

Oregon State Bar
2018 House of Delegates Meeting
Friday, November 2, 2018
10:00 a.m. at the OSB Center in Tigard, OR

Oregon State Bar

October 12, 2018

Dear Oregon State Bar Member:

I am pleased to invite you to the 2018 OSB House of Delegates meeting, which will begin at **10 a.m. on Friday, November 2**, at the Oregon State Bar Center.

The preliminary agenda for the HOD meeting includes, among other things, resolutions to increase transparency in criminal proceedings, to revise the criteria for the Justice Across Oregon stipend to ensure that it serves all rural communities in Oregon, and to consider establishing a new tier of license fees for lawyers who have practiced in Oregon less than 5 years. As in years past, the HOD agenda also includes a resolution that establishes a goal of 100% HOD member participation in making contributions to the Campaign for Equal Justice, as one component of an overall strategy to support adequate funding for legal aid. To my knowledge, we have never met this goal. Perhaps 2018 will be the year.

I am happy to report that the Board of Governors is not requesting an increase in the annual license fee for 2019. As will be explained in the financial report, however, the annual Client Security Fund assessment is being increased by \$5.

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 meeting, contact Lisa Ryan, executive assistant, by email at lryan@osbar.org or by phone at (503) 431-6386 or (800) 452-8260 ext. 386. Remember that delegates are eligible for reimbursement of round-trip mileage to and from the 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 Friday, November 2, and I thank you in advance for your thoughtful consideration and debate of these items.



Vanessa A. Nordyke
OSB President

OREGON STATE BAR

2018 House of Delegates Meeting AGENDA

Oregon State Bar Center, 16037 SW Upper Boones Ferry Road, Tigard, Oregon 97281

10 a.m., Friday, November 2, 2018

Presiding Officer: Vanessa Nordyke, OSB President

Reports

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| 1. Call to Order
<i>Vanessa A. Nordyke,
OSB President</i> | 4. Report from the Court
<i>Hon Martha L. Walters,
Chief Justice, Oregon Supreme Court</i> |
| 2. Adoption of Final Meeting Agenda
<i>Vanessa A. Nordyke,
OSB President</i> | 5. Report of the Board of Governors
Budget and Finance Committee &
Notice of 2019 Annual Fees
<i>David Wade, Chair
BOG Budget & Finance Committee</i> |
| 3. Report of the President
<i>Vanessa A. Nordyke,
OSB President</i> | 6. Overview of Parliamentary Procedure
<i>James N. Westwood,
Parliamentarian</i> |

Resolutions

- | | |
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| 7. Support for Adequate Funding for Legal Services to Low-Income Oregonians (Delegate Resolution No. 1)
<i>Kathleen A. Evans, HOD, Region 6
Edwin A. Harnden, HOD, Region 5
Ross M. Williamson, HOD, Region 2</i> | 10. New Tier of Annual License Fees for Members Active for Fewer Than 5 Years (Delegate Resolution No. 4)
<i>James A. A. Klonoski, HOD, Region 8
David Dorfman, HOD, Region 8
Evan J. Gautier, HOD, Region 8</i> |
| 8. Transparency in Criminal Proceedings (Delegate Resolution No. 2)
<i>Daniel Robert Lang, HOD, Region 3</i> | 11. In Memoriam (Board of Governors Resolution No. 1)
<i>John R. Bachofner, BOG, Region 8
Christine R. Costantino, BOG, Region 5
Thomas C. Peachey, BOG, Region 1</i> |
| 9. Ensuring the Justice Across Oregon Stipend for Summer Employment in Rural Oregon Serves All Rural Communities (Delegate Resolution No. 3)
<i>David Dorfman, HOD, Region 8
James A. A. Klonoski, HOD, Region 8
Evan J. Gautier, HOD, Region 8</i> | 12. Veterans Day Remembrance (Board of Governors Resolution No. 2)
<i>Michael Levelle,
BOG Immediate Past President</i> |

5. Report to House of Delegates—2019 OSB Membership Fee

Based on a recommendation from the Client Security Fund (CSF) Committee, the Board of Governors resolved to increase the CSF assessment for 2019 from \$10.00 to \$15.00. The new assessment applies to all active Oregon State Bar members.

As of September 30, 2018, the fund balance was \$1.342 million. Throughout 2018, there has been a significant increase in the number and dollar amount of claims, which is forecasted to deplete the balance below the \$1 million reserve level. To maintain an adequate total reserve, this increase is necessary. All other fees remain unchanged.

This chart shows the Fee Schedule for the 2019 Membership Fees. The due date for the 2019 membership fee is Thursday, January 31, 2019.

Membership Fee Status	Fee Through January 31, 2019	Fee Effective February 1, 2019
Active Over Two Years	\$ 557	\$ 657
Active Under Two Years**	\$ 470	\$ 570
Active Pro Bono	\$ 125	\$ 125
Inactive	\$ 125	\$ 175
Retired	\$ 125	\$ 175
**Based on admission date to ANY jurisdiction, not admission to Oregon		

7. Support of Adequate Funding for Legal Services for Low-Income Oregonians (Delegate Resolution No. 1)

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

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

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

Whereas, since 1998, pursuant to ORS 9.575, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight for the state statutory allocation for legal aid in accordance with the Bar's Standards and Guidelines (which incorporate national standards for operating a statewide legal aid program);

Whereas, during the great recession the staffing for legal aid programs was reduced while the poverty population in Oregon increased dramatically, thus broadening “the justice gap” in Oregon;

Whereas, Oregon’s legal aid programs do not have sufficient resources to meet the civil legal needs of Oregon’s poor;

Whereas, Oregon currently has two legal aid lawyers for every 14,000 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is two legal aid lawyers for every 10,000 low-income Oregonians;

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, which provides federal support for legal aid.

(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 the Oregon legal community, 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 with financial institutions that are OLF Partners in Justice, meaning 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.

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 seeking 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, 2005–2017). This resolution is similar to the resolution passed in 2017, but provides updates on the ratio of legal aid lawyers to Oregonians eligible for legal aid services.

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 the state statutory allocation for civil legal services and provide methods for evaluating the legal services programs. The Campaign for Equal Justice 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.

Oregon’s legal aid program consists of three separate non-profits that work together as part of an integrated service delivery system designed to provide high-priority free civil legal services to low-income Oregonians in all 36 Oregon counties through offices in 17 communities. There are two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and one county wide program, the Center for Non-Profit Legal Services (Jackson County). Because the need is great and resources are limited, legal aid offices address high-priority civil legal issues such as safety from domestic violence, housing, consumer law, income maintenance (social security, unemployment insurance, and other self-sufficiency benefits), health, employment, and individual rights. About 31% of legal aid’s cases are family law cases, usually helping victims of domestic violence. All of these programs work to stretch limited resources through pro bono programs and self-help materials. Legal aid’s website, www.oregonlawhelp.com, receives about 290,000 unique visitors per year.

Providing access to justice and high quality legal representation to all Oregonians is a central and important mission of the Oregon State Bar. An Oregon study concluded that low-income Oregonians 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: 70% of individuals without access to a lawyer had negative feelings about the legal system, but of those who had access to a legal aid lawyer, 69% had a positive view of the legal system regardless of the outcome of their case. The 2014 Task Force on Legal Aid Funding, which included representatives of the Bar, the Law Foundation, the judiciary, the legislature, and private practice, concluded that legal aid funding should be doubled over the next 10 years. Because funding for legal aid is a state, federal, and private partnership, with about 80 different sources of funding, increases in funding must be made across the board to address the justice gap.

Currently, around 20% of lawyers contribute to the Campaign for Equal Justice, but in some Oregon regions (Jackson County and Lane County, for example), participation is as high as 40%.

Presenters:

Kathleen A. Evans, HOD, Region 6

Edwin A. Harnden, HOD, Region 5

Ross M. Williamson, HOD, Region 2

8. Transparency in Criminal Case Proceedings (Delegate Resolution No. 2)

Whereas, “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;

Whereas, current protocol for motion hearings in criminal cases requires that a defendant must submit “Points and Authorities” in support of a defense motion, such as a “Motion to Suppress,” to be considered by Oregon circuit courts in criminal cases; however, the state has no such requirements;

Whereas, defendant’s “Points and Authorities” are submitted in written form, and served upon the state (prosecutor) when a defense motion is filed or in advance of the date set for a hearing on defendant’s motion; however, the state may, but is not required to file, any written “Points and Authorities” in opposition prior to or even at the hearing on a defense motion;

Whereas, the foregoing current protocol in criminal cases implicates equal protection and due process concerns, by reason of counsel for the defendant being blindsided; which places both defense counsel and defendant at a marked disadvantage by allowing the state to orally cite and argue previously undisclosed authorities at the hearing;

Whereas, the current permissive protocol in favor of the state deprives the defense counsel (and defendant) of the opportunity to read, analyze, and distinguish such previously undisclosed oral authorities, and thereby offends the presumption of innocence;

Whereas, Oregon courts may be hindered by the lack of pre-hearing review and analysis of the state’s previously undisclosed oral authorities;

Whereas, the current protocol is inherently unfair because, it places the state at an unwarranted advantage upon matters involving due process, implicating fundamental fairness, the rule of law, and equal access to justice;

Whereas, as members of the Oregon State Bar, we have taken an oath to support the Constitution, and are dedicated to supporting the Oregon State Bar mission of providing equal access to justice;

Whereas, as members of the Oregon State Bar, we owe an ethical duty to zealously represent our clients in criminal cases, most often implicating liberty interests;

Whereas, as members of the Oregon State Bar, members of the House of Delegates, or members of the Board of Governors, we should seek to provide equal access to justice by abolishing the current one-sided protocol that provides the state with an unfair advantage at critical stages in criminal cases; now, therefore, be it

Resolved, that the House of Delegates recommend that the Board of Governors study how the mission of the Oregon State Bar’s furtherance of equal access to justice and respect for the rule of law will be benefited by abolition of the unjust present protocol of allowing the state to submit oral authorities during motion hearings without disclosing or filing any advance written “Points and Authorities.”

Financial Impact

None provided; however, transparency in criminal case proceedings will foreseeably assist circuit courts in applying the correct rule of law, which in turn may reduce costs by reducing the number of criminal case appeals.

Presenter:

Daniel Robert Lang, HOD, Region 3

9. Ensuring the Justice Across Oregon Stipend for Summer Employment in Rural Oregon Serves All Rural Communities (Delegate Resolution No. 3)

Whereas, it is the policy of the Oregon State Bar to advance justice throughout Oregon, in urban and rural communities alike;

Whereas, many rural communities in Oregon face significant unmet legal needs, yet struggle to attract new members of the legal profession who could serve as prosecutors, defense attorneys, pro bono service providers, and practitioners in essential fields such as property law and family law;

Whereas, the Oregon State Bar administers an annual Justice Across Oregon Stipend program, which incentivizes law students to explore summer legal opportunities in rural Oregon by providing students receiving a summer stipend with supplementary funding if they work in less populated areas of the state;

Whereas, law students frequently accept post-graduate employment in the communities or at the organizations where they worked during their summers in law school;

Whereas, for purposes of the Justice Across Oregon Stipend, the Oregon State Bar currently defines “rural Oregon” as “anywhere along the Oregon coast, east of the Cascade Mountains, or south of, and including, Roseburg,” with other communities only eligible on a case-by-case basis;

Whereas, the Oregon Office of Rural Health defines “rural Oregon” as “any geographic area . . . ten or more miles from the centroid of a population center of 40,000 people or more,” and maintains a database designating each Oregon community as either urban or rural;

Whereas, the Justice Across Oregon Stipend’s current definition of “rural Oregon” excludes many jurisdictions considered by the Office of Rural Health to be rural, including northern Douglas County, southern Lane County, substantial portions of the Willamette Valley, and mountain communities within, but not east of, the Cascade Mountains; now, therefore, it be

Resolved, that, for purposes of administering the Justice Across Oregon Stipend, the Oregon State Bar shall henceforth define “rural Oregon” as “any geographic area in Oregon along the coast, east of the Cascade Mountains, or south of, and including, Cottage Grove, or otherwise located ten or more miles from the centroid of a population center of 40,000 people or more.”

Financial Impact

None stated by the delegate.

Presenters:

David Dorfman, HOD, Region 8

James A. A. Klonoski, HOD, Region 8

Evan J. Gautier, HOD, Region 8

10. New Tier of Annual License Fees for Members Active for Fewer Than 5 Years (Delegate Resolution No. 4)

Whereas, the Oregon State Bar understands that the first several years of practice can be financially challenging for newly-licensed legal professionals;

Whereas, the Oregon State Bar 2017 Economic Survey—Report of Findings (available at <https://www.osbar.org/docs/resources/Econsurveys/17EconomicSurvey.pdf>) demonstrates, both in Oregon and nationwide, that the average attorney earns less during her first six years of practice than in the years thereafter;

Whereas, the average recent law school graduate carries approximately \$112,000 in student loan debt, which in many cases impedes the ability of such attorneys to pursue public service, legal entrepreneurship, public interest work, or other careers they might otherwise envision;

Whereas, a diverse group of state bar associations—among them Hawaii, Massachusetts, Minnesota, Nevada, New York, North Dakota, Rhode Island, and Texas—have recognized that after five years of active practice legal professionals are better positioned to financially support their respective state bar organization, and therefore have created a separate tier of membership dues for active members with fewer than five years of legal practice;

Whereas, ORS 9.191(3) allows the Board of Governors to “consider . . . time periods of membership” in establishing annual membership fees for legal professionals;

Whereas, the annual membership fee is established by the Board of Governors and any increase over the amount established for the prior year must be approved by a majority of delegates voting thereon at the annual meeting of the House of Delegates, pursuant to ORS 9.191(1); now, therefore, be it

Resolved, that

1. The House of Delegates recommends that the Board of Governors of the Oregon State Bar authorize the creation of a separate tier of membership fees for Oregon State Bar members active in any jurisdiction under five years or for a similar duration of time; and that
2. The House of Delegates recommends that the Board of Governors consider an equitable assignment of fees to this new tier of active Bar members, as well as consider equitable

changes to fees assigned to existing tiers, reflecting the economic realities of experienced and newer legal professionals; and that

3. The House of Delegates further recommends that the Board of Governors also consider other appropriate issues of equity permissible under Oregon statute during the creation of a separate tier of membership fees for Oregon State Bar members active in any jurisdiction under five years or for a similar duration of time; and that
4. The Board of Governors shall present the results of its deliberation on the new membership fee tiers to the House of Delegates at the 2019 House of Delegates meeting for consideration pursuant to ORS 9.191, provided no such changes shall be implemented prior to the 2020 House of Delegates meeting.

Financial Impact

None stated.

Presenters:

James A. A. Klonoski, HOD, Region 8

David Dorfman, HOD, Region 8

Evan J. Gautier, HOD, Region 8

There is no financial impact on the Oregon State Bar operating budget if the result of this resolution is that the BOG consider establishment of a new tier and bring back to the HOD the results of its deliberation. If the result of its deliberation, however, is simply to extend a fee discount to third and fourth year members of the OSB, there will be a financial impact. There are approximately 1,250 members who are in their third and fourth years of membership with the OSB. For every \$10 discounted from the license fee for these members, there would be a \$12,500 loss of revenue. This information is provided pursuant to OSB Bylaw Section 3.3.

11. In Memoriam

(Board of Governors Resolution No. 1)

Resolved, that the OSB House of Delegates and members assembled stand for a moment of silence in honor of the members of the Oregon State Bar who have died since the 2017 House of Delegates Meeting.

Richard J. Adelman	Wilford K. Carey	George R. Duncan, Jr.	Nancy E. Howe
Raymond S. Baum	Warren A. Covington	J. Michael Gleeson	Daniel F. Hughes
Robert Allen Bennett	Matthew C. Daily	Nick I. Goyak	Bruce Francis Kennedy
Troy A. Biddle	Thomas F. Della-Rose	Bernt A. Hansen	Gene A. Killeen
Kristine D. Burr	Thomas V. Dulcich	Michael Henderson	Patrick L. Kubin

James Murch
James W. O'Leary
Gayle Patterson
Theodore W. Phillips
Janel L. Potter

Duane S. Seeley
Michael F. Sheehan
Clinton D. Simpson
Gwynne L. Skinner
John H. Socolofsky

Jacob Tanzer
Cathern E. Tufts
Charles H. Turner
Patricia A. Vallerand
Richard Van Cleave

Presenters:

*John R. Bachofner, BOG, Region 8
Christine R. Costantino, BOG, Region 5
Thomas C. Peachey, BOG, Region 1*

**12. Veterans Day Remembrance
(Board of Governors Resolution No. 2)**

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:

Michael Levelle, BOG, Immediate Past President
