

Oregon State Bar
2009 House of Delegates Meeting

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

Oregon State Bar

Dear Oregon State Bar Member:

The Annual House of Delegates Meeting is an important annual event in the life of our bar. The bar continues to function in an excellent fashion as a result of significant volunteer input and the involvement of its members in the governance and direction of the bar. OSR 9.139(1) provides that the House of Delegates may, by vote of the majority of the delegates in attendance at a meeting, 'modify or rescind an action or decision of the Board of Governors' or 'direct the Board of Governors as to future action.' We welcome your participation at the upcoming House of Delegates Meeting.

Enclosed is your Agenda for the 2009 Oregon State Bar House of Delegates Meeting, which will begin at 1:30 p.m. on November 6, 2009, at the Bar Center. In addition to the Agenda, please note the following:

1. Pursuant to a 2007 HOD Resolution and OSB Bylaw 7.500, the Bar will reimburse HOD members 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. Only delegates may vote on resolutions, but all Bar members are welcome and 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 view on the items to be considered. Delegates are listed on the Bar's webpage at www.osbar.org.
3. Matters that will be considered by the House include:
 - Adoption of Oregon RPC 6.1 "Voluntary Pro Bono Publico Service"
 - Amendment of Oregon RPC 1.18 to conform to the ABA Model Rule
 - Elimination of the 10-signature requirement for HOD nominating petitions
 - Encouraging Fair Compensation for state legislators
 - Paralegal Representation in FED cases
 - Priority placement of HOD Delegate resolutions on the HOD agenda
 - Notice Pleading
 - Simplified MCLE reporting
 - Support for amendments to ORCP 54E
 - Appointment of Study Group regarding registration of out-of-state attorneys in Oregon arbitrations
 - Opposition to Repeal of 2009 Oregon legislative tax measures
 - Request for further consideration of proposed rule expanding reciprocity admission
4. 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, by phone at 503-431-6386, by email at twenzel@osbar.org, or toll free inside Oregon at 800-452-8260 ext 386.

Your attendance at this meeting will continue to ensure that the Oregon State Bar is one of the outstanding state bars in the country.

I look forward to seeing you at the Bar Center.



Gerry Gaydos
OSB President

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

Agenda

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<i>James N Westwood,
Stoel Rives LLP</i></p> <p>3. Report of the President
<i>Gerry Gaydos, OSB President</i></p> <p>4. Adoption of Final Meeting Agenda
<i>Gerry Gaydos, 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 2010 Membership Fees

The 2009 Oregon State Bar membership fees and assessments are as set forth below. The amounts include an increase in CSF Assessment from \$5 to \$15, approved by the BOG pursuant to its authority under ORS 9.645

Membership Category	If paid by February 1, 2010	If paid after February 1, but by February 26, 2010	If paid after February 26, 2010
Regular active members admitted in any jurisdiction before 1/1/08	\$492.00	\$542.00	\$592.00
Active members admitted in any jurisdiction on or after 1/1/08	\$413.00	\$463.00	\$513.00
Inactive members	\$110.00	\$135.00	\$160.00
Active Emeritus/ Active Pro Bono members	\$125.00	\$125.00	\$125.00

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

Other Resolutions

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

*Robert P. Amacher
Sandra L. Arp
Roy C. Atchison
Thomas J. Barnett
James K. Belknap
Burton H. Bennett
David J. Berentson
Nyal C. Bodily
James T. Bow
Winston Bradshaw
Malcolm L. Brand
Jerry Bronner
Matthew A. A. Chancellor
Thomas (T.W.) Wheeler Churchill
Charles H. Clarke
Richard T. Clarke
Jesse Cline
Bertrand J. Close
Clifford C. Comisky
Vernon Cook
George H. Corey
Charles E. Coulter
Richard A. Crews
Laurence A. Cushing*

*Richard A. Dalrymple
Valerie B. Doberty
Jeff D. Dorroh
Gerald W. Douglas
Nick A. Draconic
George Montgomery. Dugan
Lee A. Ellmaker
Michael L. Ellmaker
Quintin B. Estell
Kathleen H. Fields
Viva L. L. Foley
The Honorable Clifford L. Freeman
Bradley C. Grove
Charles B. Guinasso
Lee E. Harrell
Russell M. Heath
Julian Herndon
Jud Holtey
Gregory T. Hornecker
William P. Horton
Chester J. Irelan
Gregg H. Ireland
John E. Jaqua
Patrick H. Jensen
John E. Johansen
Carol E. Jones
Thomas P. Joseph
Harrison R. Kincaid
William A. King
Carol J. Kyle
John R. Latourette
Merle A. Long
Raymond H. Lung
Harry Walter Matthews
Jackson B. McCann
C. H. McGirr
John C. McLean
The Honorable William S. McLennan
John D. McLeod
Patrick M. McMabon
James R. Moore
Dorothy J. Morey
Donald J. Morgan
Edward N. Murphy
James D. Noteboom
James L. Oakey
Rupert E. Park
John T. Petersen
Prentiss K. Puckett
Margaret R. Raker
Edwin O. Raudsep
Joel B. Reeder
Lawrence B. Rew
Keith Rodman
Willard M. Ruch
Maurice L. Russell
Raymond J. Salisbury
Martin Schedler
Joyce M. Schiro
Donald R. Schmidt*

Dwight L. Schwab
Victor S. Shults
Charles Simmons
Harry A. Skerry
Edgar R. Smith
George W. Sohl
Thomas B. Stoel
Charles J. Strader
The Honorable Donald D. Sullivan
James D. Tiger
Raymond P. Underwood
Eric Hans van Naerssen
David A. Vinson
Linda Marie. Wah
George Waliser
D. B. Williamson
H. Dewey Wilson
Wendell Wyatt
Ralph W.G. Wyckoff
Daniel A. York
David W. Young

Terry Wright
Region 5, Board of Governors

9. Adoption of Oregon Rule of Professional Conduct Rule 6.1 (Board of Governors Resolution No. 2)

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

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

Resolved, That the addition of the following Rule 6.1 to the Oregon Rules of Professional Conduct is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 6.1 Voluntary Pro Bono Publico Service

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

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

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

(b) provide any additional services through:

- (1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational

purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

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

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

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

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

Presenter: Barbara DiIaconi,
Region 1, Board of Governors

Background

This rule would replace OSB Bylaw 13.1, which provides:

Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

10. Amendment of Oregon Rule of Professional Conduct 1.18 (Board of Governors Resolution No. 3)

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

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

Resolved, That the amendment of Oregon Rule of Professional Conduct 1.18 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

Rule 1.18 Duties to Prospective Clients

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

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal

information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

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

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

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

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

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

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

*Presenter: Mitzi Naucler,
Region 3, Board of Governors*

Background

The Oregon Rules of Professional Conduct, adopted effective January 1, 2005, were drawn almost entirely from the ABA Model Rules, consistent with the drafters' goal of bringing Oregon's rules into alignment with what was then a majority and is now the entirety of other U.S. jurisdictions. Several months ago, in the course of analyzing a member's inquiry, OSB staff noted a discrepancy between Oregon RPC 1.18 and the ABA Model Rule on which it was based.

Rule 1.18 was designed by the ABA to eliminate unnecessary disqualification of a lawyer based solely on a consultation with prospective client that didn't result in a representation. Prior to the adoption of Rule 1.18, such situations were analyzed under the former client conflict rule, which prohibits a lawyer from "side-switching" in the same case. ABA Model Rule 1.18 allows a lawyer in a law firm who has a consultation to be screened so as not to disqualify the entire firm from representing the adverse party.

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

suggested that the person was a "prospective client" within the meaning of the rule notwithstanding that the communications had gone well beyond the exploratory discussions that would typically occur when a person is considering hiring a lawyer.

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

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

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

Resolved, that the OSB initiate and pursue in the 2011 legislative session an amendment to ORS 9.152as follows:

9.152 Election of delegates; rules. (1) The election of delegates to the house of delegates shall be held annually on a date set by the board of governors. ~~Except as provided in subsection (2) of this section, n~~Nominations shall be made by petition signed by ~~at least 10 members of the Oregon State Bar entitled to vote for a delegate in the election~~ the candidate. The election shall be by ballot. Nominating petitions must be filed with the executive director of the state bar at least 30 days before the election.

(2)(a) The executive director shall mail ballots containing the nominations for the office of delegate in each region to every active member in the region. Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director on or before the day of the election. The executive director, with any assistants that the executive director may designate, shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections in lieu of using mailed ballots under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

(3) The candidate, or candidates if there is more than one open position, receiving the highest number of votes in each region for the position or positions being filled shall be declared elected. Balloting shall be conducted in a manner that ensures that only active members of the bar can vote and that the secrecy of the ballots shall be preserved.

(4) The nomination petition for a delegate from the region composed of all areas not located in this state need only be signed by the candidate for the position.

(5) ~~4~~ Notwithstanding subsection (1) of this section, an election shall not be held for any position for which only a single candidate has been nominated. If only a single candidate has been nominated, the board shall declare the single candidate elected to the position on a date specified by the board.

*Presenter: Kathleen Evans,
Region 6, Board of Governors*

Background

The Board of Governors plans to seek an amendment in the 2011 legislative session that would eliminate the requirement that BOG candidates submit nominating petitions signed by 10 active members in the candidate's region. The BOG believes that the 10-signature requirement for HOD candidates should also be eliminated. This resolution is an opportunity for the HOD to decide whether it agrees with the BOG on the issue.

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

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

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

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

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

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

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

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

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

Presenter: Danny Lang, Region 3

13. Paralegal Representation in FED Cases (House of Delegates Resolution No. 2)

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

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

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

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

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

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

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

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

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

(1) *Further*, strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for civil legal services programs of low-income Oregonians; and

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

Presenter: Danny Lang, Region 3

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

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

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

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

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

Presenter: Danny Lang, Region 3

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

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

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

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

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

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

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

Presenter: Danny Lang, Region 3

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

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

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

Resolved, That the House of Delegates recommend and encourage the Board of Governors to implementation of a simplified Member reporting procedure; consisting of a sworn statement for the subject reporting period. Presenter: Danny Lang, Region 3

BOG Fiscal Impact Statement

MCLE Rules, including the rules relating to compliance, are subject to approval by the Supreme Court. The program operates largely on an "honor system." The bar maintains a transcript for each member based on attendance records provided by sponsors. Members can supplement their transcripts prior to submitting them. The member's signature certifies the accuracy of the transcript. The bar is working on a method for members to certify their transcripts online. All members are subject to random audit, which requires them to establish their attendance at programs for which they have claimed credit.

There are a handful of jurisdictions, including California, that do not require maintenance or submission of a transcript. Members in those jurisdictions certify their compliance on a postcard or similar form. They keep their own records of attendance and are subject to random audits.

It is likely correct that not maintaining attendance information would result in some saving of MCLE staff time devoted to reviewing compliance reports. Whether the saving would be offset by increased audit costs has not been examined. The largest part of staff time is devoted to accrediting programs, which would still need to be done. MCLE expenses are covered entirely by sponsors and other fees.

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

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

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

Whereas, Public Policy favors settlement of unresolved Civil Litigation;

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

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

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

Present: Danny Lang, Region 3

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

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

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

Whereas, Public Policy favors settlement of unresolved Civil Litigation;

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

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

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

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

Present: Danny Lang, Region 3

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

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

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

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

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

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

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

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

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

Presenter: Michelle Vlach-Ing, Region 6

Background

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

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

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

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

In other instances, there is no means to know whether the party

appearing in arbitration is an attorney in another jurisdiction and whether that party should be held to the standards of the Rules of Professional Conduct in this jurisdiction or his or her own jurisdiction. Any ruling that may favor one party based on misconduct of the out-of-state attorney is not reviewable.

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

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

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

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

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

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

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

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

- State courts: \$15.4 million
- State Police: \$12.9 million
- Department of Corrections: \$64.8 million
- Public defenders: \$10.8 million
- District Attorneys: \$523,000
- Oregon Youth Authority: \$13.7 million

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

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

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

Presenter: Charles R. Williamson, Region 5

Background

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

Fiscal Impact

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

21. Proposed Reciprocal Admission with 37 States (House of Delegates Resolution No. 10)

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

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

Whereas, the proposed amendment calls for all such admittees to have professional liability coverage, but those who are not actually relocating to Oregon will not be eligible for PLF coverage;

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

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

Presenter: Leslie S. Johnson, Region 5

Background

Currently, Oregon has reciprocal admission agreements with Alaska, Washington, Idaho and Utah. Experienced Oregon lawyers can obtain admission in those states without passing a bar exam and Oregon admits attorneys from those states on the same terms. Attorneys from other jurisdictions can participate in alternative dispute resolution settings in Oregon and be specially admitted for other limited purposes (e.g., for a specific court action *pro hac vice*). All other states have some provision for temporary admission for special purposes and participation in other limited activities, but the rules and requirements vary.

There is a movement in the profession toward “multijurisdictional practice” (MJP). Around 2000, the ABA organized a task force on the subject. In 2002, the ABA adopted changes to the Model Rules of Professional Conduct intended to make it easier for lawyers to practice at least temporarily in states where they are not licensed. The changes have not been uniformly adopted. The profession’s move toward MJP is “an evolutionary process” that could take 20 years according to the ABA.

Oregon’s Board of Bar Examiners is now proposing that Oregon allow full admission of experienced attorneys from 33 more qualifying jurisdictions. The “qualifying jurisdictions” are those that will allow admission of Oregon attorneys on the same terms. Notably, neither California nor Delaware is on the list.

There are obvious arguments in favor of MJP based on the nature of 21st century business and communication tools. Professionals expect to be more mobile over the duration of their careers than used to be true. Other advocates for MJP want to be able to provide representation for their clients wherever they are doing business, and there are reasonable arguments for the notion that the costs associated with representation in distant jurisdictions can be made up by the advantages of continuity of representation and experience with the client and the client’s issues. But there are lots of ways attorneys can already represent their clients in other states, often with the benefit of insight and collaboration with local lawyers. And there are also signs that potential clients are confused about what qualifies an attorney to represent them in a local matter when they can broadcast requests for legal advice on the internet without regard to geographic boundaries.

The admissions rules and ethical requirements still vary widely among the proposed qualifying jurisdictions, as do the insurance requirements. Oregon clients and Oregon lawyers with their principal place of practice in Oregon uniquely benefit from the existence of the PLF. While other states require professional liability insurance, no other state bar has established its own carrier with the purpose of protecting both lawyers and clients. Arguably, there is no “substantially similar” coverage available to out-of-state attorneys who seek admission here.

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