law, court order, or as required by the Rules of Professional Conduct, there is no exception when doing so is necessary to comply with a monitoring agreement for diversion, probation or conditional admission. The lack of such a clear exception may either discourage the use of the diversion, probation and conditional admission process, or prevent monitors and supervisors from ensuring that the subject lawyers are fully complying with their agreements. This amendment is intended to eliminate those barriers to effective monitoring.

12. Encouraging Sustainability (House of Delegates Resolution No. 1)

Whereas, public policy issues relating to dependence upon foreign oil, carbon emissions, and sustainability, have become a matter of public concern; and,

Whereas, energy conservation and sustainability have recognized benefits to Society; now, therefore be it;

Resolved, That, the Members of the House of Delegates recommend and encourage to the Board of implementation of policies and procedures intended to enhance sustainability by:

Encouraging funding for optional use of video conferencing technology to reduce motor vehicle travel for routine Court appearances; and,

Expanding optional telephonic appearances by Counsel beyond the current limited availability to Attorneys with offices more than 25 miles from Court.

*Presenter: Danny Lang
Region 3, House of Delegates*

Background

The Environmental and Natural Resources Section supports the resolution for reasons of energy efficiency and sustainability.

13. OSB Paralegal Certification (House of Delegates Resolution No. 2)

Whereas, delivery of legal services by Oregon State Bar Members will increasingly depend upon well qualified Paralegals;

Whereas, Access to Justice will benefit and depend upon such assistance by well qualified Paralegals;

Whereas, unregulated document providers may not have adequate training or qualifications; therefore be it

Resolved, That, the House of Delegates recommends and encourage to the Board of Governors to study the feasibility of creating an OSB Paralegal Certification Program.

*Presenter: Danny Lang
Region 3, House of Delegates*

Background (provided by OSB)

Historical records of the OSB indicate that certification of legal assistants has been considered in the past. The Board of Governors created the Board for Certification of Legal Assistants in 1974 to certify legal assistants by examination. In 1975, three people took and passed the examination. In 1977, the members of the OSB were surveyed regarding the current and future use of legal assistants. Twenty-five percent (25%) of the membership returned completed surveys. Approximately 45% of the responders stated that they did not contemplate using legal assistants in the foreseeable future. Sixty-seven percent (67%) of those responding said they would prefer to train existing employees. Survey respondents stated that the most important qualification was to possess two years of college training. Only 9% indicated that certification by the OSB was desirable. In 1980, the certification program was abolished because: a) the 1977 attorney survey did not indicate that certification was an important factor; b) employers were not inquiring about certification; c) the community colleges did not think abolition of the certificate would make a difference in their programs; d) certification was stifling rather than assisting the legal assistants program; e) there had been little interest in the program; and f) perhaps licensing should be considered instead.

14. Sentencing Fiscal Impact Statements (House of Delegates Resolution No. 3)

Whereas, criminal case sentences for a term of incarceration impose a fiscal impacts upon the State;

Whereas, awareness of the fiscal impacts of incarceration is a matter of public interest; and,

Whereas, improved State budgeting for anticipated fiscal impacts of incarceration is a benefit to the Executive, Legislative, and Judicial Branch of State Government, therefore be it

Resolved, That the Members of the House of Delegates recommend and encourage the Board of Governors, study and consider a proposal for creation of a "Sentencing Fiscal Impact Statement" estimating costs of incarceration at time of sentencing for purposes of budgeting and auditing the cost of incarceration to the State compared to alternative sentences.

*Presenter: Danny Lang
Region 3, House of Delegates*

15. Creation of House of Delegates Executive Committee (House of Delegates Resolution No. 4)

Whereas, the House of Delegates is a governance forum for the membership through Elected and Ex-Officio Representatives; and,

Whereas, the House will debate and decide matters of Bar Policy; and,

Whereas, the business of the House will be conducted much the same as in the "Town Hall" membership meeting format; and,

Whereas, the Agenda for the House of Delegates may include recommendations of Sections, Committees, and the Board, together with any Resolutions proposed by the Membership; and,

Whereas, the House of Delegates consists of Elected Delegates representing lawyers within and outside the state, plus the following Ex-Officio voting Delegates: Members of the Board of Governors, the Chair of each Section, and the President of each County Bar Association; and,

Whereas, the House of Delegates Agenda and Meeting would benefit from better communication among Delegates prior to the Annual Meeting; and,

Whereas, at present the House of Delegates lacks any designated HOD Executive Committee for purposes of communication among Delegates upon HOD matters, therefore be it

Resolved, That, the House of Delegates recommends and encourages that the Board of Governors create a HOD Executive Committee to communicate, coordinate, and propose matters of Bar Policy in preparation for the HOD Annual Meeting.

*Presenter: Danny Lang
Region 3, House of Delegates*

Background (provided by OSB)

The concept of a leadership entity for the House of Delegates has been presented and rejected previously in the following forms:

- 2000 Delegate Resolution No. 1- proposes election to HOD of chief delegate and regional delegates.
- 1998 Delegate Resolution No. 4 – adopts HOD Rules of Procedure 5.8, 5.9 & 5.10 to create positions of Chief Delegate and Regional Delegates and to establish a schedule of meetings between these delegates, the Board of Governors, and the Chief Justice of the Supreme Court.

Delegate Resolution No. 6 – directs the Board of Governors to prepare and introduce amendments to ORS 9.136 through 9.155 to create positions of Chief Delegate and Regional Delegates.
- 1997 Delegate Resolution No. 8 – establishes procedure for management of the HOD between annual meetings of the house,.

16. Amendment to House of Delegate Quorum Requirement (House of Delegates Resolution No. 5)

Whereas, the present Quorum requirement for the annual House of Delegate Meeting requires 50% +1 of all eligible Delegates [Elected & Ex-Officio Delegates] to be present; and,

Whereas, the actual number of Delegates in attendance at prior House of Delegates meetings has resulted in serious concerns for achieving and maintaining the required Quorum; and,

Whereas, a substantial risk of failure to reach a Quorum would adversely impact both those Delegates in attendance and the Oregon State Bar Budget by the cost/loss of mileage allowance payable to attending Delegates, therefore be it

Resolved that the House of Delegates recommends and encourages the Board of Governors to amend the Quorum requirements so as to provide for a reduction in the number of Delegates needed to

constitute a Quorum.

Further, the House of Delegates recommends amendment of the Quorum requirement so as to define a Quorum as being 50% +1 of the number of Elected Delegate positions with both Elected & Ex-Officio Delegates in attendance being counted for purposes of satisfying the new Quorum requirement of 50% +1 of the number of Elected Delegate positions.

*Presenter: Danny Lang
Region 3, House of Delegates*

Background (provided by OSB)

HOD Rule 2.3 provides that proceedings of the House of Delegates are governed by the Bar Act, the bylaws and policies of the State Bar, and Robert's Rules of Order. HOD Rule 6.1 provides that a majority of the total number of delegates shall constitute a quorum for transaction of business by the HOD. The quorum requirement is also embedded in ORS 9.142(1).

Robert's Rules of Order (10th Ed.) tells us that the requirement for a quorum is protection against totally unrepresentative action in the name of the body by an unduly small number of persons. In delegate assemblies, including both houses of the US Congress, a quorum is typically a majority of the delegates. That is also the default quorum in other assemblies that have not designated a different number.

Prior to the creation of the HOD in 1996, the quorum for conducting business at the annual meeting of the membership was 200 active members. At the time, the membership of the bar was approximately 10,000. The current composition of the HOD is 219, requiring attendance by 110 members to constitute a quorum. Current OSB membership is approximately 13,500.

17. Fair Compensation for Those Practicing Public Defense Law (House of Delegates Resolution No. 6)

Whereas, the United States and Oregon constitutions and fundamental fairness require that all people charged with a criminal offense have the right to assistance by ethical and competent counsel;

Whereas, the United States and Oregon constitutions require that all people charged with a criminal offense who are determined eligible for public defense receive ethical and competent counsel compensated by the state;

Whereas, the United States and Oregon constitutions, Oregon laws and fundamental fairness require that all people facing state court proceedings that may result in the deprivation of an individual's constitutionally or statutorily protected rights (such as parental rights) have a right to assistance by ethical and competent counsel paid by that state, if a court determines the person is eligible;

Whereas, the 2006 session of the Oregon State Bar House of Delegates unanimously approved Resolution 15, which chronicled the substantial disparity in rates of compensation between lawyers representing those entitled to public defense counsel and their counterparts in county district attorneys offices;

Whereas, the 2006 House of Delegates Resolution 15 directed

the Oregon State Bar, through its Board of Governors and staff, to actively participate with the Public Defense Services Commission's Office of Public Defense Services (OPDS) and the Oregon Criminal Defense Lawyers Association (OCDLA) in the establishment of a plan for achieving fair compensation for public defense providers;

Whereas, funding for a modest increase in rates for public defense compensation was achieved in the 2007 Regular Session of the Oregon Legislature, unacceptable differences remain between the rates of compensation between prosecutors and public defense providers, therefore be it

Resolved, That the Oregon State Bar, through its Board of Governors and staff, continue to actively participate with the Office of Public Defense Services and the Oregon Criminal Defense Lawyers Association in the establishment of a plan for achieving fair compensation for public defense providers.

Further, be it resolved, That the House of Delegates expresses its gratitude to Susan Grabe, Sally LaJoie, and the Board of Governors for their support of the 2006 House of Delegates Resolution 15.

*Presenter: Hubert G. Duvall, Jr.
Region 2, House of Delegates*

Background

The funding for defense of indigent persons accused of crimes, alleged to be mentally ill, parents charged with child neglect facing the termination of their parental rights in family court, and children accused of delinquency or in need of court ward ship has been chronically under funded in Oregon. Payment for services, which was minimal when first set by the State, has remained relatively static, failing to provide for reasonable compensation for professional services, comparability with other government-paid attorneys, or cost of living increases.

Because of the low compensation for public defense providers and the lack of comparability of pay with other government-funded lawyers, present defense practitioners are leaving the field, and new practitioners who are otherwise interested and willing to work as publicly funded defense counsel are financially unable to take on the burden of public defense practice.

The hourly rate for private bar, court-appointed attorneys in cases other than aggravated murder, remained at \$40 for over 16 years. In mid-year 2007, it was raised to \$45. Forty dollars was inadequate in 1991 and \$45 an hour is shockingly inadequate in 2008.

Rates paid to public defense contractors and public defender offices are increasingly insufficient to retain experienced attorneys and to attract new attorneys to this government service. Salaries for public defense attorneys are significantly less than those paid their counterparts in prosecutors' offices. This is not to say that such prosecutors are adequately compensated; in fact, the OSB 2007 Economic Survey, at page 20, reports that criminal public defenders and criminal public prosecutors were paid the lowest of any of the areas of private practice surveyed.

2002 Compensation Comparison between Public defender and Public prosecutor (from the OSB 2002 Economic Survey, Page16)	Average Full-Time Salary	Median Full-Time Salary
Public Defender	\$53,162	\$45,500
Public Prosecutor	\$66,894	\$63,504

2007 Compensation Comparison between public defender and public prosecutor (From the OSB 2007, Economic Survey, Page 15)	Average Full-Time Salary	Median Full-Time Salary
Public Defender	\$57,809	\$52,000
Public Prosecutor	\$79,018	\$75,000

Based upon the data above, in 2002, a public defense lawyer with an average annual salary of \$53,162 per year would need to realize a percentage increase in salary of **25.8%** if she/he were to receive the average salary of \$66,894 of a public prosecutor. In 2007, a public defense lawyer with an average annual salary of \$57,809 would need to realize a percentage increase in salary of **36.6%** if she/he were to receive the average salary of \$79,018 of a public prosecutor. Not only are the historical disparities in salary significant, they are actually getting worse. The cumulative effect of such disparities over years of public service is substantial and detrimental to the quality and smooth operation of the criminal and juvenile justice systems.

18. Adequate Funding of Legal Service for All Citizens (House of Delegates Resolution No. 7)

Whereas, providing equal access to justice and 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 and moderate income Oregonians are a fundamental component of the Bar's effort to provide such access;

Whereas, low-income legal service 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 aid programs is substantially less than it was in 1980 and there have been severe restrictions imposed on the work of those 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 and moderate income Oregonians meaningful access to the justice system, Government, therefore be it

Resolved, That the Oregon State Bar:

- 1) Reaffirm 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 and moderate 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 from Oregon lawyers and law firms by establishing goals of a 100% participation rate by members of the House of Delegates and of a 50% participation rate by all lawyers.
- 4) Actively participate in and support the fundraising efforts of those non-profit low-income legal service providers in Oregon that are not supported by the Campaign for Equal Justice.
- 5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program.
- 6) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.

*Presenter: Christopher Kent
Region 5, Board of Governors*

19. 2008 Resolution in Support of Adequate Funding for Legal Services for Low-Income Oregonians (House of Delegates Resolution No. 8)

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;

- (1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for 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: 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. 12 in 2007, No. 14 in 2006, No. 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 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. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

A comprehensive assessment of legal needs study 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 made contributions. The Campaign supports statewide legal aid programs in Oregon which have offices in 19 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.

Excluded Resolution

Background (provided by OSB)

The BOG has excluded the following item from the agenda pursuant to Bylaw 3.4 and HOD Rule 5.5, having determined that it is outside the scope of permissible activities of a mandatory bar under *Keller v. State Bar of California*, 499 US 1 (1990). The doctrine of that case is that mandatory bar dues may not be used to advance ideological issues that are not germane to the bar's essential purposes.

The Oregon State Bar is an instrumentality of the judicial department of the State of Oregon. ORS 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." OSB Bylaw 1.2 describes the mission of the Oregon State Bar as "to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice." Bylaw 12.1 commands that Bar legislative and policy activities be reasonably related to one or more of the following subjects: regulating and disciplining lawyers; improving the functioning of the courts; regulating lawyer trust accounts; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

The first order of business for the HOD is to approve the final meeting agenda. Any delegate may move the addition of this excluded item to the final agenda. If the item is added to the agenda and passed by the HOD, any member objecting to the use of bar dues in connection with the resolution would be entitled to a refund of the portion of the dues attributable to the activity, in accordance with Bylaw 12.6. The BOG has not calculated the percentage of its public affairs department budget that would be attributable to supporting the creation of an elected consumer advocate position. Assuming it would be no more than 10% (a very generous estimate), the refund for objecting bar members would be approximately \$2.21. (The bar's public affairs budget is 4.6% of the entire budget and constitutes \$22.17 of membership dues.)

20. Create Elected "Consumer Insurance Advocate" (House of Delegates Resolution No. 9)

Whereas, the Oregon Financial Responsibility Statutes make automobile liability insurance mandatory for Oregon Consumers;

Whereas, Oregon Consumers bear substantial expense for the cost of premiums charged by automobile liability insurance carriers;

Whereas, Oregon Consumers should be informed as to both claim payment performance, as well as cost of premiums;

Whereas, Oregon Consumers would benefit from public competitive disclosure of pay-out ratios and claim handling performance;

Whereas, health insurance coverage for Oregon consumers has also become a significant expense;

Whereas, Consumers face difficulties in comparing coverages; claim handling performance; and actual premium costs;

Whereas, competitive performance reported by a State elected Insurance Advocate is therefore desirable, therefore be it

Resolved, That, the House of Delegates recommends and encourages that the Board of Governors support the creation of a Statewide elected office of Oregon Insurance Advocate.

*Presenter: Danny Lang
Region 3, House of Delegates*

Oregon
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Bar

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