

Oregon State Bar  
**2010 House of Delegates Meeting**  
Oregon State Bar Center  
16037 S.W. Upper Boones Ferry Rd.  
Tigard, Oregon  
Friday, Oct. 29, 2010  
10:00 a.m.



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Dear Oregon State Bar member:

On Friday, October 29th, at 10:00 a.m., the Oregon State Bar House of Delegates will meet at the bar center to consider the bar's business. The agenda is enclosed. I thank you in advance for your time and energy devoted to the consideration and debate of these items. While all bar members are welcome and encouraged to participate in the discussion, only delegates may vote on resolutions.

Your attendance is crucial to the governance of the bar. Without you — and without a quorum — matters may not move forward. In an effort to make your attendance a bit easier and at the urging of the Board of Governors in 2007, the HOD approved reimbursement for your roundtrip mileage expense for travel to and from the HOD meeting. Reimbursement is limited to no more than 400 miles, and you must submit your expense reimbursement form within 30 days of the meeting.

While the agenda goes into more detail, key matters that will be considered by the House include:

- Amendment of HOD Rule 5.5
- Resolution Regarding Veterans Day Remembrance
- Amendment of ORPC 1.5 and 1.15-1
- Amendment of ORPC 1.2 and 3.4
- Amendment of ORPC 3.3
- Support of Adequate Funding for Legal Services to Low-Income Oregonians
- Resolution for Repeal of ORS 419B.010 and 9.114
- Resolution to Amend Oregon Rule of Professional Conduct 7.1 - 7.3
- Resolution to Amend Bar Rule 8.2
- Resolution to Amend ORS 133.060
- Pricing of Oregon State Bar Products and Services

If you have questions concerning the House of Delegates meeting, please contact Teresa Wenzel, executive assistant, by phone at (503) 431-6386, by e-mail at [twenzel@osbar.org](mailto:twenzel@osbar.org), or toll free inside Oregon at (800) 452-8260, ext. 386.

Kathleen A. Evans  
OSB President

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Oregon State Bar  
**2010 House of Delegates Meeting**

Oregon State Bar Center  
16037 S.W. Upper Boones Ferry Rd.  
Tigard, OR 97281-1935  
10:00 a.m., Friday, Oct. 29, 2010

Presiding Officer: Kathleen A. Evans, OSB President

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**Agenda**

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1. Call to Order <i>Kathleen A. Evans</i> <i>OSB President</i>	11. Amendment of Oregon Rules of Professional Conduct 1.5 and 1.15-1 (BOG Resolution No. 4) ..... page 4 <i>Derek C. Johnson</i> <i>Board of Governors, Region 2</i>
2. Overview of Parliamentary Procedure <i>James N. Westwood</i> <i>Stoel Rives LLP</i>	12. Amendment of Oregon Rules of Professional Conduct 1.2 and 3.4 (BOG Resolution No. 5) ..... page 5 <i>Ethan D. Knight</i> <i>Board of Governors, Region 5</i>
3. Report of the President <i>Kathleen A. Evans</i> <i>OSB President</i>	13. Amendment of Oregon Rules of Professional Conduct 3.3 (BOG Resolution No. 6)..... page 5 <i>Mitzi M. Naucler</i> <i>Board of Governors, Region 3</i>
4. Adoption of Final Meeting Agenda <i>Kathleen A. Evans</i> <i>OSB President</i>	14. Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians (HOD Resolution No. 1) ..... page 6 <i>Edwin A. Harden</i> <i>House of Delegates, Region 5</i> <i>Dennis Karnopp</i> <i>House of Delegates, Region 3</i> <i>Christopher H. Kent</i> <i>Board of Governors, Region 5</i>
5. Comments from the Chief Justice <i>Paul J. De Muniz, Chief Justice</i> <i>Oregon Supreme Court</i>	15. Resolution for Repeal of ORS 419B.010 and ORS 9.114 (HOD Resolution No. 2) ..... page 7 <i>Timothy M.B. Farrell</i> <i>House of Delegates, Region 1</i>
6. Report of the Board of Governors Budget and Finance Committee <i>Christopher H. Kent, Chair</i> <i>BOG Budget and Finance Committee</i>	16. Resolution to Amend Oregon Rule of Professional Conduct 7.1 - 7.3 (HOD Resolution No. 3)..... page 7 <i>Timothy M.B. Farrell</i> <i>House of Delegates, Region 1</i>
7. Notice of 2011 Membership Fees..... page 3 <i>Christopher H. Kent, Chair</i> <i>BOG Budget and Finance Committee</i>	17. Resolution to Amend Bar Rule 8.2 (HOD Resolution No. 4) ..... page 8 <i>Timothy M.B. Farrell</i> <i>House of Delegates, Region 1</i>
<hr/> <p style="text-align: center;"><b>Resolutions</b></p> <hr/>	
8. In Memoriam (BOG Resolution No. 1)..... page 3 <i>Ann Fisher</i> <i>Board of Governors, Region 4</i>	18. Resolution to Amend ORS 133.060 (HOD Resolution No. 5) ..... page 8 <i>Danny Lang</i> <i>House of Delegates, Region 3</i>
9. Amendment of HOD Rule 5.5 (BOG Resolution No. 2) ..... page 4 <i>Barbara M. DiIaconi</i> <i>Board of Governors, Region 1</i>	19. Pricing of Oregon State Bar Products and Services (HOD Resolution No. 6) ..... page 9 <i>David H. Madden</i> <i>House of Delegates, Region 5</i>
10. Resolution Regarding Veterans Day Remembrance (BOG Resolution No. 3)..... page 4 <i>Christopher H. Kent</i> <i>Board of Governors, Region 5</i>	

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## Resolutions with Financial Impact

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### 7. Notice of 2011 Membership Fees

The 2011 Oregon State Bar membership fees and assessments are as follows:

Membership Category	If paid by 1/31/2011	If paid after 1/31/11 but by 2/28/2011	If paid after 2/28/2011
Active members admitted in any jurisdiction before 1/1/09	\$492.00	\$542.00	\$592.00
Active members admitted in any jurisdiction on or after 1/1/09	\$413.00	\$463.00	\$533.00
Inactive members	\$110.00	\$135.00	\$160.00
Active pro bono members	\$125.00	\$125.00	\$125.00

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

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### Other Resolutions

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#### 8. In Memoriam (BOG Resolution No. 1)

David N. Andrews  
Walter J. Apley  
C. Edwin Baker  
The Honorable Richard C. Beesley  
Paul G. Beneke  
Nancy S. Bergeson  
William E. Blitsch  
Paul J. Boland  
William Risley Bradshaw  
Garthe Brown  
Neil Brown  
Harold E. Burke  
Jon Byron Carpenter  
Sean Cee  
Edward L. Clark, Jr.  
Adelbert G. Clostermann  
James Victor Collins  
Richard C. Cottle  
Clayton M. Couture  
Thomas Jude Curran  
Robert G. Danielson  
Richard William Davis  
Douglas B. Dawson  
Douglas P. Devers  
Robert P. Dickinson  
Howard N. Dietrich  
Lloyd A. Domaschofsky

James T. Duncan  
Glenn Everett Edgar  
David A. Engels  
Douglas E. Erickson  
Duane R. Ertsgaard  
Leo Michael Evans  
George S. Frum  
Thomas Benton Gabriel  
Doug S. Gard  
Danny H. Gerlt  
Glenn A. Geurts  
Debra Thatcher Gilcrest  
R. Thomas Gooding  
Fred A. Granata  
Ben T. Gray  
Paul F. Gronnert  
Dennis A. Hachler  
Eric R. Haessler  
James Michael Hafey  
Lee A. Hansen  
Harry Rudolph Heard  
Joseph N. Hershberger  
Elliot H. Holden  
Charles R. Holloway, III  
F. William Honsowetz, Jr.  
Richard Carl Horn, Jr.  
David H. Howe  
William Jayne  
Claude M. Johns, Jr.  
Guy W. Jonas, Jr.  
John Paul Jones  
J. Robert Jordan  
Kenneth S. Klarquist  
Peter Irving Kolik  
James W. Korth  
Murley M. Larimer  
John Ortman Linde  
Norman L. Lindstedt  
James A. Luebke  
Calvin H. Luetjen  
Dennis Len Marvin  
John G. Meyer  
Michael Sean Mogan  
James K. Neill  
James H. Nelson  
Timothy D. Norwood  
David R. Paxton  
Morgan Snyder Pritchett  
Robert D. Puckett  
Capt Robert M Redding  
John A. Reuling  
Kathryn M. Ricciardelli  
William D. Scalf  
Larry H. Schons  
Hector E. Smith

Frank H. Spears  
Joseph D. St. Martin  
Robert S. Stone  
William Joseph Sundstrom  
Arthur L. Tarlow  
Richard L. Thwing  
H. Stewart Tremaine  
Bill Ray Vertrees  
Monte E. Walter  
Roscoe E. Watts  
Scott Michael Weis  
Clarence R. Wicks  
Linda J. Wilson  
Donald D. Workman  
Neal Daniel Wright

*Presenter: Ann Fisher  
Board of Governors, Region 4*

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### **9. Amendment of HOD Rule 5.5 (BOG Resolution No. 2)**

*Whereas*, ORS 9.142 requires the Board of Governors to formulate rules for the conduct of the business of the House of Delegates for adoption by the House of Delegates, and

*Whereas*, the OSB Board of Governors has amended OSB Bylaw 3.4 regarding the manner in which the HOD preliminary agenda is made available to the membership; therefore, be it

*Resolved*, That House of Delegates Rule 5.5 be amended as follows:

*In advance of any meeting of the House of Delegates, the Board of Governors of the Oregon State Bar shall review proposed agenda items for conformity with applicable law and bar policy and propose a preliminary agenda for the meeting. The preliminary agenda, along with notice of the questions or measures the Board determined should not be placed on the agenda, shall be [distributed] published, with notice thereof to the membership of the Oregon State Bar at least twenty (20) days prior to the meeting.*

*Presenter: Barbara M. DiIaconi  
Board of Governors, Region 1*

#### **Background**

In February 2010, the BOG amended OSB Bylaw 3.4 to substitute the word “publish” for “distribute” with regard to making the preliminary agenda available to members. Since approximately 2006, the agenda has been “distributed” by sending an e-mail with a link to the OSB website where the agenda is posted. The only members who get hardcopies are those who don’t have an e-mail address on file with the bar. Although the BOG believes its current practice constitutes “distribution” within the meaning of the bylaw, it decided that the term “publish” is more inclusive and would eliminate any question about the validity of the process by which members receive the agenda.

Because the HOD Rule also uses the word “distributed,” the BOG recommends that it be amended to use the term “published” for consistency with the OSB Bylaws.

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### **10. Resolution for Veterans Day Remembrance (BOG Resolution No. 3)**

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

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

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

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

#### **Background**

The mission of the bar is to serve justice and promote the rule of law. Active duty military service members, the guard, and reservists, all embody the American tradition of a citizen soldier. We literally would not have our freedom, much less the rule of law, without generations of sacrifice by these citizens. This resolution is simply intended to offer thanks and condolences to all who have sacrificed. This applies to all living veterans, to those who are presently serving, and to the families of those who have lost loved ones.

In honor of Veterans Day, Nov. 11, 2010, the Board of Governors would like to say thank you and pause for a moment to offer sympathy to the families of those who have suffered.

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### **11. Amendment of Oregon Rules of Professional Conduct 1.5 and 1.15-1 (BOG Resolution No. 4)**

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

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

*Resolved*, That the amendments of Oregon Rules of Professional Conduct 1.5 and 1.15-1 as set forth below are approved and shall be submitted to the Oregon Supreme Court for adoption:

#### **Rule 1.5 Fees**

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(c) A lawyer shall not enter into an arrangement for, charge or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or

(2) a contingent fee for representing a defendant in a criminal case.; or

(3) a fee denominated as “earned on receipt,” “nonrefundable” or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:



(i) the funds will not be deposited into the lawyer trust account, and

(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

### **Rule 1.15-1 Safekeeping Property**

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(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the fee is denominated as “earned on receipt,” “nonrefundable” or similar terms and complies with Rule 1.5(c)(3).

*Presenter: Derek C. Johnson  
Board of Governors, Region 2*

#### **Background**

The Oregon Supreme Court has long made it clear that a lawyer may be excused from depositing into a trust account money received from a client before services are performed “if the client has agreed, in writing, that all legal fees paid are deemed earned by the lawyer upon receipt.” *In re Balocca*, 342 Or 279 (2007), citing its first pronouncement of the rule in *In re Hedges*, 313 Or 618 (1992). The court elaborated on its first holding in *In re Biggs*, 318 Or 281 (1994): “Without a clear written agreement \*\*\* that fees paid in advance constitute a non-refundable retainer earned upon receipt, such funds must be considered client property and are, therefore, afforded the protections imposed by [former]DR 9-101(A).” The court has also made it clear that a fee collected for services that are not performed is not earned and is “clearly excessive” regardless of the amount. *In re Fadeley*, 342 Or 403 (2007); *In re Balocca*, supra; *In re Thomas*, 294 Or 505 (1983).

Notwithstanding the clear language in the cases, in OSB Formal Opinions and *The Ethical Oregon Lawyer*, the foregoing principles are elusive to many practitioners. Moreover, the BOG recently amended the Client Security Fund rules to provide that a lawyer acts dishonestly if the lawyer “wrongfully fails to maintain client funds in trust.” That definition will be much easier to apply when there is clear direction about when client funds must be deposited into trust.

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## **12. Amendment of Oregon Rules of Professional Conduct 1.2 and 3.4 (BOG Resolution No. 5)**

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

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

*Resolved*, That the amendments of Oregon Rules of Professional Conduct 1.2 and 3.4 as set forth below are approved and shall be submitted to the Oregon Supreme Court for adoption:

## **Rule 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer**

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(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is illegal, [or] fraudulent, or in violation of a court rule or ruling, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

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### **Rule 3.4 Fairness to Opposing Party and Counsel**

A lawyer shall not:

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(c) knowingly disobey an obligation under the rules or a ruling of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

*Presenter: Ethan D. Knight  
Board of Governors, Region 5*

#### **Background**

Former DR 7-106(A) prohibited a lawyer from advising the lawyer’s client to disregard a standing rule or a ruling of a tribunal, except where the lawyer could take “appropriate steps in good faith to test the validity of such a rule or ruling.”

Oregon RPC 1.2 prohibits a lawyer from advising a client to engage in conduct the lawyer knows is illegal (i.e., in violation of a statute) or fraudulent, and RPC 3.4 prohibits the lawyer from knowingly disobeying “an obligation under the rules of a tribunal.” It is not clear, however, that the lawyer is prohibited from advising a client to disobey a ruling of a tribunal. Courts in several jurisdictions have interpreted rules based on ABA Model Rule 3.4 to also prohibit advising a client to violate a ruling of the court, but there is no such authority in Oregon. The proposed amendment to RPC 1.2 will expand the scope of the rule to prohibit assisting or counseling a client in conduct that violates a ruling of a court. The amendment to RPC 3.4 will prohibit lawyers from knowingly disobeying the rulings of a tribunal as well as the rules of the tribunal. Both changes are consistent with what has long been required of lawyers in Oregon.

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## **13. Amendment of Oregon Rules of Professional Conduct 3.3 (BOG Resolution No. 6)**

*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); therefore, be it

*Resolved*, That the amendment of Oregon Rule of Professional Conduct 3.3 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

### Rule 3.3 Candor Toward the Tribunal

(a) A lawyer shall not knowingly:

(1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;

(3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if [necessary] permitted, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;

(4) conceal or fail to disclose to a tribunal that which the lawyer is required by law to reveal; or

(5) engage in other illegal conduct or conduct contrary to these Rules.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, [unless compliance] but in no event require[s] disclosure of information otherwise protected by Rule 1.6.

(d) In an *ex parte* proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

*Presenter: Mitzi M. Naucner  
Board of Governors, Region 3*

#### Background

Under former DR 7-102(B), a lawyer who learned that his client had "perpetrated a fraud" on a person or a court was required to call upon the client to rectify the fraud, but if the client refused, the lawyer was required to reveal the fraud to the court, "unless the information was a confidence as defined in DR 4-101" (i.e., a privileged communication). If the lawyer learned that someone other than a client has perpetrated a fraud on the court, the lawyer was required to promptly reveal the fraud to the court. The former rule was supplanted in January 2005 by Oregon RPC 3.3(a)(3). The new rule requires a lawyer to take "reasonable remedial measures, including, if necessary, disclosure to the tribunal" if the lawyer learns that material evidence offered by the lawyer's client or a witness called by the lawyer is false.

ABA Model Rules 3.3, on which Oregon RPC 3.3 was based, provides at paragraph (c) that the duty to take remedial measures applies "even if compliance requires disclosure of information otherwise protected by Rule 1.6." The drafters of the Oregon RPCs (and presumably the HOD in approving and the Supreme Court in adopting them) desired to retain Oregon's approach of not

requiring disclosure of confidential client information. Accordingly, the language of the Model Rule was modified so that Oregon RPC 3.3(a)(e) says the duty in 3.3(a) applies "unless compliance requires disclosure of information otherwise protected by Rule 1.6."

A concern has been raised that the language of RPC 3.3(d) is confusing. After discussion, General Counsel's Office, Disciplinary Counsel's Office, the Legal Ethics Committee and the BOG agree that the proposed amendment clarifies the intent of the rule and will be easier for practitioners to understand.

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### 14. Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians (HOD Resolution No. 1)

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

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

*Whereas*, programs providing civil legal services to low income Oregonians 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, adjusted for inflation, 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*, the Oregon State Bar provides oversight regarding the use of state court filing fees to help fund legal aid and this funding now comprises one-third of legal aid's overall funding and is critical in providing equal access to justice;

*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) Actively participate in and support the fundraising efforts of those nonprofit 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; and
- (7) Work to preserve the dedicated court filing fee funding for legal aid that has been in place since 1977 and which has been monitored and distributed by the Oregon State Bar Legal Services Program since 1997.

*Presenters: Edwin Harnden  
House of Delegates, Region 5*

*Dennis Karnopp  
House of Delegates, Region 1*

*Christopher H. Kent  
Board of Governors, Region 5*

### **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. 11 in 2009; Delegate Resolution No. 8 in 2008; 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 2009 resolution was identical to the one passed in 2008.

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, 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. Studies in 2005 and 2009 by the national Legal Services Corporation confirm 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. 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.

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### **15. Resolution for Repeal of ORS 419B.010 and 9.114 (HOD Resolution No. 2)**

*Whereas*, ORS 419B.010 requires public officials to report any child abuse or any child abusers that they come into contact with;

*Whereas*, ORS 9.114 requires the Oregon State Bar to have all attorneys complete one hour of training every three years;

*Whereas*, under ORS 419B.010 some members of the bar are already exempt from reporting information obtained in the course of representation;

*Whereas*, ORS 419B.010 is unlimited in its geographic scope and may be unenforceable outside the state of Oregon;

*Whereas*, ORS 9.114 requires that the training for reporting child abuse be included in the limited continuing legal education hour requirements to keep Oregon attorneys versed in the law;

*Whereas*, a violation of either of these laws can result in serious criminal or regulatory sanctions, including disbarment;

*Whereas*, reporting child abuse is an important goal, as is providing pro bono legal services, which is aspired to by the bar and for which lawyers in the state provide without the threat of criminal sanctions; therefore, be it

*Resolved*, That the OSB Board of Governors shall introduce or sponsor a bill in the next regular legislative session to amend ORS 419B.010 to exempt attorneys entirely in all circumstances from having to report child abuse and to repeal ORS 9.114 in its entirety.

*Presenter: Timothy M.B. Farrell  
House of Delegates, Region 1*

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### **16. Resolution to Amend Oregon Rule of Professional Conduct 7.1 - 7.3 (HOD Resolution No. 3)**

*Whereas*, lawyer advertising is governed by the Rules of Professional Conduct 7.1 to 7.3;

*Whereas*, these rules are different from and more restrictive than the rules governing lawyer advertising in the state of Washington and other states;

*Whereas*, the less restrictive rules have not resulted in abuses or threats to the public that should be governed by the Rules of Professional Conduct;

*Whereas*, Oregon attorneys are allowed to practice in other states and other states’ lawyers are allowed to practice in Oregon;



*Whereas*, Oregon attorneys are put at a competitive disadvantage in not being able to use the latest communications technology and methods to obtain clients;

*Whereas*, the Oregon public is not exposed to modern advertising techniques and cannot be made aware of the legal assistance available to it or the services that lawyers can provide;

*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); therefore, be it

*Resolved*, That the OSB Board of Governors shall formulate amendments to RPCs 7.1-7.3 to conform to the rules governing Washington attorneys for approval at the 2011 HOD meeting.

*Presenter: Timothy M.B. Farrell  
House of Delegates, Region 1*

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### **17. Resolution to Amend Bar Rule 8.2 (HOD Resolution No. 4)**

*Whereas*, the reinstatement of inactive Oregon attorneys is governed by the Oregon State Bar Rules of Procedure (Bar Rules, BR);

*Whereas*, the reinstatement of attorneys inactive for five or less years is processed informally under BR 8.2 whereby applicants are reinstated by the Executive Director after filling out an application and, among other things, paying a \$250.00 fee;

*Whereas*, the reinstatement of attorneys inactive for greater than five years is processed formally under BR 8.1 and requires a showing to the Board of Governors that the attorney has the learning and ability to practice law in the state and, among other things, provides three references, a criminal background check and a payment of \$500;

*Whereas*, the Board of Governors only meets periodically, meaning that an 8.1 application takes much longer than an 8.2 application;

*Whereas*, in these difficult economic times, many attorneys who practice out of state may be forced to convert to inactive status in order to save bar dues and fees;

*Whereas*, there is no evidence that an attorney who is inactive for longer than five years lacks the learning and ability to practice law, especially if that attorney has been active in other jurisdictions;

*Whereas*, an 8.1 applicant does not have to prove any special knowledge or learning ability specific to Oregon law;

*Whereas*, most states do not distinguish reactivation applicants based on their years of inactivity and do not report that attorneys who have been inactive in their state have any problems in learning and having the ability to practice law;

*Whereas*, in these difficult economic times the greater expense and longer time period to reactivate an attorney under BR 8.1 creates an unnecessary hardship on members of the bar;

*Whereas*, the Bar Rules are adopted by the Board of Governors and approved by the Supreme Court pursuant to ORS 9.005(8) and 9.542; therefore, be it

*Resolved*, That BR 8.1 and 8.2 should be amended by the Board so that inactive attorneys who wish to reactivate their status are processed informally under BR 8.2 and may be reinstated by the Executive Director regardless of the number of years that they have been inactive.

*Presenter: Timothy M.B. Farrell  
House of Delegates, Region 1*

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### **18. Resolution to Amend ORS 133.060 (HOD Resolution No. 5)**

*Whereas*, ORS 133.060 requires that a person cited to appear in criminal cases be given a time, date and court specified in the citation, which shall not be later than 30 days after the date the citation was issued; and,

*Whereas*, when the person arrives to make a personal appearance at the time, date and court specified, the person may discover that no criminal complaint has been filed and that there is no existing circuit court case number, with the result that no first appearance is conducted and, worse yet, the person has made a wasted trip (involving personal time loss, missed work, or travel expense, etc.); and,

*Whereas*, such persons also experience frustration with the judicial system as a result of being inconvenienced, because such persons cited to appear have no adequate means of advance knowledge whether or not any criminal complaint has actually been filed by the date and time set forth in the Oregon uniform citation and complaint by the issuing officer; and,

*Whereas*, presently a person cited to appear has no reasonably adequate remedy to avoid making a wasted trip (i.e., a futile attempt to comply with the citation to appear) because there is no assurance that upon appearing a criminal complaint will have been filed in the circuit court; and,

*Whereas*, such travel by persons cited to appear involves unproductive loss of time, missed work, personal inconvenience, and also results in wasted natural resources, increased carbon emissions, and increased motor vehicle traffic, contrary to the public interest in sustainability; and,

*Whereas*, modern technology has the ability to provide an electronic mechanism for *reasonable prior notice* confirming that a criminal complaint has been filed with a corresponding circuit court case number; and,

*Whereas*, both sustainability and better service by the Judicial Department will occur by providing an automatic postponement of the first appearance, without sanction, if such reasonable advance notification has not been provided so as to confirm the actual need to personally appear; therefore, be it

*Resolved*, That the House of Delegates recommend and encourage the Board of Governors to consider sponsoring a bill in the next legislative session to amend ORS 133.060 [“Cited Person to Appear Before Magistrate; Effect of Failure to Appear; Arrest Warrant”] to provide for reasonable advance notice by electronic means via an Internet website or alternatively via a pre-recorded voice-mail confirming that a complaint has actually been filed, and



that if no advance notice is so provided, that therefore a person cited to appear will not be subject to a charge of Failure to Appear; but, instead may be subject to re-citation by mail or any other reasonable means to appear at a later date.

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

## **19. Pricing of Oregon State Bar Products and Services (HOD Resolution No. 6)**

*Whereas*, the Oregon State Bar offers for sale programs, products, and services to members of the Oregon State Bar, including without limitation continuing legal education programs, legal publications, and research materials and resources, both print and online;

*Whereas*, the Oregon State Bar sometimes offers bulk-purchasing discounts to certain groups of customers who purchase multiple units or subscriptions to the goods and services;

*Whereas*, the extension of favorable bulk pricing to certain associations of lawyers while denying it to other associations of lawyers necessarily implies a potential for creating unfair competitive advantages among competing lawyers that may expose the bar to civil liability under ORS 646.040;

*Whereas*, the Oregon State Bar and its Board of Governors should be prohibited from instituting and engaging in bulk pricing policies which favor certain associations of Oregon lawyers over others; therefore, be it

*Resolved*, That in setting prices for OSB products and services, the Board of Governors and Oregon State Bar staff shall not offer a quantity-discount price to a first customer that is different from the price offered to any other purchaser of an equal quantity of the product or service. The foregoing shall not affect the extension of favorable pricing to selected classes of individual-unit purchasers, such as judges, law libraries, newly-admitted attorneys, professors and pro-bono groups.

*Presenter: David H. Madden  
House of Delegate, Region 5*

### **Background**

The OSB has historically offered various discounts to purchasers of its goods and services. One type of discount is tied to a classification or characteristic of the purchaser: a judge, newly-admitted attorney or law library may be entitled to a favorable price. The other type of discount is tied to the number of items purchased at once; this category recognizes that the transaction costs involved in a sale may not scale linearly as the number of items, so it is reasonable to offer the purchaser a portion of the transaction-cost savings.

It has recently come to light that the bar has been setting prices in ways that conflate the “classification” and “transaction cost” types of discount. For example, the BarBooks™ product was offered at a bulk-discount price to groups of lawyers associated with a single firm, but the same price was refused to an equally-sized group of lawyers who were not associated with a single firm. And, although BarBooks™ is now scheduled to become available to all active attorneys as a benefit of membership, the issue is not moot, because

the bar currently refuses to sell a subscription to its CLE series to a group of 500 unaffiliated lawyers (although it would sell such a subscription to a firm of 500 associates and partners).

More broadly, this resolution is a measured and appropriate means to direct the bar’s economic efforts in ways that support and further its goals of ensuring that its members have the resources to competently represent their clients, while reducing the risk that its pricing policies will run afoul of the state’s price discrimination laws, which provides:

ORS Section 646.040 Price discrimination prohibited; price differentials

(1) It is unlawful for any person engaged in commerce or food commerce, or both, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities, or services or output of a service trade, of like grade and quality or to discriminate in price between different sections, communities or cities or portions thereof or between different locations in sections, communities, cities or portions thereof in this state, where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

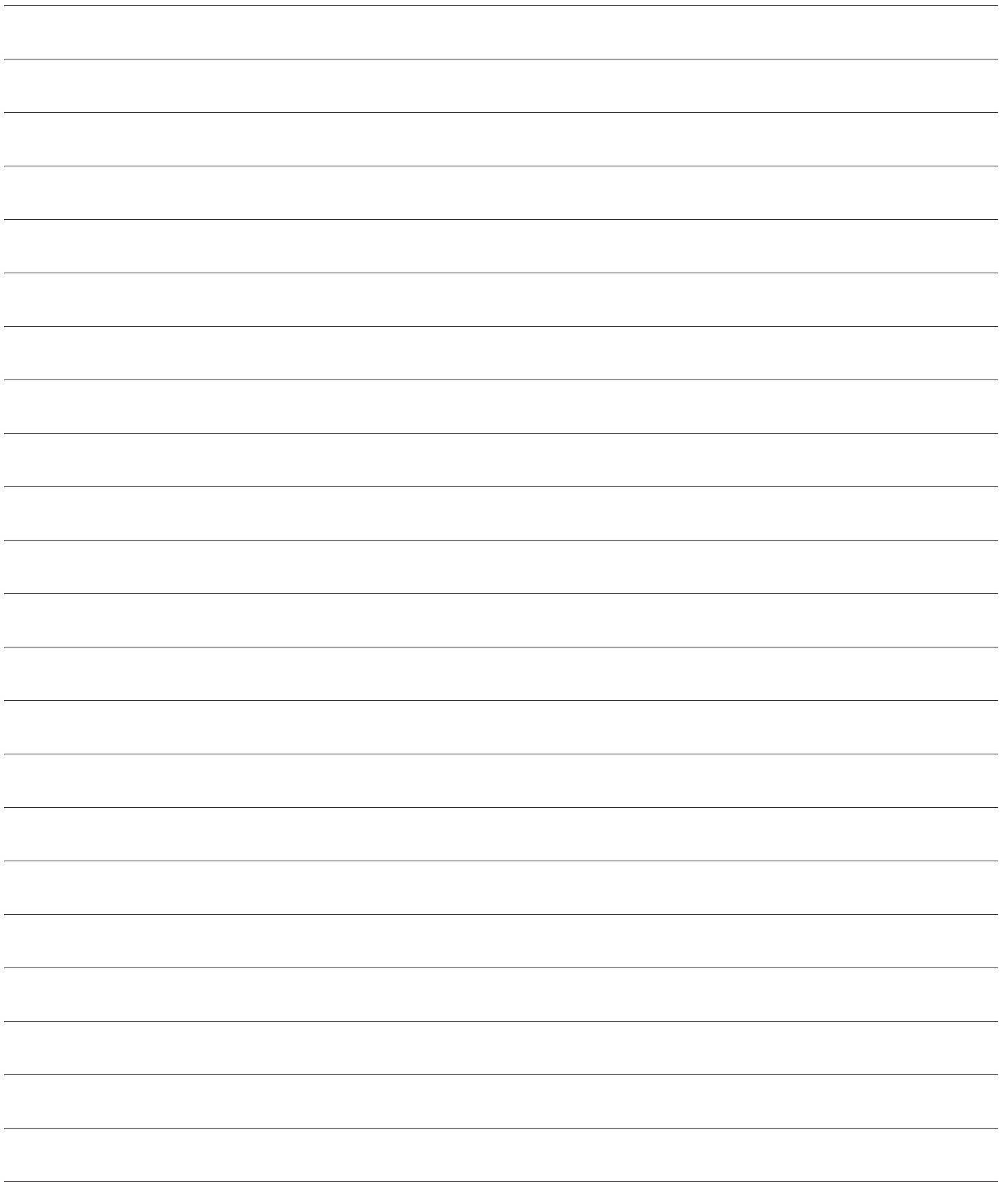
(2) Subsection (1) of this section does not prevent:

- (a) Differentials which make only due allowance for differences in the cost of manufacture, sale or delivery, resulting from the differing methods or quantities in which the commodities are sold or delivered to purchasers.
- (b) Persons engaged in selling goods, wares or merchandise, or service or output of a service trade, in commerce from selecting their own customers in bona fide transactions and not in restraint of trade.
- (c) Price changes from time to time where in response to changing conditions affecting the market for or marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

### **Financial Impact**

This resolution would prevent the bar from offering bulk discounts to multiple-item purchasers on any basis other than the number of items purchased. Therefore, somewhat fewer bulk discounts could be offered, and purchasers who would have received these discounts will have to pay a higher price. Consequently, this resolution should have a positive effect on the bar’s revenues.





Oregon  
State  
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