

Oregon State Bar
2013 House of Delegates Meeting

Holiday Inn Portland South - Wilsonville
25425 SW 95th Avenue
Wilsonville, Oregon 97070
503.682.2211
Friday, November 1, 2013
9:00 a.m.

Oregon State Bar

Dear Oregon State Bar Member:

I am pleased to invite you to the 2013 OSB House of Delegates meeting, which will begin at **9:00 a.m.** on **Friday, November 1, 2013**, at the Holiday Inn Portland South Hotel & Convention Center – Wilsonville. Use the code “Oregon State Bar” to receive a rate of \$99 if you want to book a room at the hotel. Call 503.682.2211 or visit them online at www.hiportlandsouth.com.

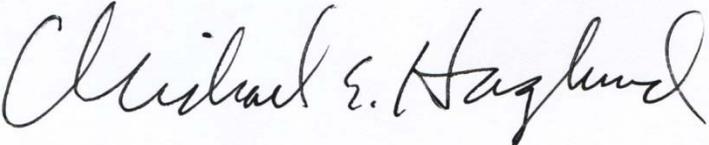
I am pleased to report that the Board of Governors is not requesting an increase in the annual membership fee for 2014. The BOG is proposing, however, an increase in the Diversity & Inclusion (*formerly* Affirmative Action) assessment. The preliminary agenda for the meeting also includes several proposed amendments to the Oregon Rules of Professional Conduct and resolutions supporting adequate judicial funding, low-income legal services, and marriage equality.

All bar members are welcome and encouraged to participate in the discussion and debate of HOD agenda items, but only delegates may vote on resolutions. If you are unable to attend, please contact one of your delegates to express your views on the matters to be considered. Delegates are listed on the bar’s website at www.osbar.org/docs/leadership/hod/hodroster.pdf.

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

Remember that delegates are eligible for reimbursement of round-trip mileage to and from the HOD meeting. Reimbursement is limited to 400 miles and expense reimbursement forms must be submitted within 30 days after the meeting.

I look forward to seeing you at the HOD Meeting on November 1, and I thank you in advance for your thoughtful consideration and debate of these items.



Michael E. Haglund, OSB President

OREGON STATE BAR

2013 House of Delegates Meeting AGENDA

Holiday Inn Portland South – Wilsonville, 25425 SW 95th Avenue, Wilsonville, Oregon 97070

9:00 a.m., Friday, November 1, 2013

Presiding Officer: Michael E. Haglund, OSB President

Reports

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| 1. Call to Order

<i>Michael E. Haglund
OSB President</i> | 5. Report of the Board of Governors Budget and Finance Committee

<i>Ethan D. Knight, Chair
BOG Budget and Finance Committee</i> |
| 2. Adoption of Final Meeting Agenda

<i>Michael E. Haglund
OSB President</i> | 6. Status Report on 2012 CLNS Task Force Resolution

<i>Travis Prestwich and Patrick Ehlers
CLNS Task Force Co-Chairs</i> |
| 3. Report of the President

<i>Michael E. Haglund
OSB President</i> | 7. Overview of Parliamentary Procedure

<i>Alice M. Bartelt, Parliamentarian</i> |
| 4. Comments from the Chief Justice of the Oregon Supreme Court

<i>Thomas A. Balmer, Chief Justice
Oregon Supreme Court</i> | |

Resolutions

- | | |
|--|---|
| 8. In Memoriam
(Board of Governors Resolution No. 1)
<i>Presenter: David Wade, BOG, Region 2</i> | 15. Online Directory Section Listings
(Delegate Resolution No. 2)
<i>Presenter: John Gear, HOD, Region 6</i> |
| 9. Diversity & Inclusion Assessment Increase
(Board of Governors Resolution No. 2)
<i>Presenters: Ethan Knight, BOG, Region 5
Hon. Ann Aiken, Chief Judge, U.S. District Court</i> | 16. Support for Adequate Funding for Legal Services to Low-Income Oregonians
(Delegate Resolution No. 3)
<i>Presenters: Kathleen Evans, HOD, Region 6
Gerry Gaydos, HOD, Region 2
Ed Harnden, HOD, Region 5</i> |
| 10. Amendment of Oregon Rule of Professional Conduct 8.4
(Board of Governors Resolution No. 3)
<i>Presenter: Ethan Knight, BOG, Region 5</i> | 17. Scope of House of Delegates Authority
(Delegate Resolution No. 5)
<i>Presenter: Danny Lang, HOD, Region 3</i> |
| 11. Amendment of Oregon Rules of Professional Conduct 7.1-7.5
(Board of Governors Resolution No. 4)
<i>Presenter: Kurt Hansen
Chair, Legal Ethics Committee</i> | 18. Marriage Equality Resolution
(Board of Governors Resolution No. 7)
<i>Presenters: Patrick Ehlers, BOG, Region 5
Richard Spier, BOG, Region 5</i> |
| 12. Miscellaneous Amendments to Oregon Rules of Professional Conduct
(Board of Governors Resolution No. 5)
<i>Presenter: Helen Hierschbiel
General Counsel, Oregon State Bar</i> | 19. Admission to Bar after Two Years of Law School
(Delegate Resolution No. 6)
<i>Presenter: Timothy MB Farrell
President, Mid-Columbia Bar Association</i> |
| 13. Veterans Day Remembrance
(Board of Governors Resolution No. 6)
<i>Presenter: Richard Spier, BOG, Region 5</i> | 20. Centralized Legal Notice System
(Delegate Resolution No. 7)
<i>Presenter: John Gear, HOD, Region 6</i> |
| 14. Member Support of Judicial Branch
(Delegate Resolution No. 1)
<i>Presenter: Danny Lang, HOD, Region 3</i> | 21. Admission Rule for Military Spouse Attorneys
(Delegate Resolution No. 8)
<i>Presenter: Gabriel Bradley, HOD, Out-of-State
Resolution Excluded from Preliminary Agenda</i> |
| | 22. Enhance Public Safety on Oregon Public Waterways (Delegate Resolution No. 4)
<i>Presenter: Danny Lang, HOD, Region 3</i> |

Resolutions

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

Philip T. Abraham	William B. Duncan	Sanford Kowitt	Loretta Skurdahl
Gail L. Achterman	Royce Deryl Edwards	Richard T. Kropp	Frederick T. Smith
Duane A. Bartsch	John B. Fenner	Ryan Lawrence	Guy O. Smith
Milton E. Bernhard	Steve D. Gann	Herbert W. Lombard	Douglas R. Spencer
Thomas L. Black	Arnold L. Gray	Gregg A. Lowe	Mary L. Stasack
Stuart M. Brown	Charles M. Gudger	Jim L. Lucas	Marvin S.W. Swire
Richard W. Butler	Reese Patrick Hastings	Merrill C. McCarthy	Joseph J. Thalhofer
Jesse R. Calvert	Rodger M. Hepburn	Hon. Michael J. McElligott	William R. Thomas
Janis M. Cote	John W. Hill	Peter L. Powers	Larry Voth
Joyle C. Dahl	H. Kent Holman	Patrick A. Randolph	Wendy Weinberg Waplinger
Dianne K. Dailey	Ralph M. Holman	William P. Ray	Mark LB Wheeler
Cameron J. Dardis	Theodore B. Jensen	Don H. Sanders	Arthur L. Whinston
C. Douglas De Freytas	Raymond Alan Jenksi	Kenneth W. Saxon	Kathryn A. Wood
Lynn Deffebach	Rees C. Johnson	Lester Edward Seto	Joseph P. Wright
Robert L. Dressler	Michael A. Kesner	Thomas A. Sherwood	
Neil J. Driscoll	Krista I. Koehl	Hon. Otto R. Skopil	

*Presenter: David Wade
Board of Governors, Region 2*

9. Diversity and Inclusion Assessment Increase (Board of Governors Resolution No. 2)

Whereas, the 1974 Oregon State Bar Annual Meeting approved the creation of an Oregon State Bar Affirmative Action Program (AAP) due to the low numbers of racial and ethnic minority bar members (.5% of the membership); and

Whereas, in 2006 the House of Delegates (HOD) approved a resolution reauthorizing the AAP through December 31, 2021 at the same funding level established for the AAP in 1989 (\$30 per active member per year and \$15 per active member for less than two years); and

Whereas, since the mid-1970's, the number of bar members who identify as racial and ethnic minorities has increased to 6.6%, while the population of racial and ethnic minorities in Oregon has increased to 16.4%; and

Whereas, the demographics in Oregon and America are rapidly changing, and there is a compelling need for the bar to serve an increasingly diverse population and to reflect the community we serve; and

Whereas, a diverse and inclusive bar is necessary to solve the challenges faced by the legal profession; and

Whereas, the name of the AAP was changed to the Diversity & Inclusion Department and Programs (D&I) in 2011; and

Whereas, the assessment to fund the Diversity & Inclusion Department has not increased in 23 years; and

Whereas, an increase in the Diversity & Inclusion Assessment is necessary to retain staff, and continue programs and outreach; now, therefore, be it

Resolved, that effective in 2014, the Diversity & Inclusion Assessment be set at \$45 for active members admitted in any jurisdiction before January 1, 2012, and at \$25 for active members admitted in any jurisdiction on or after January 1, 2012.

*Presenters: Ethan Knight, BOG, Region 5
Hon. Ann Aiken, Chief Judge, U.S. District
Court*

Proponent's Statement

The Board of Governors recommends passage of the resolution increasing the assessment to fund the bar's Diversity & Inclusion Department and Programs (D&I), formerly known as the Affirmative Action Program (AAP). The assessment to fund D&I was last raised 23 years ago in 1990, so funding for D&I has not kept pace with inflation. Additional funding is

needed to retain staff and fund important programs and outreach.

The OSB established the AAP, which is now called the Diversity & Inclusion Department and Programs, in 1974. At that time only 0.5% (27 out of 5,450) bar members identified as racial and ethnic minorities. Initially, D&I was funded by a \$10 per bar member "Affirmative Action" assessment. The assessment was increased from \$10 to \$15 in 1980, and from \$15 to \$30 in 1990. In 2006, the House of Delegates authorized the \$30 assessment through 2021.

The mission of the Diversity & Inclusion Department of the Oregon State Bar is to support the mission of the Oregon State Bar: by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. The Program serves this mission by striving to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, by educating attorneys about the cultural richness and diversity of the clients they serve, and by removing barriers to justice.

With its dedicated resources, and a long history of committed advisory committee volunteers, D&I has made significant progress toward increasing the diversity of the OSB, which is one of its primary missions. This work is evidenced by the increase in the number of attorneys licensed in Oregon who identify as racial and ethnic minorities from .5% in 1974 to 6.6% today. That said, there is much more work that needs to be done, especially given the rapidly changing demographics in Oregon and the United States, the rise in the number of Americans who are unable to afford legal services, declining law school enrollment, and the legal jobs crisis.

The board believes that a diverse and inclusive bar is necessary to solve the challenges facing the legal profession. In particular, a diverse and inclusive bar is necessary to attract and retain talented employees and leaders; effectively serve diverse clients with diverse needs; understand and adapt to increasingly diverse local and global markets; devise creative solutions to complex problems; and improve access to justice, respect for the rule of law, and the credibility of the legal profession. Until a diverse set of lawyers is present at every level of the profession

-- partners in firms, government agencies, nonprofits and businesses, judges both state and federal, etc.-- there is still work to be done.

Race and ethnicity is one important aspect of diversity that requires deliberate attention, but the concept is much broader than that. In 2012 the board defined diversity and inclusion as acknowledging, embracing and valuing the unique contributions our individual backgrounds make to strengthen our legal community, increase access to justice, and promote laws and creative solutions that better serve clients and communities. Diversity includes, but is not limited to: age; culture; disability; ethnicity; gender and gender identity; geographic location; national origin; race; religion; sexual orientation; and socio-economic status.

D&I's signature program, Opportunities for Law in Oregon (OLIO), was created in 1998 as a racial and ethnic minority law student recruitment and retention strategy. Direct program expenses for OLIO are paid entirely with non-member resources (donations, grants, etc.). Beginning in 2005, the eligibility requirement for OLIO was opened to allow any law student who supported the program's mission to attend the OLIO Orientation as an upper division student as well as all the other OLIO program components. Today, all of D&I's programs and outreach extend beyond programs for students and include all bar members and the community at large.

The OSB has had a long-standing tradition of supporting the advancement of diversity and inclusion within the bar. The challenges faced by the legal profession nationally and in Oregon demand that we increase our effort to support diversity as key to the bar achieving its mission. While we recognize the difficulty in asking our bar members to pay more in a time of less, we on the Board of Governors encourage the members of the House of Delegates to support this increase as a modest investment in a future bar that is more inclusive and promotes access to justice for all Oregonians.

**10. Amendment of Oregon Rule of Professional Conduct 8.4
(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 are 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 8.4 as set forth below is approved and will be submitted to the Oregon Supreme Court for adoption:

**RULE 8.4
MISCONDUCT**

- (a) It is professional misconduct for a lawyer to:
- (1) violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (2) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law;
 - (4) engage in conduct that is prejudicial to the administration of justice;
 - (5) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law; [or]
 - (6) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law[.]; or
 - (7) in the course of representing a client, knowingly engage in conduct that manifests bias or prejudice based upon race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, disability or socioeconomic status.**
- (b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or

constitutional rights, provided the lawyer's conduct is otherwise in compliance with these Rules of Professional Conduct. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein, or from declining, accepting, or withdrawing from representation of a client in accordance with Rule 1.16

*Presenter: Ethan Knight
BOG, Region 5*

Background

At its April 2011 meeting, in response to a request from the Oregon Women Lawyers, the Board of Governors directed the Legal Ethics Committee ("LEC") to establish a special subcommittee, including representatives from OWLS, specialty bars and other stakeholders (collectively "stakeholders"), to evaluate whether discrimination, intimidation and harassment are adequately addressed in the Oregon Rules of Professional Conduct. The LEC established the group and designated it Task Force on Discipline for Harassment, Discrimination and Intimidation ("HDI Task Force").

At the September 2011 BOG meeting, the HDI Task Force submitted a recommendation and a proposed amendment to RPC 8.4 to the BOG. The Board voted unanimously to accept the task force conclusion that the RPCs should prohibit discrimination, intimidation and harassment in the practice of law. However, because the LEC itself had not had an opportunity to fully study the proposed rule, and in a preliminary vote was evenly divided on the issues of whether a rule change was appropriate and on the language of the proposed rule, the Board decided to send the matter back to the LEC for further study.

After another year of consideration including efforts to draft a formal ethics opinion, and meeting with

stakeholders, the LEC ultimately concurred with the HDI Task Force conclusion that a rule change is necessary and appropriate. Oregon is one of a minority of states that does not have either a rule or commentary that specifically prohibits lawyers from engaging in harassment, discrimination or intimidation in the practice of law. The LEC believes the time has come for Oregon to join the majority in expressly prohibiting harassment, discrimination and intimidation by lawyers in the practice of law.

In deciding what form an amendment to the rules should take, the LEC reviewed the HDI Task Force report and the rules and commentary from other jurisdictions. Using the amendment to RPC 8.4 proposed by the HDI Task Force as its starting point, the LEC's primary points of discussion were: what protected classes of individuals should be included in the new rule; what level of intent should be required (knowing or negligent); and whether the new rule should reach a lawyer's conduct only in the course of representing a client or include conduct when representing the lawyer's own interests.

On the question of what protected classes should be included in the rule, the LEC adopted the recommendations made by stakeholders, adding color, sex, gender identity, gender expression, and socioeconomic status to the list proposed by the HDI Task Force.¹

There was significant debate around the issue of whether the level of intent required to violate the rule should be "knowing" or "negligent." The amendment proposed by the HDI Task Force included a "knowing" element; however, several LEC members expressed concern about the difficulty of proving that a lawyer "knowingly manifested" bias or prejudice. Moreover, civil rights laws do not require a showing of intent to prove discrimination. The LEC settled on what it believes is a fair compromise: the rule requires evidence that a lawyer *knowingly engaged in conduct* that manifests bias or prejudice, as opposed to evidence that the lawyer *knowingly manifested bias or prejudice*. Accordingly, a violation would occur, when a lawyer knowingly makes a racial slur, regardless of whether the lawyer intended to manifest bias or prejudice by such conduct.

¹ The addition of sex, gender identity and gender expression was based on the U.S. Department of Education Office for Civil Rights guidance relating to Title IX.

The LEC also spent considerable time discussing whether the new rule should reach conduct "in the course of representing a client or the lawyer's own interests" or only conduct "in the course of representing a client." Some felt strongly that the rules of professional conduct should not be used to dictate a lawyer's personal conduct or to enforce laws that prohibit employment discrimination, and expressed concern that including "the lawyer's own interests" would open those doors. While mindful of those issues, others were concerned that omitting "the lawyer's own interests" would allow a lawyer to engage in offensive conduct in the course of pursuing his or her own personal legal matters. The proposed rule applies only "in the course of representing a client." Overriding all discussions was the desire to ensure that some form of an amendment to RPC 8.4 be approved by the House of Delegates. Thus, while the proposed new language may not be the preferred version for everyone, compromises were made by many in order to create a rule that would demonstrate the bar's intolerance for conduct that manifests bias or prejudice, be enforceable, and be acceptable to the majority of the membership. The BOG acknowledges and is grateful for the stakeholders' contributions to the work of the LEC in developing this proposed amendment.

**11. Amendment of Oregon Rules of Professional Conduct 7.1-7.5
(Board of Governors 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 are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, That the following Oregon Rules of Professional Conduct 7.1 – 7.5 be substituted for the current Oregon RPC 7.1 – 7.5 and submitted to the Oregon Supreme Court for adoption:

**RULE 7.1 COMMUNICATIONS CONCERNING A
LAWYER'S SERVICES**

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

RULE 7.3 SOLICIATION OF CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a

prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted: (1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

RULE 7.4 (RESERVED)

RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be

used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

(e) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

*Presenter: Kurt Hansen
Chair, Legal Ethics Committee*

Background

The 2010 HOD agenda included a resolution to conform Oregon's advertising rules to Washington's. Although the resolution failed, several delegates suggested that the BOG should study the idea. The BOG, in turn, asked the Legal Ethics Committee (LEC) to study the rules and make a recommendation. This resolution is the product of nearly two years' study by the LEC.

The LEC review included Washington's rules, the ABA Model Rules, and the report and recommendations of a 2009 Advertising Task Force. The 2009 Task Force, concluding that many of Oregon's rules would not withstand scrutiny under the Oregon Constitution, recommended sweeping changes that included eliminating the prohibition on in-person solicitation. In the face of strong opposition to such

extensive changes, the BOG tabled the 2009 recommendations.

As did the 2009 Task Force, the LEC operated on the assumption that the principal objective of the rules on advertising and solicitation is to assure that those communications are truthful and not misleading. The desire to protect lawyers from competition, regulate "good taste" or keep the public ignorant of their potential rights, are not proper bases for professional regulation.

Nevertheless, the LEC recommendations take a more measured approach than the 2009 Task Force proposals. The LEC concluded that adoption of the ABA Model Rules 7.1-7.5 with some variations will retain important existing provisions while providing practitioners with guidance that is clear, simple and more consistent with other jurisdictions. The LEC will, if the proposed rules are adopted, draft one or more formal ethics opinions that will offer interpretive guidance.

A brief summary of the changes follows. The full text of the proposed amendments, with a comparison to the current rules and explanatory notes can be found at the end of this agenda. **[Exhibit A]**

RPC 7.1: This is the rule with the most significant change. The rule prohibits false or misleading communications, and currently lists nine different types of statements that are prohibited because they are deemed to be misleading. Because both the 2009 Task Force and the LEC believe the itemized list is both under-inclusive and overbroad, the recommendation is to adopt the ABA Model Rule language that simply prohibits false or misleading communications, and defines false or misleading to include a misrepresentation of fact or law, or the omission of facts necessary to make a statement not materially misleading. This change will, of course, require lawyer to evaluate proposed communications on a case-by-case basis, focusing the analysis on the harm the rules is intended to prevent.

RPC 7.2: The first part of this rule is a simple statement authorizing advertisements in written, recorded or electronic communication. The current prohibition on allowing another to promote the lawyer's service through means involving false or misleading communications is eliminated, as it is covered in the overarching prohibition of Rule 7.1. The prohibition against paying others for referrals is retained, with limited exceptions including paying

the charges of a not-for-profit referral service. The current detailed provisions of 7.2(c) relating to legal service plans are eliminated, as they are already covered in other rules.

RPC 7.3: The proposed new rule is nearly identical to current Rule 7.3, retaining the prohibitions against in-person, live telephone or real-time electronic solicitation of professional employment. The requirement to identify unsolicited advertisements as such is modified to substitute the phrase "Advertising Material" for "Advertisement" and deletes the requirement that the words be "in noticeable and clearly readable fashion" on the ground that it does not give clear guidance with regard to the many kinds of communications that may be used and because a notification that isn't readily apparent constitutes no notification and would violate the rule. Recommendations of the ABA Ethics 20/20 Commission have also been incorporated into the proposed rule for clarity sake.

RPC 7.4: Neither the Legal Ethics Committee nor the BOG favors adoption of the ABA rule governing communicating fields of practice and specialization.

Both conclude that it is duplicative of the existing prohibition against false or misleading communications.

RPC 7.5: The proposed new rule contains the essential elements of the current rule, but in different order and using slightly different language. The only substantive change is in regard to including a lawyer's name in a firm name if the lawyer is temporarily not actively practicing with the firm. The new rule applies that prohibition only when the lawyer is holding public office.

12. Miscellaneous Amendments to Oregon Rules of Professional Conduct (Board of Governors 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 are presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved, That the Oregon Rules of Professional Conduct be amended as follows and submitted to the Oregon Supreme Court for adoption:

RULE 1.0 TERMINOLOGY

(q) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and [e-mail] **electronic communications.** A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

RULE 1.6 CONFIDENTIALITY

* * *

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

* * *

(6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose [provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17] with respect to each affected 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, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. [A potential purchasing] The lawyer or lawyers receiving

the information shall have the same responsibilities as the [selling] **disclosing** lawyer to preserve **the** 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] **regardless of the outcome of the contemplated transaction;**

* * *

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST;
SCREENING

* * *

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is **promptly** screened from any form of participation or representation in the matter **and written notice of the screening procedures employed is promptly given to any affected former client.** [For purposes of this rule, screening requires that:

(1) *the personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter or representation;*

(2) *at least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation; and*

(3) no violation of this Rule shall be deemed to have occurred if the personally disqualified lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.]

RULE 1.15-2 IOLTA ACCOUNTS AND TRUST ACCOUNT
OVERDRAFT NOTIFICATION

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest ("net interest") shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. IOLTA accounts shall be operated in accordance with this rule and with operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.

* * *

(f) If a lawyer or law firm determines that a particular client's funds in an IOLTA account either did or can earn net interest, the lawyer shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for **the lesser of either:** [of] any interest earned by the client's funds **and** [that may have been] remitted to the Oregon Law Foundation; **or the interest the client's funds would have earned had those funds been placed in an interest bearing account for the benefit of the client at the same bank.**

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

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

* * *

RULE 1.18 DUTIES TO PROSPECTIVE CLIENTS

(a) A person who [discusses] **consults** with a lawyer **about** 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] **learned information from** a prospective client shall not use or reveal **that** information [learned in the consultation], except as Rule 1.9 would permit with respect to information of a former client.

RULE 2.4 LAWYER SERVING AS MEDIATOR

(a) A lawyer serving as a mediator:

- (1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and
- (2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.

(b) A lawyer serving as a mediator:

- (1) may prepare documents that memorialize and implement the agreement reached in mediation;
- (2) shall recommend that each party seek independent legal advice before executing the documents; and
- (3) with the consent of all parties, may record or may file the documents in court.

(c) [Notwithstanding Rule 1.10, when a lawyer is serving or has served as a mediator in a matter, a member of the lawyer's firm may accept or continue the representation of a party in the matter in mediation or in a related matter if all parties to the mediation give informed consent, confirmed in writing.]

[[d c]]The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.

RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in **paragraph (d)** and in Rule 2.4(b) [and in paragraph (d)], a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all

parties to the proceeding give informed consent, confirmed in writing.

* * *

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS; INADVERTENTLY SENT DOCUMENTS

* * *

(b) A lawyer who receives a document **or electronically stored information** relating to the representation of the lawyer's client and knows or reasonably should know that the document **or electronically stored information** was inadvertently sent shall promptly notify the sender.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER [ASSISTANTS] ASSISTANCE

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

- (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
- (b) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Background

Most of the following amendments are based largely on changes made to the ABA Model Rules of Professional Conduct based on the recommendations of the ABA Ethics 20/20 Commission. Others were suggested as helpful clarifications of the Oregon RPCs.

Rule 1.0 Terminology

Adding “electronic communications” to the definition of “writing” or “written” in subsection (q) recognizes that email is not the only (or even most widely used) form of electronic communication. Making the language more general will make it clear that all such communications fall within the meaning of “writing.”

Rule 1.6 Confidentiality

The new language in paragraph (b)(6) expands on the disclosures currently permitted in connection with the sale of a law practice. It recognizes that lawyers in different firms may need to disclose limited information to each other to detect and resolve conflicts of interest when a lawyer is considering an association with another firm or two firms are considering a merger.

New paragraph (c) requires lawyers to act competently to safeguard client information against unauthorized access by third parties and against inadvertent disclosure by the lawyer or other persons who are participating in the representation who are subject to the lawyer’s supervision. The “new” language is nearly identical to *former* DR 4-101(D), which had no counterpart in the ABA Model Rules until recently.

Rule 1.10 Imputation of Conflicts of Interest; Screening

The detailed process in subparagraphs (1)-(3) of the current rule retained the language in *former* DR 5-105(I), which was adopted in Oregon in 1983. For many years, Oregon was one of only two jurisdictions that permitted such screening. When Oregon adopted the Oregon Rules of Professional Conduct (based largely on the ABA Model Rules) in 2005, the long-standing screening process was retained in part because there was no analogous ABA Model Rule. At the same time, we adopted a definition of “screened” in Rule 1.0(n):

“Screened” denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

One unforeseen consequence of retaining the language of the old screening rule is its assumption that the personally disqualified lawyer’s former law

firm continues to represent the former client. Accordingly, RPC 1.10(c) provides no guidance when a lawyer wants to invoke screening to avoid disqualification of the new firm, but the lawyer’s former client is no longer represented by the lawyer’s former firm.

If amended as proposed, the rule will direct the notice of the screening that is being employed to the affected former client (through the client’s lawyer if the client is represented, pursuant to RPC 4.2). The screening procedures employed are at the discretion of the firm, so long as they are sufficient to meet the standard in Rule 1.0(n). This will align screening in Rule 1.10 to the screening permitted under Rule 1.18 (Prospective Client).

Rule 1.15-2 IOLTA Accounts and Trust Account Overdraft Notification

If client funds held by a lawyer are so minimal in amount or will be held for such a short period that they *cannot* earn net interest, RPC 1.15-2 requires they be held in an IOLTA (Interest on Lawyer Trust Accounts). Interest earned on funds held in IOLTA accounts is paid to the Oregon Law Foundation (“OLF”), a charitable, tax-exempt entity, which uses the money for grants to legal services programs for low-income individuals and to other programs that either promote diversity in the legal profession or educate the public about the law.

Client funds that *can* earn net interest must *not* be deposited in an IOLTA account. Instead, RPC 1.15-2(c) directs that such funds must be deposited in an interest bearing Lawyer Trust Account in which interest earned on the funds accrues to the benefit of the client.

Should a lawyer deposit into an IOLTA account funds that are later determined to have been able to earn net interest for the client, RPC 1.15-2(f) requires the lawyer to transfer the funds into an interest bearing trust account for the client’s benefit and “request a refund for any interest earned by the client’s funds that may have been remitted to the Oregon Law Foundation.” The OLF is then to issue a refund of the interest earned on the client funds. Unfortunately, the RPC does not make it clear how much interest should be refunded.

Interest rates available to the general public at most financial institutions are at an all-time low and currently range between about .01 and .25 percent. By contrast, because of Oregon’s unique Leadership Bank Program, interest rates on Oregon IOLTA

accounts can be as high as 1%. As a result, a client's funds could earn much more interest in an IOLTA account than they could earn if deposited in a separate interest bearing account for the client's benefit.

The trust account rules, particularly the IOLTA requirements, were not designed to provide a windfall for a client whose lawyer mistakenly deposits the funds in the wrong account. This change will allow the client to have a refund only of the amount of interest that the client's funds would have earned if properly placed in a non-IOLTA account.

Rule 1.18 Duties to Prospective Client

The change from "discusses" to "consults" is intended to make it clear that a person may become a prospective client within the meaning of the rule regardless of whether the "consultation" is written, oral or electronic. Circumstances will dictate whether the communication constitutes a consultation. For example, a consultation is likely to have occurred if a lawyer, in person or through advertising in any medium, invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. By contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's qualifications or provides legal information of general interest. Similarly, a mechanism for submitting information will not result in consultations if the lawyer clearly indicates no intention of establishing client relationships in that manner and warns against submitting confidential information. The amendment in paragraph (b) complements the change in paragraph (a) by eliminating the term "discussions" and puts the focus on the information that is learned.

Rule 2.4 Lawyer Serving as Mediator and Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third Party Neutral

The proposed amendments to Oregon RPC 2.4 and RPC 1.12 will clarify their relationship to one another and resolve their inconsistent mandates. Rule 2.4(c) allows one lawyer in a firm to represent a party to a mediation even if another member of the firm is serving or has served as a mediator in the matter, provided all parties to the mediation give their

informed consent to the representation. By contrast, RPC 1.12(c) prohibits any other lawyer in the firm from undertaking or continuing representation in the matter without the parties' consent unless the lawyer in the firm who mediated the matter is screened and the parties and tribunal are given prompt written notice.

The inconsistency between RPC 2.4 and 1.12 was unintentional and only recently discovered when a practitioner inquired about which rule to apply. Oregon RPC 2.4 is identical to *former* DR 5-106, which was initially adopted in 1986 and was unique to Oregon. The language was retained in RPC 2.4 with only minor changes. Oregon RPC 1.12, on the other hand, was adopted verbatim from the Model Rules; prior to 2005, Oregon had no rule like it.

While unintended, the discord between RPC 2.4(c) and 1.12(c) creates uncertainty for practitioners. At the very least, the written notice provision of RPC 1.12(c) is redundant, given the informed consent requirement of RPC 2.4. Additionally, the informed consent requirement of RPC 2.4 is unnecessarily burdensome and elevates the rights of mediating parties to those of clients. If a firm has previously represented a client, there is an obvious justification for requiring (under RPC 1.9) the former client's informed consent if the firm undertakes to represent a new client with adverse interests in a related matter. There is, however, no similar rationale for giving a mediating party the same level of veto power over the mediator's or the mediator's firm's subsequent representation of clients.

Rule 4.4 Respect for the Rights of Third Persons; Inadvertently Sent Documents

The addition of "electronically stored information" to paragraph (b) recognizes modern methods of communications. OSB Formal Op. No. 2011-187 assumes the applicability of the rule to electronically stored information and discusses the duties of a lawyer who receives inadvertently sent metadata in an electronic document. Amending the rule provides a sounder underpinning for the conclusion in the opinion and clarifies the scope of the rule.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants

This simple change in the title to the rule will clarify the obligations of lawyers who outsource legal work, both domestically and offshore. Specifically, the change will make it clear that existing principles apply to the use of nonlawyers both within and

outside the firm. The term “assistants” generally connotes nonlawyer staff within a lawyer’s office; “assistance” is a broader term than can encompass a

variety of individuals and types of work that may be sourced outside a firm.

**13. Resolution for Veterans Day Remembrance
(Board of Governors Resolution No. 6)**

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

Whereas, Thousands of Oregonians have served in the military, and many have given their lives; now, 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: Richard Spier
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, November 11, 2013, the Board of Bar Governors would like to say thank you and pause for a moment in honor of the soldiers and their families.

**14. Member Support of Judicial Branch
(Delegate Resolution No. 1)**

Whereas, Oregon State Bar Members depend on the availability of an adequately staffed and funded Judicial Branch; and

Whereas, the Constitution of Oregon, Article VII, providing for the Judicial power of the State sets forth the independent function of the Judicial Branch; and

Whereas, an independent Judicial Branch must receive stable and certain funding to provide for needed infrastructure, adequate staffing, and Judicial compensation commensurate with the level of responsibility of Circuit Court Judges; Judges of the Court of Appeals; and Oregon Supreme Court Justices; and

Whereas, individual Members of the Oregon State Bar are uniquely qualified to communicate to the Public, the Media, and Members of the Oregon Legislature the need for essential funding of the Judicial Branch as an independent function of State Government in providing access to Justice; now, therefore, be it

Resolved, that the House of Delegates recommend the Board of Governors actively encourage Members to Publicly and Legislatively support funding of the Judicial Branch needs for infrastructure improvements; staffing without Court closures; and recognition that the responsibility upon the Oregon Judiciary for full Access to Justice requires commensurate compensation.

Presenter: Danny Lang, HOD, Region 3

**15. Online Directory Section Listings
(Delegate Resolution No. 2)**

Whereas, The bar maintains complete records of bar section membership and leadership roles; and

Whereas, The bar has an online member directory available for the public and provides attorney

contact and disciplinary information to the public through that directory; and

Whereas, Attorneys should be encouraged to become active participants and leaders in bar

sections, both for the good of the bar and the public; and

Whereas, Listing each member's section membership history and leadership position history will encourage bar members to join sections of interest to them and to seek leadership positions in those sections, helping the sections and the bar financially; and

Whereas, The cost of this enhancement is trivially small; and

Whereas, The public would benefit from having information about attorney section membership and leadership history when using the directory; now, therefore, be it

Resolved, That the House of Delegates of the Oregon State Bar directs the Board of Governors to take prompt action to enhance the online membership directory listing by adding each listed member's section membership and leadership history to the online display for each consenting member

Presenter: John Gear, HOD Region 6

**16. Support for Adequate Funding for Legal Services to Low-Income Oregonians
(Delegate Resolution No. 3)**

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

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

Whereas, Programs providing civil legal services to low-income Oregonians is a fundamental component of the Bar's effort to provide such access; and

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 more than one third of legal aid's overall funding and is critical in providing equal access to justice; and

Whereas, Poverty in Oregon has increased 61% between 2000 and 2011, the 8th largest increase in the nation and most of Oregon's poor have nowhere to turn for free legal assistance; and

Whereas, In the past 3 years, because of a perfect storm of funding cuts, Oregon's legal aid programs have had to reduce staffing and close offices, at a time when the need for civil legal services is at a record high; and

Whereas, It is estimated that legal aid programs in Oregon meet about 15% of the civil legal needs of Oregon's poor creating the largest "justice gap" for low-income and vulnerable Oregonians in recent history; and

Whereas, Assistance from the Oregon State Bar and the legal community is critical to maintaining and developing resources that will provide low-income Oregonians meaningful access to the justice system; now, therefore, be it

Resolved, That the Oregon State Bar;

(1) Strengthen its commitment and ongoing efforts to improve the availability of a full range of legal services to all citizens of our state, through the development and maintenance of adequate support and funding for Oregon's legal aid programs and through support for the Campaign for Equal Justice.

(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) Work with Oregon's legal aid programs and the Campaign for Equal Justice to preserve and increase state funding for legal aid and explore other sources of new funding.

(4) 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, 75% of Oregon State Bar Sections contributing \$50,000, and a 50% contribution rate by all lawyers.

(5) Support the Oregon Law Foundation and its efforts to increase resources through the interest on Lawyers Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank at OLF Leadership Banks that pay the highest IOLTA rates.

(6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.

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

(8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice

Presenters:

Kathleen Evans, HOD, Region 6

Gerry Gaydos, HOD, Region 2

Ed Harnden, HOD, 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.” OSB Bylaw 1.2. 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 Resolutions in 1996, 1997, 2002, 2005–2012). This resolution is similar to the resolution passed in 2012, but specifically updates the increase in poverty, and resolves to work with Oregon’s legal aid programs and the Campaign for Equal Justice in helping to address “the justice gap.”

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 Campaign works collaboratively with the Oregon

Law Foundation and the Oregon State Bar to support Oregon’s legal aid programs. The Bar and the Oregon Law Foundation each appoint a member to serve on the board of the Campaign for Equal Justice.

In a comprehensive study assessing legal needs, 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). Today, legal aid programs estimate that about 85% of the civil legal needs of the poor in Oregon go unmet. Although we have made strides toward increasing lawyer contributions to legal aid, there remains a significant deficit in providing access to justice to low-income Oregonians.

Currently, about 20% of lawyers contribute to the Campaign for Equal Justice. The Campaign supports statewide legal aid programs in Oregon which have offices in 17 different Oregon communities, and provide representation to income eligible clients in all 36 Oregon counties. 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.

17. Scope of House of Delegates Authority (Delegate Resolution No. 5)

Whereas, Delegates to the House of Delegates have demonstrated their interest, competence, and dedication to promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession; and

Whereas, the House of Delegates has been delegated/recognized as a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public; and

Whereas, the type of matters historically presented to the House of Delegates (and to the Membership prior to the creation of the HOD) have included: 1) Disciplinary Rule Changes; 2) Bar positions on major legislative and policy issues; 3) Member resolutions on a variety of topics; 4) fee increases; and

Whereas, the annual meeting of the House of Delegates offers a forum, open to the public, wherein Agenda Items and matters of public interest and benefit are within the scope of the Oregon State Bar ByLaws, including the aforementioned purpose(s) of the Bar; and

Whereas, Agenda Items/Proposed Resolutions are submitted by Elected Delegates or Ex-Officio Delegates within the purpose of ensuring fair administration of justice for all and the advancement of the science of jurisprudence; and

Whereas, to date, the concept of “advancement of the science of jurisprudence” remains susceptible to differing subjective interpretations; and

Whereas, better guidance will be provided to HOD Delegates and Members of the Board of Governors by the establishment of appropriate criteria; and

Whereas, enhanced visibility of the Oregon State Bar in general and the various Sections; Committees; Local Bar Associations; and other sponsors of public interest matters will be better served by establishment of appropriate definitions and categories for proposed Agenda Items; now, therefore, be it

Resolved, that the House of Delegates recommend and encourage the Board of Governors to appoint a Committee to undertake development of such refinements of the science of jurisprudence in the context of the functioning of the House of Delegates.

Presenter: Danny Lang, HOD, Region 3

18. Marriage Equality Resolution (Board of Governors Resolution No. 7)

Whereas, The Oregon Legislative Assembly has directed the BOG to “at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice;” and

Whereas, The Functions of the Oregon State Bar as stated in OSB Bylaw 1.2 include that “We are leaders helping lawyers serve a diverse community;” and

Whereas, Consistent with and supportive of this Function, one of the Values of the Oregon State Bar is that “The Bar is committed to serving and valuing its diverse community, to advancing equality in the legal system, and to removing barriers to the system;” and

Whereas, The movement for Marriage Equality is the civil rights challenge of this decade, much as the struggle for racial and ethnic equality was an important part of the 1950s and 1960s, which struggle resulted in improved ability of racial minorities to enjoy the same civil rights afforded to others, such as in public accommodations, education, voting rights, -- and marriage (*Loving v. Virginia*, 388 US 1 (1967)); and

Whereas, As the organization of Oregon lawyers who are called upon to “serve a diverse community,” we

of the OSB should go on record in support of the civil right to marry a person of either sex; and

Whereas, Members of the OSB help Oregonians every day with issues that turn on the status of the marriage relationship, including marriage and dissolution and attendant issues of support, property division, and child custody; adoption; estate planning, estate/gift and income taxation; healthcare and medical insurance; criminal law; education; and the rights and obligations of debtors and creditors; and

Whereas, the United States Supreme Court recently held the federal Defense of Marriage Act unconstitutional as respects its prohibition of the federal government’s recognition of same sex marriages that are valid under state law(*United States v. Windsor*, 570 US ____ (2013)); and

Whereas, In holding that the central government cannot discriminate against same-sex spouses whose marriages are valid under applicable state law, the Court stated:

. . . The differentiation [between different-sex and same-sex marriage] demeans the couple, whose moral and sexual choices the Constitution protects, see *Lawrence [v. Texas]*, 539 U. S. 558 [2003], and whose

relationship the State has sought to dignify. And it humiliates tens of thousands of children now being raised by same-sex couples. The law in question makes it even more difficult for the children to understand the integrity and closeness of their own family and its concord with other families in their community and in their daily lives; and

Whereas, We must be respectful of Bar members and members of the public whose personal religious or moral beliefs may be strongly opposed to same-sex marriage, but as an organization charged with protecting equality in the legal profession, and “advancing the science of jurisprudence and the

improvement of the administration of justice,” the OSB should publicly support a legal environment in Oregon in which the relationship between same-sex couples who wish to marry is deemed “dignified,” in which the moral and sexual choices of same sex couples are not “demeaned,” and in which their children are not “humiliated;” now, therefore, be it

Resolved, that the Oregon State Bar supports the right of every Oregonian to marry a person of any sex, subject to applicable law regarding age, residence, and other prevailing statutory requirements.

*Presenters: Patrick Ehlers, BOG, Region 5
Richard Spier, BOG, Region 5*

19. Admission to Bar after Two Years of Law School (Delegate Resolution No. 6)

Whereas, some of America's greatest lawyers like Abraham Lincoln never attended law school; and

Whereas, President Obama endorses scrapping the third year of law school (*Economist*, August 31, 2013, p. 24); and

Whereas, the basic principles of legal analysis are taught to all first year law students; and

Whereas, law schools provide little practical training; and

Whereas, most students fill their third year of law school with obscure courses; and

Whereas, in the past decade law school fees have soared with the average graduate owing \$140,000.00; and

Whereas, law firms are not hiring untrained law school graduates at the rate they used to, leaving graduates unemployed and unable to either pay or discharge their law school debt; and

Whereas, states like Arizona do not require a law degree to take a bar exam (Rule of Supreme Court 34, as amended 12/12/12); and

Whereas, states like California do not require law schools to be ABA accredited; now, therefore, be it

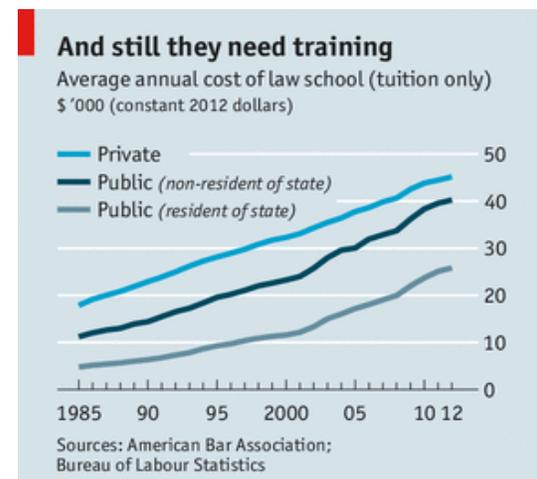
Resolved, that the board of bar examiners and Oregon Supreme Court consider the issue of admission to the bar after two years of law school.

*Presenter: Timothy MB Farrell
President, Mid-Columbia Bar Association*

Background

For many, two years is plenty. The president suggests scrapping the last year of law school. From the print edition of the *Economist*, August 31, 2013:

“This is probably controversial to say, but what the heck,’ said Barack Obama on August 23rd. ‘[L]aw schools would probably be wise to think about being two years instead of three.’ Mr Obama once taught constitutional law; his idea could put many of his former colleagues out of work. Yet he has a point.



For most of the 1800s, would-be lawyers (such as Abraham Lincoln) learned the trade as apprentices. Law schools sprouted up late in the century, in two main flavours. Elite universities set up legal departments for posh students; night schools catered to the sons of

immigrants. To stop the proles from sullyng the image of the bar—ahem, to provide sufficient instruction in the intricacies of the law—the snootier institutions convinced the American Bar Association (ABA) to accredit only schools that required a costly three years' worth of courses for a degree. It still does.

Most of the basic principles of legal analysis can be learned in a year, and law schools have made little effort to teach practical skills, since firms have historically trained new attorneys themselves. So students tend to fill their final year with classes on curious or obscure topics.

Over the past decade, however, fees have soared, requiring students to borrow ever-greater sums: the average 2013 graduate will be \$140,000 in hock, by one estimate. Meanwhile, firms have cut back on hiring, leaving many debt-laden young lawyers unemployed. That has led critics—now including Mr Obama—to suggest that law schools pare their coursework down to two years, letting students save money and start earning sooner. Cutting costs would also allow more graduates to take lower-paying jobs in public-interest law.

That would benefit students, but not law schools. Already suffering from declining enrolment, they would have to tighten their belts if they lost a third of their tuition revenue. So some schools are trying to reinvent the final year: New York University is

placing students in foreign universities or in government, while Stanford has emphasized interdisciplinary classes and clinical courses. Since first-year lawyers at big firms now earn \$160,000 a year, their time has become too valuable to squander on training. 'We can use that time to prepare them for practice better and cheaper than firms can,' says Larry Kramer, the former dean of Stanford Law.

But despite Mr Obama's words, even schools that make no such effort are still shielded by the three-year requirement. The ABA has set up a task force on legal education, and its commission on accreditation standards is now conducting a quinquennial review. Ten of the council's 21 members come from the legal academy, which wants to maintain the status quo. James Silkenat, the ABA's president, says he supports 'innovation' to reduce costs—but still believes schools yield 'a better product with the full three years.'

Many advocates for reform are turning to the judiciary, which sets the rules for bar admission. Last year Arizona began allowing students to take the test while still in law school. If more states follow its lead—and if firms will hire lawyers without an ABA-approved degree—then adventurous law schools might offer a two-year option. Or perhaps Mr Obama could tell the Department of Education to strip the ABA of its role as the federally sanctioned accreditor if it does not give schools the 'flexibility' Mr. Silkenat says he favours."

20. Instruct Board of Governor to Prioritize Design of a Centralized Legal Notice System to Provide Stable Funding for Legal Aid Services in Oregon (Delegate Resolution No. 7)

Whereas, The costs of legal notices place a significant burden on local government budgets, as well as on private individuals forced to give such notice; and

Whereas, With the collapse in interest rates, interest on lawyer trust account (IOLTA) funding for legal aid services has collapsed, even as the economic circumstances in Oregon have led to a surge in demand for civil legal aid; and

Whereas, Readily available technology would allow a centralized legal notice provider to do a better job, at substantially lower cost, while providing

individuals and governments giving notice with options for notices that are substantially richer in content and far more effective at helping Oregonians be aware of, understand, and participate in the proceedings that that notices describe; and

Whereas, Today's telecommunications capabilities mean that a centralized legal notices system can be developed and implemented that provides all Oregon residents with instantaneous notice of any legal notice from any county in Oregon at a fraction of the cost of newsprint publication, with substantial excess revenue available to be directed to fund civil legal aid; and

Whereas, The Board of Governors' Centralized Legal Notice System Task Force, formed after passage of the 2012 House of Delegates Resolution on this subject, has studied this subject and is expected to recommend to the BOG that design and development of a centralized legal notice system be a bar priority; now, therefore, be it

Resolved, The House of Delegates of the Oregon State Bar instructs the Board of Governors to undertake, as a Board priority, design and

development of a centralized legal notice system to be operated for the benefit of all Oregonians under the auspices of the bar or other appropriate nonprofit entity, with the goal of providing a reduction in the costs of legal notices and directing the net proceeds from such a system to funding legal aid services.

Presenter: John Gear, HOD, Region 6

Financial Impact Statement
(Not submitted)

**21. Admission Rule for Military Spouse Attorneys
(Delegate Resolution No. 8)**

Whereas, the Department of Defense has recognized that military spouses face unique licensing and employment challenges as they move frequently in support of the nation's defense; and

Whereas, the American Bar Association House of Delegates and the Conference of Chief Justices have encouraged state bar-admission authorities to enact "admission by endorsement" for military spouses; and

Whereas, this House desires that the burden of licensing requirements should be eased for military spouses to the maximum extent possible while also maintaining rigorous standards for learning, ability, character, and fitness among lawyers admitted to practice in Oregon; and

Whereas, the Military Spouse J.D. Network has promulgated a Model Rule for Admission of Military Spouse Attorneys that allows for admission without examination for military spouses who are members in good standing of another bar and who meet character and fitness requirements; now, therefore, be it

Resolved, The Board of Governors recommend to the Oregon Supreme Court that it adopt a rule allowing admission without examination for attorneys holding an active license to practice law in at least one state, territory, or the District of Columbia for as long as those attorneys are present in Oregon due to a spouse's military service and those attorneys meet the education, character, and fitness requirements for admission.

Presenter: Gabriel Bradley, HOD, Out-of-State

Background

Military members typically move every two or three years. For an attorney married to a military member,

the frequent state-to-state moves present a huge obstacle to a legal career. In addition to the normal hassle of moving, military spouse attorneys have to become re-licensed in their new jurisdictions.

In June 2011, the Department of Defense's State Liaison and Educational Opportunity office announced that sixteen states have laws that make licensing easier for professionals (not just attorneys) who move to a new jurisdiction because of their spouses' military service. Oregon was not one of those states.

On February 6, 2012, the ABA House of Delegates adopted a resolution that urged state bar-admission authorities to adopt rules that "accommodate the unique needs of military spouse attorneys who move frequently in support of the nation's defense." This resolution specifically encouraged:

- Admission without examination for military spouses who are present in a state due to their spouses' military service.
- Reviewing bar application procedures to ensure they are not unduly burdensome to military spouses.
- Encouraging mentorship programs for military spouses who are new to a jurisdiction.
- Offering reduced bar application and membership fees to military spouses who are new to a jurisdiction or wish to retain bar jurisdiction after moving out of the jurisdiction.

On July 25, 2012, the Conference of Chief Justices passed a resolution encouraging state bar-admission authorities to "consider the development and implementation of rules permitting admission without examination for attorneys who are

dependents of service members of the United States Uniformed Services and who have graduated from ABA accredited law schools and who are already admitted to practice in another state or territory.”

Oregon allows for attorney admission by reciprocity with thirty-seven states and the District of Columbia. But some military spouse attorneys will come to Oregon from states that do not have reciprocity with Oregon. Others may be starting out in their careers or may have taken time off and will therefore not meet the time-in-practice requirements of the general reciprocity rule. A more flexible admissions

rule for military spouse attorneys would alleviate the burden of frequent moves.

The Military Spouse J.D. Network (www.msjdn.org) is a group of attorneys who are married to military members. They have drafted a Model Rule for Admission of Military Spouse Attorneys. MSJDN reports that rule accommodations for military spouse attorneys have been passed in Arizona, Idaho, Illinois, North Carolina, South Dakota, and Texas. A copy of the Model Rule is attached.

[Exhibit B]

The BOG has excluded the following item from the agenda pursuant to OSB Bylaw 3.4 and HOD Rule 5.5.

**22. Enhance Public Safety on Oregon Public Waterways
(Delegate Resolution No. 4)**

Whereas, recognized need for Public Safety upon Oregon Highways have been addressed by the Seat Belt Law as set forth in **ORS 811.210** [Failure to Properly use Safety Belts]; and

Whereas, recognized need for the protection of Children while seated as passengers in motor vehicles has been addressed by the Child Safety System Standards as set forth in **ORS 815.080** [Providing Safety Belt, Harness or Child Safety System that Does Not Comply with Standards]; and

Whereas, recognized need for Public Safety of Bicyclists has been addressed by the Child Protective Headgear Law as set forth in **ORS 814.485** [Failure to Wear Protective Headgear]; and

Whereas, generally, Oregon reservoirs, lakes, and rivers are Public Waterways; and

Whereas, Users of both Oregon Public Highways and Oregon Public Waterways are subject to risks of serious injury or death, which can be mitigated by appropriate safety requirements when persons use Public Waterways; and

Whereas, the occurrence of reported drownings that frequently occur upon Oregon Public Waterways evidences needless, preventable drownings; and

Whereas, the victims of such preventable drownings also include would-be rescuers [“danger invites rescue”] adding to the consequences of repeated occurrences of such tragic drownings; and

Whereas, substantial consequences include major expenses associated with rescue and recovery efforts [i.e., Law Enforcement, EMT’s, or Coast Guard]; and

Whereas, additional major consequences include the loss of a parent, family unit, and financial support of children left dependent by loss of a parent; and

Whereas, there is a readily available means for the prevention of drownings via the use of Coast Guard approved Floatation Devices [generally available for less than \$10.00]; now, therefore, be it

Resolved, that the House of Delegates recommend and encourage the Board of Governors to recommend to the Oregon Legislature the enactment of Public Safety Legislation designed to address preventable drownings by requiring that Users of Oregon Public Waterways wear appropriate Coast Guard approved Floatation Devices when in water greater than a depth of three feet.

Presenter: Danny Lang, HOD, Region 3

Exhibit A
PROPOSED OREGON RPCs 7.1 THROUGH 7.5
 (Approved by the Board of Governors February 22, 2013)

Current ORPC	Proposed ORPC	Explanation
<i>INFORMATION ABOUT LEGAL SERVICES</i>		
Rule 7.1 Communications Concerning a Lawyer's Services		
<p>(a) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:</p> <p>(1) contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading;</p> <p>(2) is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve;</p> <p>(3) except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms;</p> <p>(4) states or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading;</p> <p>(5) states or implies that the lawyer or the lawyer's firm is in a position to improperly influence any court or other public body or office;</p> <p>(6) contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other</p>	<p>A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.</p>	<p><i>The proposed new rule combines (a) and (a)(1) of the current rule and states the overarching prohibition against communications that are false or misleading either by misrepresentation or omission. The current prohibition against "caus[ing] to be made" is addressed in RPC 8.4(a)(1) which makes it misconduct to violate the RPCs through the acts of another. The remaining specific prohibitions are eliminated, with the exception of (a)(4), which is now found in Rule 7.4.</i></p> <p><i>Eliminating a list of specific prohibitions will require lawyers to evaluate proposed communications on a case-by-case basis, but also focuses the analysis on the harm to be prevented, namely that communications not be false or misleading.</i></p> <p><i>The 2009 Advertising Task Force also recommended eliminating the enumerated list on the grounds that it was overbroad and underinclusive since it didn't include every prohibited type of communications while including some things that weren't necessarily either false or misleading.</i></p>

Current ORPC	Proposed ORPC	Explanation
<p>clients;</p> <p>(7) states or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not;</p> <p>(8) states or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses;</p> <p>(9) states or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated;</p> <p>(10) contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented;</p> <p>(11) is false or misleading in any manner not otherwise described above; or</p> <p>(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.</p>		
<p>(b) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.</p>		<p><i>This prohibition is duplicative and unnecessary since a communication whose nature isn't clear from the context is very likely misleading if not false, which is covered above.</i></p>
<p>(c) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.</p>		<p><i>This prohibition is now found in Rule 7.2(c).</i></p>

Current ORPC	Proposed ORPC	Explanation
(d) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by Rule 7.2.		<i>This provision adds nothing and is duplicative of Rule 7.2, where to and is addressed more particularly.</i>
(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.		<i>This is nothing more than another statement that communications are not permitted if they violate the "false or misleading" standard. It is an unnecessary duplication, particularly with reference to the provisions of Rules 7.2 and 7.3.</i>
Rule 7.2 Advertising		
(a) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by paragraph (c) or Rule 1.17.	(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.	<i>The new rule is a general permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact. The current prohibition against paying someone else to recommend or secure employment is found in (b).</i>
(b) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.	(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may (1) pay the reasonable costs of advertisements or communications permitted by this Rule; (2) pay the usual charges of a legal service plan or a not-for-profit lawyer referral service; and (3) pay for a law practice in accordance with Rule 1.17.	<i>The current rule's prohibition on allowing another to promote a lawyer through means involving false or misleading communications is eliminated as unnecessary in light of the overarching prohibition against false and misleading communications in Rule 7.1 and RPC 8.4, which makes it misconduct for a lawyer to violate the rules through the acts of another. New paragraph (b) continues the prohibition against paying another for recommending or securing employment subject to specific exceptions. New (b)(1) is virtually identical to current (a). New (b)(2) is currently found in ORPC 7.2(c).</i>

Current ORPC	Proposed ORPC	Explanation
		<p><i>New (b)(3) reiterates language in current ORPC 1.5(e).</i></p> <p><i>The committee believes that the structure of the new rule is clearer.</i></p> <p><i>[Note: the proposal differs from ABA MR 7.2(b) in two significant respects. MR 7.2(b)(2) allows payment to a “qualified” lawyer referral service, which is defined as one approved an “an appropriate regulatory authority.” MR 7.2(b)(4) allows reciprocal referral agreements between lawyers or between lawyers and nonlawyer professionals, which is directly contradictory to Oregon RPC 5.4(e).]</i></p>
<p>(c) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:</p> <p>(1) the operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;</p> <p>(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;</p> <p>(3) no condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and</p> <p>(4) such plan, service or organization does not make communications that would violate Rule 7.3 if engaged in by the lawyer.</p>		<p><i>The permission to participate in legal service plans and referral services is in new Rule 7.2(b). The remainder of the current rule is unnecessary since all of the prohibited conduct is covered in other rules, including Oregon RPC 5.4, which prohibits lawyer from allowing their judgment to be influenced by others.</i></p>
	<p>(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.</p>	<p><i>This paragraph retains what is currently Oregon RPC 7.1(c).</i></p>
Rule 7.3 [Direct Contact with Prospective] Solicitation of Clients		
<p>(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a</p>	<p>(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a</p>	<p><i>The proposed new rule is identical to current Oregon RPC 7.3(a), but incorporates the recommendations of the ABA Ethics 20/20 Commission</i></p>

Current ORPC	Proposed ORPC	Explanation
<p>prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:</p> <p>(1) is a lawyer; or</p> <p>(2) has a family, close personal, or prior professional relationship with the lawyer.</p>	<p>significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:</p> <p>(1) is a lawyer; or</p> <p>(2) has a family, close personal, or prior professional relationship with the lawyer.</p>	<p><i>to change the title and deletes the phrase "from a prospective client." The reason for that change is to avoid confusion with the use of the phrase in Rule 1.18, where a prospective client is someone who has actually shared information with a lawyer.</i></p>
<p>(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:</p> <p>(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p>(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:</p> <p>(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the target of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;</p> <p>(2) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or</p> <p>(3) the solicitation involves coercion, duress or harassment.</p>	<p><i>Following the recommendation of the ABA Ethics 20/20 Commission, the proposed amended rule substitutes "target of the solicitation" for "prospective client" in subparagraphs (1) and (2).</i></p> <p><i>The proposed rule also retains Oregon's (b)(1), which was eliminated from the Model Rule several years ago for reasons that are not entirely clear.</i></p>
<p>(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).</p>	<p>(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).</p>	<p><i>The new rule is virtually identical to the current rule, except that the new rule substitutes "anyone" for "prospective client" and requires the words "Advertising Material" instead of "Advertisement." It also eliminates the requirement that the words be "in noticeable and clearly readable fashion," on the ground that the phrase is open to varying interpretation and because if the notification of "Advertising Material" isn't sufficiently readable it constitutes no notice and would be a violation of the rule.</i></p>
<p>(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or</p>	<p>(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or</p>	<p><i>The new rule is identical to the current rule.</i></p>

Current ORPC	Proposed ORPC	Explanation
subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.	
Rule 7.4 (Reserved)		
		<p>ABA MR 7.4 provides:</p> <p>Rule 7.4 Communication of Fields of Practice and Specialization</p> <p>(a) A lawyer may communicate the fact that the lawyer does or does not practice in particular fields of law.</p> <p>(b) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation.</p> <p>(c) A lawyer engaged in Admiralty practice may use the designation "Admiralty," "Proctor in Admiralty" or a substantially similar designation.</p> <p>(d) A lawyer shall not state or imply that a lawyer is certified as a specialist in a particular field of law, unless:</p> <p>(1) the lawyer has been certified as a specialist by an organization that has been approved by an appropriate state authority or that has been accredited by the American Bar Association; and</p> <p>(2) the name of the certifying organization is clearly identified in the communication.</p> <p>The committee recommends not adopting any of the provisions on the ground that they are unnecessarily duplicative of the overarching prohibition against false or misleading communications.</p>
Rule 7.5 Firm Names and Letterheads		
(a) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein	(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government	<p>This new rule is similar current Oregon RPC 7.5(a), but includes the permission to use a trade name that is currently in Oregon RPC 7.5(c)(2). The phrase "professional designation" is broad enough to capture the listings enumerated in</p>

Current ORPC	Proposed ORPC	Explanation
complies with Rule 7.1 and other applicable Rules.	agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.	<i>the current rule as well as other, more modern, uses of firm names. It also includes the prohibition against falsely implying a connection with government or charitable organization that is currently in Oregon RPC 7.1(a)(5) and 7.5(c)(2).</i>
(b) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.	(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.	<i>The LEC recommends deleting current(b) as being an unnecessary focus on the business relationships between lawyers. The definition of "firm" continues to include Of Counsel, which the committee believes is sufficient to capture the conflict aspect of "of counsel" relationships. The new rule retains the requirement of current Oregon RPC 7.5(f).</i>
(c) A lawyer in private practice: (1) shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm; (2) may use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1; and (3) may use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.	(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.	<i>The new rule is similar to the prohibition in current RPC 7.5(d), except that it applies only to lawyer holding public office. Current (c)(1) is essentially the same as new 7.5(d). Current (c)(2) is covered in new 7.5(a). Current (c)(3) is a relic of a prior era and is unnecessary in view of the accepted use of "legacy" law firm names or names that don't name any of the lawyers.</i>
(d) Except as permitted by paragraph (c), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the	(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.	<i>The new rule is a succinct but broad statement that covers much of what is currently in 7.5(c),(d) and (e).</i>

Current ORPC	Proposed ORPC	Explanation
<p>lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.</p>		
<p>(e) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.</p>		
<p>(f) Subject to the requirements of paragraph (c), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.</p>		<p><i>See proposed new 7.5(b) above.</i></p>

Exhibit B
DRAFT Model Rule for Admission of Military Spouse Attorneys

Rule __. Admission of Military Spouse Attorneys.

1. Due to the unique mobility requirements of military families who support the defense of our nation, an attorney who is a spouse or a registered domestic partner of a member of the United States Uniformed Services (“service member”), stationed within this jurisdiction, may obtain a license to practice law pursuant to the terms of this rule.

2. An applicant under this rule must:

- (a) have been admitted to practice law in another U.S. state, territory, or the District of Columbia;
- (b) hold a J.D. or LL.B. degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;
- (c) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
- (d) establish that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
- (e) establish that the applicant possesses the character and fitness to practice law in this jurisdiction;
- (f) demonstrate presence in this jurisdiction as a spouse of a member of the United States Uniformed Services;
- (g) certify that the applicant has read and is familiar with this jurisdiction’s Rules of Professional Conduct;
- (h) pay the prescribed application fee;
- (i) within [60 days] of being licensed to practice law, complete a course on this jurisdiction’s law, the content and method of delivery of which shall be approved by this jurisdiction’s highest Court; and
- (j) comply with all other ethical, legal, and continuing legal education obligations generally applicable to attorneys licensed in this jurisdiction.

3. The Court may require such information from an applicant under this rule as is authorized for any applicant for admission to practice law—except any information specifically excluded by this rule—and may make such investigations, conduct such hearings, and otherwise process applications under this rule as if made pursuant to this jurisdiction’s rules governing application for admission without examination. Upon a showing that strict compliance with the provisions of this section would cause the applicant unnecessary hardship, the Court may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.

4. If after such investigation as the Court may deem appropriate, it concludes that the applicant possesses the qualifications required of all other applicants for admission to practice law in this jurisdiction, the applicant shall be licensed to practice law and enrolled as a member of the bar of this jurisdiction. The Court shall promptly act upon any application filed under this rule.

5. Except as provided in this rule, attorneys licensed under this rule shall be entitled to all privileges, rights, and benefits and subject to all duties, obligations, and responsibilities of active members of bar of this jurisdiction, and shall be subject to the jurisdiction of the courts and agencies of this jurisdiction with respect to the laws and rules of this jurisdiction governing the conduct and discipline of attorneys, to the same extent as members of the bar of this jurisdiction.

6. The license to practice law under this rule shall terminate in the event that:

- (a) the service member is no longer a member of the United States Uniformed Services;
- (b) the military spouse attorney is no longer married to the service member; or
- (c) the service member receives a permanent transfer outside the jurisdiction, except that if the service member has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the service member is assigned to a location with dependents authorized.

In the event that any of the events listed in this paragraph occur, the attorney licensed under this rule shall notify the Court of the event in writing within thirty (30) days of the date upon which the event occurs. If the event occurs because the service member is deceased or disabled, the attorney shall notify the Court within one hundred eight (180) days of the date upon which the event occurs.

7. Each attorney admitted to practice under this rule shall report to the Court, within thirty (30) days:

- (a) any change in bar membership status in any jurisdiction of the United States or in any foreign jurisdiction where the attorney has been admitted to the practice of law; or
- (b) the imposition of any permanent or temporary professional disciplinary sanction by any federal or state court or agency.

8. An attorney's authority to practice under this rule shall be suspended when the attorney is suspended or disbarred in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which the attorney has been admitted to practice.