

**Oregon State Bar**  
**2023 House of Delegates Meeting**  
**Friday, October 27, 2023**  
**9:00 a.m. in person at the OSB Center**  
**Remote attendance option available**

Oregon State Bar

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October 6, 2023

Dear Oregon State Bar Member:

I am pleased to invite you to the 2023 OSB House of Delegates meeting, which will begin at **9:00 a.m. on Friday, October 27, at the Oregon State Bar Center in Tigard, Oregon.**

We are excited to be back in person and to offer the option of remote attendance at the HOD meeting as well. We are happy that we can continue to provide a hybrid HOD meeting experience, which better accommodates a wide variety of participant needs. We definitely learned from last year and made some technological changes as a result. We are also proposing amendments to the HOD Rules of Procedure that, if passed early in the meeting, should help ensure a more satisfying hybrid meeting experience for everyone.

In addition to proposed amendments to the HOD Rules of Procedure, the preliminary agenda for the HOD meeting includes, among others, resolutions to amend Oregon RPC 1.2(d), 1.8(e), and 8.4(a)(7); support well-being in the legal profession; impose a three-year moratorium on member fees; increase HOD delegate engagement; require OSB membership for administrative law judges; support public defense providers; support adequate funding for legal services to low-income Oregonians; support adequate funding for the judicial branch; and expand licensed paralegal services.

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](http://www.osbar.org/docs/leadership/hod/hodroster.pdf).

If you have questions concerning the meeting, contact Cassandra Dyke, executive assistant, by email at [cdyke@osbar.org](mailto:cdyke@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, October 27, and I thank you in advance for your thoughtful consideration and debate of these items.

Lee Ann Donaldson  
OSB President

**OREGON STATE BAR**  
**2023 House of Delegates Meeting AGENDA**  
October 27, 2023, at 9:00 a.m.  
OSB Center  
16037 SW Upper Boones Ferry Road, Tigard, OR

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**Reports**

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| <p>1. <b>Call to Order</b><br/><i>Lee Ann Donaldson, OSB President</i></p> <p>2. <b>Adoption of Final Meeting Agenda</b><br/><i>Lee Ann Donaldson, OSB President</i></p> <p>3. <b><u>Report of the President and Notice of Actions on Past HOD Resolutions</u></b><br/><i>Lee Ann Donaldson, OSB President</i></p> <p>4. <b>Report from the Court</b><br/><i>Chief Justice Meagan Flynn,<br/>Oregon Supreme Court</i></p> | <p>5. <b><u>Report of the Board of Governors Budget &amp; Finance Committee and Notice of 2024 License Fees</u></b><br/><i>Chris Cauble, Chair<br/>BOG Budget &amp; Finance Committee</i></p> <p>6. <b>Overview of Parliamentary Procedure</b><br/><i>Lori L. Brocker, Parliamentarian</i></p> |
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**Resolutions**

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| <p>7. <b><u>Amend HOD Rules of Procedure</u></b><br/>(BOG Resolution No. 1)<br/><i>David Rosen, BOG, Region 1</i></p> <p>8. <b><u>Amend Oregon RPC 1.2(d)</u></b><br/>(BOG Resolution No. 2)<br/><i>Ankur Doshi, OSB General Counsel</i></p> <p>9. <b><u>Amend Oregon RPC 1.8(e)(3)</u></b><br/>(BOG Resolutions No. 3)<br/><i>Joe Piucci, BOG, Region 5</i></p> <p>10. <b><u>Amend Oregon RPC 8.4(a)(7)</u></b><br/>(BOG Resolution No. 4)<br/><i>Elizabeth Inayoshi, BOG, Region 4</i></p> <p>11. <b><u>Support Well-Being in the Legal Profession</u></b><br/>(BOG Resolution No. 5)<br/><i>Tomás Hernandez, BOG, Region 6</i></p> <p>12. <b><u>Increase HOD Delegate Engagement</u></b><br/>(HOD Delegate Resolution No. 2)<br/><i>Danny Lang, Ex-Officio Delegate, Region 3</i></p> <p>13. <b><u>Require OSB Membership for Administrative Law Judges</u></b><br/>(HOD Delegate Resolution No. 3)<br/><i>Danny Lang, Ex-Officio Delegate, Region 3</i></p> | <p>14. <b><u>Support adequate funding for Public Defense Providers</u></b><br/>(HOD Resolution No. 4)<br/><i>Keiler Beers, OSB 203444, HOD, Region 5<br/>Janae Bly, OSB 142820, HOD, Region 3<br/>Kristen Farnworth, OSB 00344, HOD, Region 6<br/>Shannon Flowers, OSB 073898 HOD, Region 6<br/>Joshua Gums, OSB 173623, HOD, Region 1<br/>Jennifer Kinzey, OSB 171324, HOD, Region 4<br/>Adam LeBrun, OSB 170712, HOD, Region 4</i></p> <p>15. <b><u>Support for adequate funding for Legal Services to Low-Income Oregonians</u></b><br/>(HOD Resolution No. 5)<br/><i>Peter A. Werner, OSB 091722, HOD, Region 1<br/>Kristi Gibson, OSB 990528, HOD, Region 2<br/>Elizabeth Knight, OSB 992454, HOD Region 5<br/>Vanessa Nordyke, OSB 084339, HOD Region 6,<br/>OSB Past President 2018<br/>Heather Decker, OSB 962589, HOD Region 7</i></p> <p>16. <b><u>Support adequate funding for the Oregon Judicial Branch</u></b><br/>(HOD Delegate Resolution No. 6)<br/><i>Vanessa Nordyke, OSB 84339, HOD Region 6,<br/>OSB Past President 2018<br/>David Wade, OSB 931217, HOD Region 2,<br/>OSB Past President, 2021</i></p> |
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*Brent Barton, OSB, 062698, HOD Region 4*

**17. Expand Licensed Paralegal Services**

(HOD Delegate Resolution No. 7)

*Danny Lang, Ex-Officio Delegate, Region 3*

**18. Veterans Day Remembrance**

(BOG Resolution No. 6)

*Tomás Hernandez, BOG, Region 6*

**19. In Memoriam**

(BOG Resolution No. 7)

*John Marandas, BOG Region 7*

*Kellie Furr, BOG Region 5*

*Gabe Chase, BOG Region 5*

**Resolution Excluded from Preliminary Agenda:**

**Impose a Three-Year Moratorium on**

**Member Fees**

(HOD Delegate Resolution No. 1)

*Blaine Clouten, HOD, Region 1*

**Underscored** words take you to the resolutions

## **\*\*2023 Notice of Action on Past HOD Resolutions\*\***

Following is a summary of actions taken and/or status reports on past HOD Resolutions.

### **Support Adequate Funding for the Oregon Judicial Branch (BOG Res. No. 3)**

The Board of Governors made support for Oregon's court system one of its legislative priorities for the 2023 legislative session. Bar staff then provided support and technical assistance to legislators and legislative staff throughout development of the 2023-2025 budget.

The OSB also worked in conjunction with the Campaign for Court Funding to achieve a budget for OJD above both the 2021-2023 legislatively approved budget, and the proposed current service level budget.

*For more information, see the June and July editions of the Capitol Insider.*

### **Appeals to Circuit Court of Administrative Agency Final Orders (Delegate Res. No. 1)**

This resolution recommended that the Board of Governors appoint a group to work with the Administrative Law Section to study giving the Circuit Courts jurisdiction over petitions for judicial review of agency final orders. A representative from the Administrative Law Section met with the BOG Public Affairs committee in November following the HOD meeting. This workgroup has not yet been appointed.

### **Advance a Fair, Inclusive and Accessible Justice System (Delegate Res. No. 2)**

The OSB is engaged in numerous efforts related to this resolution:

- Increasing communications support for legal services partners.
- Supporting pro bono programming and partnerships.
- Including information, resources, and symbiotic linking on social media, and through OregonLawHelp (Portal).
- Enhancing knowledge of Modest Means program, and its remittance-free structure for providers to moderate-income clients. Also exploring expanding both the income- and legal issue-based limits for client access to Modest Means providers.
- Conducting an inventory of current access to justice efforts, where the gaps are, and the complex mix of resources that support efforts across the system.
- Examining the National Center for State Courts (NCSC) Justice for All Framework for meeting civil legal needs, to determine if a customized Oregon framework could strengthen the continuum of services in Oregon.

*For more information see the July and September 2023 BOG Policy & Governance Agendas.*

### **Support for Public Defense Providers (Delegate Res. No. 3)**

The Board of Governors made support for public defense services one of its legislative priorities for the 2023 legislative session. Bar staff then provided support and technical assistance to legislators and legislative staff throughout the development of the 2023-2025 budget.

### **Support Adequate Funding for Legal Services to Low-Income Oregonians (Delegate Res. No. 4)**

The Board of Governors made support for adequate funding for legal services one of its legislative priorities for the 2023 session. Bar staff worked with legal service providers, the Campaign for Equal Justice and other stakeholders to advocate additional support for legal services, including continued funding for immigration legal services, throughout the 2023 legislative session.

### **Enhancing Cybersecurity in the Legal Community through Outreach, Assessment, and Education (Delegate Res. No. 5)**

The OSB Bulletin ran four articles on cybersecurity “best practices” in 2023 (to date). The bar also shared several PLF resources on its website and in email messaging to members. These include Practice Aids available on its website, and information about its Cyber Liability & Breach Endorsement included in its excess coverage plans. The bar also keeps a button on its main web page alerting members to scams or security threats targeting lawyers and law firms.

### **Affordable Access to Appellate Justice (2021 Delegate Res. No. 3) (2022 HOD Report)**

Throughout 2021 and 2022, an Appellate Practice Section subcommittee was expanded to include representatives from the appellate courts, to address this 2021 HOD resolution regarding the cost and complexity of appellate justice. This committee presented a progress report in June 2022 that further identified areas for study and action. These included simplified forms, sample briefs, sample motions, and a more robust website to offer guidance and resources to pro se litigants. That committee is also now working on a Pro Se Manual for appellate litigants. This work is ongoing.

*For more information see the June 2022 BOG Agenda.*

**Financial Support for Oregon Law Foundation by Sponsorship of an Approved Set of Recorded Mandatory CLE Programs** (2021 Delegate Res. No. 1, passed with amendment)

The Board of Governors Budget & Finance Committee looked at the cost of production and distribution of the proposed set of recorded mandatory CLE programs, as well as projected sales. Because content would need to be refreshed every three years, and competition within the market is high for these types of CLE programs, projected sales of the product were not expected to ever show a profit. Therefore, the Board of Governors decided not to pursue this proposal further.

**\*\*Note:** these are short summaries on complex items. Where possible, each item identifies a report or memorandum with further detail and that is available on [www.osbar.org](http://www.osbar.org). **\*\***

## Notice of 2024 Oregon State Bar Member Fees

The first chart below shows the Fee Schedule for the 2024 Annual Member Fees for lawyers, which is the same as 2023. The fee below includes the 2024 assessments for the Client Security Fund (CSF) and the Loan Repayment Assistance Program (LRAP). The assessment amounts for 2024 remain at \$20.00 and \$10.00, respectively.

Based on a recommendation from the CSF Committee, the Board of Governors resolved to keep the CSF assessment for 2024 at \$20.00. As of August 31, 2023, the fund balance was \$1.636 million. Throughout 2023, there has been a significant decrease in the number and dollar amount of claims, which is forecasted to allow the balance to be above the \$1.25 million reserve level through 2024.

The second chart shows the Fee Schedule for Licensed Paralegals (LPs). The LP license fee shown below includes the \$20 CSF assessment, but no LRAP assessment, as LPs are not currently eligible for loan repayment assistance through the bar's program.

The due date for all 2024 member fees is Wednesday, January 31, 2024.

Regular Member Fee/Status	Fee Through January 31, 2024	Fee Effective February 1, 2024
<b>Active</b>	<b>\$ 688</b>	<b>\$ 788</b>
<b>Active Under \$45k AGI **</b>	<b>\$ 557</b>	<b>\$ 657</b>
<b>Active Pro Bono</b>	<b>\$ 150</b>	<b>\$ 200</b>
<b>Inactive</b>	<b>\$ 150</b>	<b>\$ 200</b>
<b>Retired</b>	<b>\$ 150</b>	<b>\$ 200</b>
<b>** Based on 2023 annual gross income</b>		

Licensed Paralegal Fee/Status	Fee Through January 31, 2024	Fee Effective February 1, 2024
<b>Active Licensed Paralegal</b>	<b>\$ 350</b>	<b>\$ 450</b>
<b>Inactive</b>	<b>\$ 150</b>	<b>\$ 200</b>
<b>Retired</b>	<b>\$ 150</b>	<b>\$ 200</b>

# **BOG Resolution No. 1**

## **Amend the House of Delegates Rules of Procedure**

**Whereas**, the Board of Governors have proposed the following amendment to the Oregon State Bar House of Delegates pursuant to ORS 9.142;

**Whereas**, the House of Delegates must adopt any changes in the House of Delegates Rules of Procedure pursuant to ORS 9.142; now, therefore, be it

**Resolved**, that the amendments to the House of Delegates Rules of Procedure as set forth in Exhibit 1 are approved and shall go into effect immediately upon adoption.

### **Background**

The House of Delegates (HOD) is governed by the HOD Rules of Procedure, which control debate and procedure within the House. Any actions not covered under these rules are governed by Robert's Rules of Order. The HOD Rules of Procedure have not been amended or changed since 2010.

Since 2010, there have been substantial changes to the way that the House of Delegates operates. Most notably, the HOD has been operating with remote appearances and electronic voting since 2020. In 2022, the HOD meeting was conducted in a hybrid format, allowing for Delegates to choose either remote or in-person appearance at the meeting.

The HOD Rules of Procedure did not envision conducting business through these remote and electronic means. Our experience over the last few years has demonstrated the need for revisions to the rules to better serve this new hybrid meeting environment. The proposed amendments to the HOD Rules of Procedure address remote appearances, debate, electronic voting, and amendments. They are intended to promote a smooth and efficient meeting, allow for robust, transparent, and fair participation by all delegates, and enable the president to maintain decorum of the HOD meeting.

The proposed amendments to the HOD Rules of Procedure were presented for public comment between May 23 and June 20, 2023. Four public comments were received, primarily indicating that having the option to participate remotely was appreciated. One comment requested an adjustment to require remote delegates to show their names on the online platform. That change was added to the rules.

A synopsis of the changes are as follows:



Rule 1 has been amended to allow for the Board of Governors to decide whether to hold an in-person, hybrid, or completely remote House of Delegates meeting each year.

Rule 3 has been amended to establish the procedure for delegates to utilize the electronic platform for the House of Delegates.

Rule 5 has been amended to require delegate resolutions to be submitted at most 180 days prior to a House of Delegates meeting. This period allows for the submission of delegate resolutions to occur after the year's election to the House of Delegates. This change is to avoid a circumstance where a delegate submits a resolution prior to the election and does not win reelection.

Rule 6 has been amended to clarify that delegates appearing remotely are counted for quorum.

Rule 7 has been amended to clarify how debate will function using online queues. Delegates may utilize online queues to debate a resolution. Motions are taken from a separate queue.

Rule 8 has been amended to address the usage of an electronic voting system for taking votes during the proceeding.

Rule 9 has been added to simplify the amendment process and avoid amendments within amendments due to the technological limitations within the electronic platforms used for voting.

The Board of Governors recommends adoption of these amendments, to go into effect immediately.

### **Financial Impact**

None stated.

#### **Presenter:**

**David Rosen**, BOG, Region 1

**Oregon State Bar House of Delegates  
Rules of Procedure**

*(As amended)*

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### **Rule 1 – Meetings of the House**

1.1 The House of Delegates shall meet at least annually at a time set by the Board of Governors. The Board of Governors may establish the House of Delegates to meet at a place in-person, electronically, or a combination thereof. The President of the Oregon State Bar may call special meetings of the House and shall call a special meeting of the House if requested to do so in writing by twenty five (25) or more delegates. See ORS 9.142(1) and (2).

1.2 Notice of meetings of the House shall be given as required in the Bar Act and in the bar bylaws and policies.

1.3 The House of Delegates may meet in-person, electronically, or a combination thereof through the use of electronic software platforms selected by the bar that allows for recognition of delegates, debate, and the recording and tallying of delegate votes.

### **Rule 2-Presiding Officer**

2.1. The President of the Oregon State Bar shall preside over meetings of the House of Delegates. In the President's absence or inability to act, the President shall designate another officer to preside. See ORS 9.070(1).

2.2 The presiding officer shall preserve order, require observance of the rules of procedure and decide all questions of order and procedure.

2.3. Proceedings of the House of Delegates shall be governed, in the following precedential order, by the Bar Act, the bylaws and policies of the State Bar, these Rules and the current edition of Robert's Rules of Order Newly Revised.

### **Rule 3-Delegates and Delegations**

3.1. Delegates shall be selected as provided in the Bar Act and by the bar bylaws and policies. Delegates may not designate an alternate delegate, with the exception that only bar sections or local bar associations may designate an alternate delegate, provided the alternate delegate is a person duly authorized in the organization's bylaws or other authority to act in the stead of the section chair or local bar association president.

3.2 Delegates must register for House meetings either in person or through the electronic platform. Delegates will be provided with special credentials for registration and voting.

3.3 Delegates will be provided login credentials to the electronic platform. Delegates attending electronically are responsible to provide equipment to allow for participation electronically, including an Internet connected device, camera and microphone, and a stable internet connection.

3.4 Delegates attending electronically shall appear using their first and last names on the electronic platform software and should have their camera turned off, and microphone muted until the delegate is recognized by the presiding officer.

### **Rule 4-Record of Proceedings**

4.1 Proceedings of the House of Delegates shall be recorded stenographically. Meeting transcripts shall be maintained by the Oregon State Bar.

4.2 As soon as practicable after each meeting of the House of Delegates, the Chief Executive Officer shall prepare and publish to the Oregon State Bar membership a summary of the actions of the House.

### **Rule 5-Agenda and Order of Business**

5.1 Members of the Oregon State Bar, delegates of the House of Delegates, and the Board of Governors may submit questions or measures for placement on the agenda of House meetings as set forth in Rules 5.2 through 5.4.

5.2 At meetings of the House of Delegates the Board of Governors shall submit to the House reports of the proceedings by the Board since the last meeting of the House, reports of the officers and committees of the State Bar, and recommendations of the Board. See ORS 9.142(2).

5.3 Any active member of the Oregon State Bar, by petition signed by at least two percent (2%) of all active members of the State Bar, may submit a question or measure for the agenda of any House of Delegates meeting as provided in the Bar Act. See ORS 9.148(3). The petition must be filed with the Chief Executive Officer at least forty-five (45) days before the meeting at which it is to be presented.

5.4 A delegate of the House of Delegates may submit a question or measure for the agenda of any House of Delegates meeting by delivering a copy of the full text of the item to be presented, including a description of any financial impact, to the Chief Executive Officer at most one hundred eighty (180) and at least forty-five (45) days in advance of the meeting at which it is to be presented. If a delegate presenting a question or measure is no longer a delegate at the date of the meeting, the question or measure shall be removed from the agenda.

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

5.6 An agenda shall be adopted by the House of Delegates at the commencement of each meeting. Upon motion of a delegate, the House may add to the agenda, prior to its final adoption, any question or measure submitted pursuant to Rules 5.2 to 5.4 above and excluded from the agenda by the Board. The order of business at meetings of the House shall be as set forth in the agenda adopted by the House.

5.7 If the presenter of an agenda item is not available when the meeting has reached that point on the agenda, the item will be moved to the end of the agenda. If the presenter is unavailable when the item is subsequently called, it will be considered withdrawn.

### **Rule 6-Quorum**

6.1 A majority of the total number of delegates shall constitute a quorum for the transaction of business by the House of Delegates. See ORS 9.142(1).

6.2 Delegates appearing electronically who indicate their presence via electronic ballot during a call for quorum shall be counted towards quorum.

### **Rule 7-Debate**

7.1 Active members of the bar may participate in the discussion of matters before the House. See ORS 9.148(1). Only delegates may invoke the House rules and parliamentary procedure during meetings of the House.

7.2 The presenter of an item on the agenda shall have five (5) minutes to open and one (1) minute to close. All other speakers shall have a maximum of three (3) minutes for their presentations. The presiding officer may, with the consent of the House, lengthen the time for a speaker's presentation.

7.3 Speakers who would like to speak on a matter shall queue electronically in the "pro," "con," or "motions/questions" queues to be recognized to speak. The presiding officer will recognize "pro," "con" and "motions/questions" speakers in turn. Speakers voicing support for a matter should speak from the "pro" queue, speakers opposing a matter should speak from the "con" queue, and speakers with questions or motions should speak from the "motion/questions" queue.

7.4 Speakers, when recognized by the presiding officer, must state their full names and indicate whether they are delegates, their elected region or ex-officio status, and must state whether they are speaking "pro," "con," to a privileged motion or question. Speakers appearing electronically must activate their camera and unmute their microphone to be seen and heard by the House.

7.5 No person who has spoken "pro" or "con" on an issue will be recognized again until all other persons who wish to speak on that issue have been given the opportunity.

7.6 Debate on a pending matter is limited to that specific matter, and not the general subject. Speakers must also speak from the proper queue. The presiding officer has discretion to withdraw recognition from a speaker who does not speak from the proper queue or does not limit debate to the specific matter.

7.7 All motions, including a motion to end debate, during debate on a matter shall only be made from the "motions/questions" queue. Motions from the floor or from the "pro" or "con" queues are out of order and will not be recognized.

7.8 If there are no members in queue to debate on a matter, the presiding officer may direct the House to vote on the matter.

### **Rule 8-Voting**

8.1 Only delegates may vote. Each delegate has only one vote. Cumulative voting and voting by proxy are not permitted. A delegate's vote will be counted only if the delegate is within the delegate voting area, or, if voting electronically, the delegate submits an electronic ballot.

8.2 Votes shall be taken as determined by the presiding officer.

8.3 The presiding officer shall not vote except in the event of a tie.

8.4 All delegates (whether in-person or appearing electronically) may be required to vote via electronic ballot (ORS 9.142(3)). The Oregon State Bar will inform delegates of this requirement prior to the meeting and provide login credentials for delegates to vote via electronic ballot. Delegates, including those appearing in-person, will be responsible for providing an Internet connected device that will allow for voting via electronic ballot during the meeting.

8.5 If delegates are required to vote via electronic ballot, the presiding officer shall announce a vote and the time for delegates to submit their votes on the electronic ballot. The presiding officer will provide delegates at least two (2) minutes to record their vote via electronic ballot. Upon completion of the vote, the results may be displayed to all delegates via the voting platform, and the official vote shall be stated by the presiding officer and recorded in the minutes.

### **Rule 9-Amendments**

9.1 If a delegate seeks to amend a matter on the floor, the delegate must submit an amendment in writing prior to moving to amend a matter on the floor. Members appearing electronically will be provided an email address to submit amendments.

9.2 Amendments must be germane to the subject of a matter the amendment seeks to amend and further comply with the Bar Act, bylaws and policies of the bar. The presiding officer shall decide on whether an amendment is germane to the matter and complies with the Bar Act, bylaws, and policies of the bar.

9.3 Once a motion to amend is seconded, the House may not further amend the proposed amendment, except via friendly amendment, until a vote is taken to approve the amendment.

9.4 Delegates may offer a friendly amendment to the original movant of a matter. The amendment is adopted to the matter without a vote of the House if the movant and the delegate seconding the motion accept the friendly amendment. If the friendly amendment is not accepted, the delegate must move to amend under Rule 9.1.

### **Rule 10-Public Meetings Law**

10.1 Meetings of the House of Delegates are open to all members of the Oregon State Bar, the media and the public, except as provided otherwise by the Public Meetings Law (ORS 192.610 et seq.).

### **Rule 11-Amendment of Rules**

11.1 These rules may be amended by a vote of a majority of the delegates present and voting. Only delegates may propose amendments to these rules. Proposals for amending the rules must be submitted to the Chief Executive Officer at least forty-five (45) days in advance of the meeting of the House at which the amendment is to be considered.

# **BOG Resolution No. 2**

## **Amend Oregon RPC 1.2(d) to address representation in instances where conduct is legal in Oregon, but in conflict with other jurisdictions.**

**Whereas**, the Legal Ethics Committee and the Board of Governors formulated the following amendment to the Oregon Rules of Professional Conduct 1.2(d);

**Whereas**, the 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 Rules of Professional Conduct 1.2(d) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

### **RULE 1.2 SCOPE OF REPRESENTATION**

\* \* \*

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

(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client ~~regarding Oregon marijuana-related laws~~ in a proposed course of conduct that the lawyer reasonably believes is permitted under Oregon law. In the event Oregon law conflicts with federal law or ~~tribal law~~ the law of another jurisdiction, the lawyer ~~shall~~ may also advise the client regarding ~~related federal and tribal law and policy~~ such conflict and the potential legal consequences.

### **Background**

Oregon RPC 1.2(c) prevents a lawyer from counseling a client to engage in, or assisting a client in, conduct that the lawyer knows is illegal or fraudulent. It reads:

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

In 2014, the OSB Legal Ethics Committee (LEC) recommended an exception to the RPCs be adopted to allow attorneys to advise clients regarding the then pending legalization of marijuana within Oregon. The exception adopted by the HOD and approved by the Oregon Supreme Court, RPC 1.2(d), states:

(d) Notwithstanding paragraph (c), a lawyer may counsel and assist a client regarding Oregon's marijuana-related laws. In the event Oregon law conflicts with federal or tribal law, the lawyer shall also advise the client regarding related federal and tribal law and policy.

On June 13, 2022, the OSB Cannabis and Psychedelics Section Executive Committee requested the LEC review RPC 1.2(d) considering the changes to the law in relation to psilocybin. Specifically, the Oregon Psilocybin Services Act (OPSA) allows the Oregon Health Authority to establish a framework for the manufacture and administration of psilocybin. Psilocybin, like marijuana, is still a Schedule I substance in the federal Controlled Substances Act.

The LEC reviewed the request from the Cannabis and Psychedelics Section Executive Committee and noted that a broader exception may be necessary to prevent the LEC from revisiting the issue each time there is a conflict between federal and state law. Additionally, there is a new concern about conflicting state laws between states. Recent events have created long-arm statutes that criminalize advising and assisting clients with reproductive rights and gender-affirming care that is legal within Oregon, but illegal in other jurisdictions. These amendments to 1.2(d) provide confidence to attorneys that advising clients about proposed conduct that is legal in Oregon will not be considered unethical behavior.

The LEC recommends that RPC 1.2(d) also adjust the language to include conduct the "lawyer reasonably believes is permitted under Oregon law." The LEC decided to adopt a "reasonably believes" standard in order to allow the attorney to counsel the client based on the reasonable interpretation of the law at the juncture that the client is requesting advice. The option of "expressly permitted" was raised, but the concern was that a potential change in the judicial interpretation of a law could cause a violation of the Rule. A "reasonably believes" standard allows lawyers to provide legal advice based on the reasonable interpretation of the law at the present time without fear that a future judicial decision may subject them to a future ethical violation of the RPCs.

The LEC also recommends changing "shall" to "may." The LEC noted that the marijuana industry has matured, and business providers may seek advice from attorneys specializing in certain areas of the law not linked to criminal law or the Controlled Substances Act. Additionally, attorneys may not be adequately competent to discuss the conflict between the laws of other jurisdictions or the potential legal consequences.

The LEC recommended the preceding amendments to create a broader exception to provide attorneys with the ability to provide clients with competent legal assistance in the climate of conflicting laws. The OSB Board of Governors agrees with the LEC recommendations and urges the HOD approval.

## **Financial Impact**

None stated.

Presenter:

**Ankur Doshi**, OSB General Counsel



# **BOG Resolution No. 3**

## **Amend Oregon RPC 1.8(e) to allow attorneys representing indigent clients pro bono to gift modest living expenses to them**

**Whereas**, the Legal Ethics Committee and the Board of Governors formulated the following amendment to the Oregon Rules of Professional Conduct 1.8(e);

**Whereas**, the 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 Rules of Professional Conduct 1.8(e) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

### **RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES**

\* \* \*

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;

(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client; and

**(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client through a nonprofit legal services or public interest organization, and a lawyer representing an indigent client through a court appointment, or through a law school clinical or pro bono program, may provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses. The lawyer:**

**(i) may not promise, assure, or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;**

**(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and**

**(iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.**

**Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.**

## **Background**

This amendment is a modification to the 2022 House of Delegates Resolution #2 to Amend RPC 1.8. In 2022, the Oregon State Bar Board of Governors recommended the submission of ABA Model Rule 1.8(e)(3) to the House of Delegates (HOD) for approval. The HOD raised several questions about the proposal and submitted it back to the Legal Ethics Committee (LEC). The LEC submitted this modified language, which the Board of Governors approves and recommends for passage.

Currently, Oregon RPC 1.8(e)(1) and (2) strictly limit financial assistance to clients in connection with a pending or contemplated litigation with two exceptions. First, the lawyer may advance court costs and litigation expenses, the repayment of which may be contingent on the outcome of the matter. Second, for indigent clients, the lawyer may pay the court costs and expenses of litigation. Under the current RPC 1.8(e), attorneys may not give money or things of value to clients in litigation who need help with the basic necessities of life.

The American Bar Association (ABA) adopted a third subsection to ABA Model Rule 1.8(e) that provides an additional exception to lawyer financial assistance. ABA Model Rule 1.8(e)(3) reads:

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

\* \* \*

(3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client pro bono through a nonprofit legal services or public interest organization and a lawyer representing an indigent client pro bono through a law school clinical or pro bono program may provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses. The lawyer:

(i) may not promise, assure, or imply the availability of such gifts prior to retention or as an inducement to continue the client-lawyer relationship after retention;

(ii) may not seek or accept reimbursement from the client, a relative of the client or anyone affiliated with the client; and

(iii) may not publicize or advertise a willingness to provide such gifts to prospective clients.

Financial assistance under this Rule may be provided even if the representation is eligible for fees under a fee-shifting statute.

The ABA noted that this new rule was a narrow exception to ABA Model Rule 1.8(e) that provided increased access to justice to many vulnerable clients. The ABA further noted it was a

humanitarian rule, allowing attorneys to help indigent clients with basic needs without running afoul of their ethical obligations. In many instances, the provision of modest gifts can allow an indigent client to continue with their proceedings by providing food security or shelter security, or even simply having access to the courthouse by providing fare for transportation.

At the 2022 HOD meeting, several questions were raised about the proposal, which the Legal Ethics Committee has examined. The LEC modified the language of the amendment to address some of those concerns.

First, the LEC removed additional references to “pro bono.” The removal of the additional language was specifically to avoid confusion as to the definition of pro bono. During debate at the 2022 House of Delegates, there was confusion as to whether pro bono meant that the client was not charged for services, or if the attorney did not receive payment for services. The latter interpretation led to concerns that the rule may not apply to legal aid programs that provide attorneys with a salary, but do not charge their clients. The LEC noted that Washington had the same concern and removed additional references to pro bono to clarify that nonprofit legal service and public interest organizations are covered under this Rule.

Second, the LEC added “through a court appointment” to address concerns about the application of this rule in indigent defense. There was substantial concern raised at the 2022 House of Delegates meeting about the application of this Rule to indigent defense providers. The LEC opted to use the word court appointment to cover consortia that may only provide indigent defense as part of their practice and other areas of indigent defense, such as juvenile proceedings.

The LEC reviewed additional questions raised by the 2020 House of Delegates. They researched the issues as noted below:

1. The 2022 HOD raised questions about the liability of an attorney for providing gifts that may be used for substance abuse, and whether such liability would be covered by PLF coverage.

The LEC noted that the PLF responded that it is unlikely that an attorney would be found liable in a claim for relief related to a gift under 1.8(e)(3). PLF coverage always depends on the facts and circumstances of any given claim. However, it does not appear that this rule would generate a malpractice issue. The PLF also noted that education could be provided about possible risks and best practices. Additionally, this change to RPC 1.8(e)(3) does not obligate attorneys to provide financial assistance or other gifts to clients, and attorneys who had concerns about potential liability could choose not to give such assistance to clients.

The LEC opted to keep the current language based on this response.

2. The 2022 HOD also raised questions about whether the lack of a definition of modest would be a concern, and proposed language to provide limits to the value and the type of gifts (cash versus non-cash) that could be provided.

The LEC debated this issue and noted several concerns about adopting such language. The primary concern focused on the purpose of this rule, and that was to allow attorneys to provide a humanitarian response to many of the clients they provided services to without charge. The original

amendment was proposed by the ABA Standing Committee on Ethics and Professional Responsibility and the Standing Committee on Legal Aid and Indigent Defendants to increase access to justice by allowing attorneys to provide some aid to their most vulnerable clients.

The original proposal noted that the ABA declined to define modest, or to create specific amounts. Part of the reason to decline to create a cap or define “modest” was to account for different costs of living within different jurisdictions. The LEC also noted that restrictions on the type of gift or the value of the gift, or reporting requirements would deter attorneys from utilizing the exception and render the exception ineffective. The ABA also noted that, in pro bono cases where this limited exception would apply, the potential for harm to the client by receipt of a gift, was remote.

The LEC opted to keep the current language based on this review.

The LEC reviewed this matter and discussed the importance of this amendment. It found that the proposed amendment is narrow enough to avoid many of the concerns related to attorneys providing financial assistance to clients in litigation. The narrowness of the rule avoids any potential for champerty and maintenance to occur under this exception. A review of past disciplinary matters under 1.8(e) was conducted as well, and it was noted that the limited violations that occurred were in the context of attorneys providing assistance to fee-paying clients, and not in a pro bono context.

### **Financial Impact**

None stated.

Presenter:

**Joe Piucci**, BOG, Region 5

# BOG Resolution No. 4

## Amend Oregon RPC 8.4(a)(7)

**Whereas**, the Legal Ethics Committee and the Board of Governors formulated the following amendment to the Oregon Rules of Professional Conduct 8.4(a)(7);

**Whereas**, the 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 Rules of Professional Conduct 1.8(d) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

### **RULE 8.4 MISCONDUCT**

(a) It is professional misconduct for a lawyer to:

\* \* \*

(7) ~~in the course of representing a client~~ in the practice of law, knowingly intimidate or harass a person because of that person's race, color, national origin, ethnicity, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.

\* \* \*

(c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.

### **Background**

Oregon RPC 8.4(a)(7) was passed in 2015 prior to the American Bar Association (ABA) adopting a similar rule within the Model Rules of Professional Conduct. The ABA's analogue to RPC 8.4(a)(7), Model Rule of Professional Conduct (ABA MR) 8.4(g), was passed in 2016. In February 2022, the Board of Governors (BOG) requested the Legal Ethics Committee (LEC) review Oregon RPC 8.4(a)(7) and recommend whether the rule should be amended to more closely conform to ABA MR 8.4(g).

ABA MR 8.4(g) reads as follows:

It is professional misconduct for a lawyer to:

\* \* \*

(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability,

age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these Rules.

The LEC formed a subcommittee that met over 2022 to review Oregon RPC 8.4(a)(7) and ABA MR 8.4(g). Upon the presentation of the findings of the subcommittee to the LEC, the LEC recommended two changes to RPC 8.4(a)(7).

First, the LEC recommended changing the phrase “in the course of representing a client” to “in the practice of law.” This phrase was felt to be broader and encompasses actions taken by lawyers in their role practicing law, which may not necessarily occur while representing a client. At the same time, it strikes a reasonable balance between the free speech rights of the attorney under the Oregon Constitution and the professional responsibilities of the attorney as an officer of the court. Conduct that would be considered inappropriate behavior while practicing law would be subject to discipline under this new provision. Oregon RPC 8.4(c) still contains an exception specifically for attorneys providing legitimate advocacy.

The LEC also noted that “ethnicity” was omitted from Oregon RPC 8.4(a)(7). The LEC recommended the addition of “ethnicity.”

The BOG agrees with the recommendations from the LEC and urges adoption of the proposed amendments.

## **Financial Impact**

None stated.

### **Presenter:**

**Elizabeth Inayoshi, BOG, Region 4**

## **BOG Resolution No. 5**

### **Support Well-Being in the Legal Profession**

**Whereas**, the mission of the Oregon State Bar (OSB or Bar) is to serve justice and the public interest by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice; and,

**Whereas**, in 2017, an ABA National Task Force on Lawyer Well-Being (Task Force) published a report identifying and highlighting health concerns attendant to the legal profession, including stress, anxiety, depression, and problem substance use; and

**Whereas**, the 2017 Task Force report painted a dire picture of the mental health and well-being of the legal profession as compared to other professions, with higher incident rates of sleep deprivation, stress, social alienation, suicide, substance abuse, depression, work addiction, work-life conflict, job dissatisfaction, and burnout; and

**Whereas**, the 2017 Task Force Report inspired Oregon's January 2019 Wellness Summit (2019 Summit), where Oregon leaders in the legal profession gathered to discuss the future of well-being; and

**Whereas**, in 2021, the Bar's House of Delegates (HOD) passed its own Delegate Resolution No. 5, Conference of Well-Being Stakeholders, which directed the Bar to convene a Conference of Well-Being Stakeholders (the Conference); and

**Whereas**, in June 2022, the Conference convened with several leaders from stakeholder groups who identified and grouped challenges to well-being; and

**Whereas**, the OSB and the Oregon Attorney Assistance Program (OAAP) prepared a summary of all the Conference and the workgroup discussions in the 2023 Well-Being Report (WB Report), noting the following five recurring threads developed by all the Workgroup discussions of attorney well-being:

A knowledge gap exists among the public, members, bench, and law schools, specifically as to what well-being is; why well-being is important; and how do we achieve well-being in the legal profession;

Legal culture and business practices are entrenched in historic and continuing traditions that are sometimes at odds with the modern practice of law and well-being practices;

Mental health and addiction are stigmatized, causing shame and reluctance to reach out for available support;

The application of the disciplinary process is stressful and stigmatizing for the respondent lawyer as well as confusing and arduous for the public; and

Cultural changes are necessary to foster well-being and longevity in the profession; and

**Whereas**, attorney well-being is vital to the improvement of legal services, increasing access to justice, and improving the administration of justice; now, therefore, be it

**Resolved**, that the House of Delegates

1. Reaffirms its commitment to prioritize professional well-being in the legal profession;
2. Adopts the Well-Being Report;
3. Encourages members and other stakeholders to read, digest, and reflect on the Well-Being Report;
4. Encourages members and other stakeholders to identify and act upon what they and their organizations can do to advance well-being in the legal profession;
5. Directs the OSB to identify, prioritize, and act upon steps it can take to advance well-being in the legal profession; and
6. Proclaims the importance of legal professionals' well-being to achieving the bar's mission to increase access to justice, improve the administration of justice, and improve the quality of legal services throughout Oregon.

### **Background**

National survey findings and media attention have long documented the health concerns attendant to the legal profession, including stress, anxiety, depression, and problem substance use. It is evident that lawyer well-being issues can no longer be ignored.<sup>1</sup> In 2016, a [National Task Force on Lawyer Well-Being](#) (Task Force) was formed as a collaborative effort by the ABA Commission on Lawyer Assistance Programs and a broad coalition of other national legal organizations. The Task Force Report noted several concerning trends within the legal profession and significant well-being challenges in all major sections of the legal profession in the United States.<sup>2</sup>

The 2017 Task Force Report spurred several reforms by the Oregon State Bar (OSB or Bar) and the Oregon Supreme Court (Court). The Bar and the Court, in collaboration with the Oregon Attorney Assistance Program (OAAP), adopted a continuing legal education requirement on mental health and substance use, and essential eligibility requirements for admission, and revised bar application questions about mental health history. The Task Force Report also inspired Oregon's January 2019 Wellness Summit (2019 Summit), a collaboration by the OSB with the OAAP. Leaders in the profession gathered at the 2019 Summit to discuss well-being issues, and then provided the Board of Governors (BOG) with recommendations for Bar departments and volunteer groups. The recommendations noted that volunteer and stakeholder groups were an integral element of the future of well-being.

In 2021, the Bar's House of Delegates (HOD) built off the 2019 Summit and approved Delegate Resolution No. 5, Conference of Well-Being Stakeholders. Delegate Resolution No. 5 directed the Bar to convene a Conference of Well-Being Stakeholders (the Conference). In June 2022, this Conference convened with several leaders from stakeholder groups who identified challenges to well-being.

These challenges were the subject of the discussion meetings of four designated Workgroups: (1) Well-Being in the Workplace and Evolving Legal Culture/Law Practice Management; (2) Regulatory

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<sup>1</sup> Bree Buchanan & James C. Coyle, *National Task Force on Lawyer Well-Being: Creating a Movement to Improve Well-Being in the Profession*, Am. B. Ass'n (Aug. 14, 2017), <https://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportFINAL.pdf> (hereafter, "Task Force Report").

<sup>2</sup> Task Force Report at 10-11.



and Disciplinary Practices, and Structural Impediments to Well-Being; (3) Reducing Vicarious Trauma and Stigma in the Legal Profession; and (4) Lawyer Education and Law School Well-Being. Workgroups were comprised of members of the bar from solo practitioners to members of mid-size and large firms; employees of nonprofits; government; and employees of the OAAP, PLF, and OSB.

Throughout the Conference and the continued meetings thereafter, four recurring threads permeated the Workgroup discussions. The WB Report delves into the discussion within each workgroup, along with the common issues that each workgroup discussed.

1. A knowledge gap exists among the public, members, bench, and law schools, specifically as to what well-being is; why well-being is important; and how do we achieve well-being in the legal profession.
2. Legal culture and business practices are entrenched in historic traditions that are sometimes at odds with well-being practices.
3. Application and disciplinary processes are stressful and stigmatizing to lawyers as well as confusing and arduous for the public.
4. Cultural changes are necessary to foster well-being and longevity in the profession.

Oregon has long been a national leader in recognizing the importance of well-being in the legal profession. The Oregon Attorney Assistance Program (OAAP) has been a well-being resource since 1982, providing counseling, assisting, educating, and advocating for lawyers, judges, and law students. Additionally, the OSB Quality of Life Committee demonstrates the Bar's concern and commitment to the health and well-being of the legal community. Its mission is to encourage and support a culture that recognizes and promotes quality of life objectives as important to personal and professional development.

With all we have done in Oregon, we can and must do more. The WB Report provides a summary of the types of issues that must be addressed, and ideas for stakeholders to consider establishing a sustainable culture-shift that recognizes and values lawyer well-being as critical to protection of the public, the provision of high-quality legal services, and the advancement of a fair, inclusive, equitable, and accessible justice system.

The WB Report provides initial feedback from stakeholders on their experiences of the well-being issues within the legal profession in Oregon. There is more work to be done by all stakeholders to advance well-being in the legal profession.

The BOG offers its gratitude and appreciation to the HOD and its members for prioritizing well-being (individually and as a body) and in passing 2021 Delegate Resolution 5, which established the Conference of Stakeholders and led to the WB Report. The BOG stands with the HOD in its continuing commitment to prioritize well-being among legal professionals and asks that the HOD pass this resolution and its subparts.

**Presenter:**

**Tomás Hernandez**, BOG, Region 6

## **Delegate Resolution No. 2 Increase HOD Delegate Engagement**

**Whereas,** Given the important role of the House of Delegates;

**Whereas,** Given that the HOD only meets once per year;

**Whereas,** There is also only one annual joint meeting of the BOG and the HOD;

**Whereas,** By reason of the foregoing premises, OSB Members will benefit by improved Communication and Coordination by and between the HOD and the BOG regarding proposed HOD Agenda Items; and, Resolutions passed by HOD Delegates; now,

**Therefore,** be it resolved that the BOG appoint a Volunteer Committee to study the Benefits of a HOD Advisory Board with one or more HOD Advisory Board Members from each OSB Region to serve on the HOD Advisory Board.

**Presenter:**

**Danny Lang,** HOD, Region 3, Ex-Officio Delegate

## **Delegate Resolution No. 3**

### **OSB Membership for Administrative Law Judges**

**Whereas**, Matters of substantial importance affecting the Rights and Duties of Oregonians in areas of Employment, Education, Licenses, possession of Personal Property, and, disputed Regulatory Compliance, are often the subject of Agency Contested Cases that the Office of Administrative Hearings assigns Administrative Law Judges authorized to issue “FINAL ORDERS”;

**Whereas**, Administrative Law Judges conduct Hearings in Contested Cases that implicate the Law of Evidence, Oregon Statutes, Oregon Caselaw, and Oregon Administrative Rules, in order to issue FINAL ORDERS;

**Whereas**, the determination of FINAL ORDERS by Administrative Law Judges implicates State and Federal Constitutional Matters of Law, including Due Process concerns;

**Whereas**, Lawyers, Circuit Court Judges, and Appellate Court Judges, are required to be Members of the Oregon State Bar; and,

**Whereas**, at present, Oregon Administrative Law Judges are not required to be Members of the Oregon State Bar; now,

**Therefore**, be it resolved that the House of Delegates recommends that the Board of Governors appoint a volunteer committee to determine whether Good Cause exists to require Membership in the Oregon State Bar by Oregon Administrative Law Judges.

**Presenter:**

**Danny Lang**, HOD, Region 3 Ex-Officio Delegate

## **Delegate Resolution No. 4**

### **Proposed Resolution for Support for Public Defense Providers**

**Whereas**, the Constitutions of both Oregon and the United States require that all people facing a possible deprivation of their physical liberty in court proceedings, such as those accused of criminal offenses, juveniles accused of conduct that would constitute crimes if committed by an adult, and those who are subjects of civil commitment proceedings, have the right to assistance by ethical and competent legal counsel;

**Whereas**, Oregon statutes guarantee a right to counsel for parents defending against a petition to terminate their parental rights, for parents in juvenile dependency proceedings in which parents may lose custody of their children whenever the nature of the proceedings and due process so require, and for children in juvenile dependency proceedings when requested;

**Whereas**, those same constitutions and statutes require that the counsel provided the person be paid for by the government, if the person is indigent and cannot afford their own legal counsel;

**Whereas**, the Sixth Amendment Center published in January 2019 a comprehensive study of Oregon's public defense system and determined that Oregon's fixed-fee contract system pits appointed counsels' financial self-interest against the due process rights of their clients and is prohibited by national public defense standards;

**Whereas**, the American Bar Association published in January 2022 its report on its calculations of the amount of time public defense providers should spend on average on the various types of public defense cases and concluded that Oregon had one-third the number of public defense attorneys needed to ensure that indigent clients receive constitutionally competent representation;

**Whereas**, there is a salary and resource disparity between trial level legal counsel for the person and legal counsel for the State;

**Whereas**, trial level legal counsel for the person are government contractors and legal counsel for the State are government employees funded through direct appropriations;

**Whereas**, legal counsel for the person has an ethical and professional obligation pursuant to the state and federal constitutions, as well as Oregon Rules of Professional Conduct 1.1 ("A lawyer shall provide competent representation to a client"), 1.3 ("A lawyer shall not neglect a legal matter entrusted to the lawyer") and 1.7 ("A lawyer shall not represent a client if the representation involves a current conflict of interest") to provide adequate and conflict-free representation;

**Whereas**, the American Bar Association has acknowledged for over a decade that resource parity, salary parity, and caseload standards are essential to its “Ten Principles of Public Defense”;

**Whereas**, the House of Delegates has long supported a strong public defense system and increased financial resources for public defense providers; now, therefore, be it

**Resolved**, that the Oregon State Bar, through its Board of Governors and staff, continue to participate actively with courts, prosecutors, the Oregon Department of Justice, the Legislative Assembly, the Public Defense Services Commission, the Office of Public Defense Services, the Oregon Criminal Defense Lawyers Association, and other public safety and child welfare stakeholders, to obtain equal resources and commensurate compensation for public defense providers, and work toward developing caseload standards that ensure those public defense providers can meet their constitutional and ethical obligations.

**Submitted by:**

**Keiler Beers**, OSB# 203444, HOD, Region 5

**Janae Bly**, OSB# 142820, HOD, Region 3

**Kristen Farnworth**, OSB# 003441, HOD, Region 6

**Shannon Flowers**, OSB# 073898, HOD, Region 6

**Joshua Gums**, OSB# 173623, HOD, Region 1

**Jennifer Kinzey**, OSB# 171324, HOD, Region 4

**Adam LeBrun**, OSB# 170712, HOD, Region 4

# **Delegate Resolution No. 5**

## **Resolution in Support of Adequate Funding for Legal Services to Low-Income Oregonians**

**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 9.572, the Oregon State Bar has operated the Legal Services Program to manage and provide oversight of funds allocated by the State of Oregon for legal aid. This is done in accordance with the Bar's Standards and Guidelines, which incorporate national standards for operating a statewide legal aid program;

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

**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

**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, 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 Leadership Banks, meaning that they 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. One of the three main functions of the bar is to advance a fair, inclusive, and accessible justice system.

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, 2005–2022). This resolution is similar to the resolution passed in 2022.

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 18 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. In 2022, about 20% of legal aid's cases were family law cases, usually helping victims of domestic violence. Another 45% of cases were related to maintaining housing. All of these programs work to stretch limited resources through pro bono programs and self-help materials. Last year legal aid directly served almost 23,000 clients, a 50% increase over the prior year. An additional 500,000 Oregonians benefited from legal aid's administrative advocacy. Legal aid's website, [www.oregonlawhelp.com](http://www.oregonlawhelp.com) received over 426,000 unique visitors last year alone. Additionally, Oregonians who were victims of wildfires received vital self-help information and referrals through legal aid's disaster service website, <https://oregondisasterlegalservices.org>.

**Submitted By:**

**Peter A. Werner**, OSB# 091722, HOD, Region 1

**Elizabeth Knight**, OSB# 992454, HOD, Region 5

**Heather Decker**, OSB# 962589, HOD, Region 7

**Kristi Gibson**, OSB# 990528, HOD, Region 2

**Vanessa Nordyke**, OSB# 084339, HOD, Region 6, OSB Past President 2018



## **Delegate Resolution No. 6**

### **Support Adequate Funding for the Judicial Branch**

**Whereas**, the mission of the Oregon State Bar is to serve justice and the public interest by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice; and,

**Whereas**, the Oregon Judicial Branch adopted a Strategic Campaign for 2020-2023 containing four commitments to the people of Oregon: (1) to improve services and outcomes of people who are underserved or vulnerable; (2) to improve access to justice by eliminating barriers and continuing to leverage technology; (3) to enhance the public's trust and confidence in Oregon's state government and the Judicial Branch; and (4) to create a workplace and courthouse culture that is welcoming and inclusive where all people are treated with respect and dignity; and,

**Whereas**, the Judicial Branch is updating its strategic planning through its upcoming 2023 Justice Campaign, which will continue those four commitments; and,

**Whereas**, the Chief Justice has based her budget requests for the Oregon Judicial Department on needs and services identified through that strategic planning process, and the Oregon Legislative Assembly has based many of its funding decisions on the priorities established in the Strategic Campaign; and,

**Whereas**, both the Strategic Campaign and the forthcoming Justice Campaign will seek adequate resources for courts to respond to court users who have mental and behavioral health challenges, continue collaborative initiatives to better serve self-represented litigants, expand outreach and transparency efforts, continue using data-driven performance measures, continue to assist in finding solutions to the unrepresented persons crisis in Oregon, and ensure that judges and court staff have the training and education needed to address the needs of the people they serve, now, therefore, be it

**Resolved**, that we applaud the Legislative Assembly for its support of the Oregon Judicial Department's strategic priorities; we request that the Assembly continue to improve funding to provide necessary court services, improve compensation to attract and retain highly qualified judges, provide safe and secure court facilities, and otherwise support the goals of the Justice Campaign; and we further encourage all members of the Oregon State Bar to thank legislators for funding the Judicial Branch and continue to urge their support for the Chief Justice's Recommended Budget for the Oregon Judicial Department.

## Background

The Oregon Judicial Department (OJD) appreciates the legislature's commitment to Oregon's court system. The efforts of the OJD and the Oregon State Bar's Oregon Campaign for Court Funding resulted in improvements in court funding in recent legislative sessions. With the passage of the 2023–2025 budget, the Oregon Judicial Department is in a much better position to effectively provide court services to Oregonians. However, there is more work to be done.

This past biennium, as well as during the 2023 Legislative Session, the OJD focused on its 2020–2023 strategic campaign initiatives:

- **Improving services and outcomes for people who are underserved, vulnerable, or marginalized.** The OJD's funding priorities included its statewide pretrial release system and a conservatorship pilot project, as well as additional funding for staff in family treatment courts and specialty courts.
- **Reducing barriers to access to justice by simplifying and streamlining processes and forms, enhancing service options, leveraging technology, improving interpreter services, and keeping courts open, safe, and secure.** During the 2023 Legislative Session, the OJD concentrated its efforts on improving services for self-represented litigants by using technology and providing adequate resources for Oregon's courts.
- **Enhancing the public's trust and confidence in Oregon's state courts by listening and responding to the needs of those we serve, holding ourselves to high standards, and communicating the role of our courts in providing justice for all.**
- **Creating a workplace and courthouse culture that is supportive, inclusive, welcoming, and affirming, that embraces diversity, and where all people can thrive and are treated with respect and dignity.**

While important progress has been made, additional challenges remain. It is critical that the Oregon State Bar and its members continue to support the OJD's strategic initiatives, courthouse improvements, and adequate funding for the court system to ensure that court services remain accessible to all Oregonians.

### Submitted By:

**Vanessa Nordyke**, OSB# 084339, HOD, Region 6, OSB Past President 2018

**David Wade**, OSB# 931217, HOD, Region 2, OSB Past President 2021

**Brent Barton**, OSB# 062698, HOD, Region 4

## **Delegate Resolution No. 7**

### **Expansion of Licensed Paralegal Services**

**Whereas**, the Oregon Supreme Court has approved Paralegal Licensing that limits Paralegals to practice only within certain areas of Family Law and Landlord-Tenant Law;

**Whereas**, Expansion of Licensed Paralegal Services will further address a long standing need for improved Access to Justice for the 80% of Oregonians unable to afford traditional Legal Services;

**Whereas**, to further serve the needs of the unserved 80% of Oregonians; and, in particular to serve their needs in areas of Law such as Traffic Violations, Unemployment Hearings, Fish and Game Violation Cases, Local Planning Hearings, Land Use Advisory Commissions, School Suspension of Students, and other areas of Law where there remains a lack of affordable Legal Services; now,

**Therefore**, be it resolved that the House of Delegates recommends that the Board of Governors appoint a Volunteer Committee [Workgroup] to study Expansion of Licensed Paralegal Services, so as to encourages Licensees to become better qualified in additional areas of Law; and, become authorized to practice in underserved areas of Law toward the goal of greater Access to Justice for the 80% of Oregonians with unmet needs for Legal Services.

**Presenter:**

**Danny Lang**, HOD, Region 3, Ex-Officio Delegate

## **BOG Resolutions No. 6**

### **Veterans Day Remembrance**

**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 sincerest condolences to the families and loved ones of those who have died serving their country.

**Presenter:**

**Tomás Hernandez**, BOG, Region 6

# BOG Resolution No. 7

## In Memoriam

**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 2022 House of Delegates Meeting.

William Atwood	Douglass Hamilton	D. Eugene Pierson
JB Bedingfield	Timothy J. Harold	Paul L. Pierson
Richard C. Bemis	Rick Haselton	Richard Porter
Len Bergstein	Janet Schoenhard Holcomb	Hollis C. Ransom
Gary Berlant	Michael G. Holmes	James E. Redman
Frank Bocci	Robert Hull	Jay Richardson
Lon Bryant	Rise J. Johnson	Richard W. Riggs
Brian Burton	Albert N. Kennedy	William G. Rounsavelle Carter
Theodore Carlstrom	William R. Kirby	Dale H. Schofield
Catherine Carroll	Jerry Kleen	Michael D. Schrunk
Andrew W. Carter	Christopher Kunz	William F. Schulte
Michael Clift	Ronald Lansing	Robert Shoemaker
Craig Coyner	Hon. Edward Leavy	Richard Sly
Harold M. Daron	Marcene Leskela	John Souther
Hon. Ross Davis	Robert S. Lovlien	Lynn Spang
Peter DeLuca	John Lydick	Michael Stebbins
James Donnell	John MacConaghy	Leslie Stevens
Robert B. Dugdale	Robert MacKay	John E. Storkel
Hon. Randall L. Dunn	William MacKay	Corinne G. Stumbo
Mary Duvall	David H. Madden	Michael B. Tharp
Michele L. Eder	James H. Marvin	Martin E. Thompson
Susan T. Egnor	William C. McKinney	Gerald Van Hoomissen

Thomas Fagan	Sandra McMullen	Martin Bruce Vidgoff
Eugene Feltz	Ronald Miller	Laurence Walker
Gary Georgeff	Steven J. Munson	William Welch
William I. Goldstein	Roger Nelson	Jennifer Wells
Kenneth Gough	Michael Opton	Jerry Widawski
Ben Graham	Terrance Pancoast	John D. Winkelman
Alvin J. Gray	Charles Paulson	Marc Winter
	Frank Peter	Bradley J. Woodworth

**Presenters:**

- John Marandas**, BOG, Region 7
- Kellie Furr**, BOG, Region 5
- Gabe Chase**, BOG, Region 5

# **Delegate Resolution No. 1**

## **Three-Year Moratorium on Member Fee**

**Whereas**, the OSB Board of Governors is charged by ORS 9.080(1) with the executive functions of the Oregon State Bar, which include ensuring there are adequate resources for bar operations;

**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**, the 2023 active bar fee shall be frozen and not increase until not sooner than January 2027. The Oregon State Bar active bar fee shall be on an increase moratorium for the next three years.

### **Background**

The House of Delegates takes seriously its obligation to use the bar's resources wisely, especially because over two-thirds of the bar's annual revenue comes from the mandatory annual membership fees. For the last two years, there have been bar fee increases. Despite increases to bar dues, membership growth remains flat. Studies have shown that Oregon has the highest active bar fees in the United States. High bar dues may be acting as a deterrent to promoting new membership. High bar dues create a stress on active bar members, especially solo and small firm practitioners. High bar dues also have a disproportionate impact on attorneys with limited financial resources which includes a higher proportion of attorneys who are part of or who represent marginalized communities.

### **Financial Impact**

Between 2016 and 2020, bar membership dues remained unchanged. There should be no impact financially to a moratorium on fee increases over a three-year period.

**Submitted by:**

**Blaine Clooten**, OSB#133294, HOD, Region 1