

**Oregon State Bar**  
**2017 House of Delegates Meeting**  
**Friday, Nov. 3, 2017**  
**10:00 a.m. at the OSB Center in Tigard, OR**

Oregon State Bar

October 13, 2017

Dear Oregon State Bar Member:

I am pleased to invite you to the 2017 OSB House of Delegates meeting, which will begin at **10 a.m.** on **Friday, Nov. 3**, at the Oregon State Bar Center.

I am happy to report that the Board of Governors is not requesting an increase in the annual membership fee for 2018, and that the Client Security Fund assessment is being reduced to \$10. The preliminary agenda for the HOD meeting includes resolutions to support adequate funding for legal aid, to study the current Professional Liability Fund rate structure, and to eliminate or change the Loan Repayment Assistance Program. The agenda also includes several proposed amendments to the Oregon Rules of Professional Conduct that arose out of the OSB Futures Task Force and the Fee Mediation Task Force. I want to extend a special thank you to the members of these task forces, who dedicated significant time and expertise to develop these proposals.

Excluded from the agenda is a resolution that the board give HOD members continuing legal education credit for attending the meeting. This resolution was excluded pursuant to ORS 9.139(3)(c), which prohibits the HOD from directing the board to take any action that is subject to the control, approval or review by the Oregon Supreme Court. Because the rules for mandatory continuing legal education are subject to approval by the supreme court, the resolution was excluded. The MCLE committee, however, will be reviewing the resolution proposal.

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 Camille Greene, executive assistant, by email at [cgreene@osbar.org](mailto:cgreene@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 Nov. 3, and I thank you in advance for your thoughtful consideration and debate of these items.

*MICHAEL D. LEVELLE*

Michael D. Levelle  
OSB President

**OREGON STATE BAR**  
**2017 House of Delegates Meeting AGENDA**

Oregon State Bar Center, 16037 SW Upper Boones Ferry Road, Tigard, Oregon 97224  
10 a.m., Friday, Nov. 3, 2017  
Presiding Officer: Michael Levelle, OSB President

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**Reports**

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| <p>1. Call to Order<br/><i>Michael Levelle</i><br/><i>OSB President</i></p> <p>2. Adoption of Final Meeting Agenda<br/><i>Michael Levelle</i><br/><i>OSB President</i></p> <p>3. Report of the President<br/><i>Michael Levelle</i><br/><i>OSB President</i></p> | <p>4. Report on behalf of the Chief Justice of the Oregon Supreme Court<br/><i>Hon. Rives Kistler, Justice Oregon Supreme Court</i></p> <p>5. Report of the Board of Governors Budget and Finance Committee &amp; Notice of 2018 Annual Fees<br/><i>Jim Chaney, Chair BOG Budget &amp; Finance Committee</i></p> <p>6. Overview of Parliamentary Procedure<br/><i>Alice Bartelt, Parliamentarian</i></p> |
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**Resolutions**

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| <p>7. Amendment to ORPC 5.4(a)(5) and 7.2(b)(2) re: Professional Independence of a Lawyer, and Advertising (Board of Governors Resolution No. 3)<br/><i>Amber Hollister, OSB General Counsel</i></p> <p>8. Amendment to ORPC 7.3 re: Solicitation of Clients (Board of Governors Resolution No. 4)<br/><i>Amber Hollister, OSB General Counsel</i></p> <p>9. Amendment to ORPC 8.3 re: Reporting Professional Misconduct (Board of Governors Resolution No. 5)<br/><i>Amber Hollister, OSB General Counsel</i></p> <p>10. Support for Adequate Funding for Legal Services to Low-Income Oregonians (Delegate Resolution No. 1)<br/><i>Kathleen Evans, HOD, Region 6</i><br/><i>Ed Harnden, HOD, Region 5</i><br/><i>Ross Williamson, HOD, Region 2</i></p> | <p>11. Study the PLF Program Flat Per Capita Rate Structure (Delegate Resolution No. 3)<br/><i>John Gear, HOD, Region 6</i></p> <p>12. Give Members the Right to Redirect Funds Directed for Them to LRAP (Delegate Resolution No. 4)<br/><i>John Gear, HOD, Region 6</i></p> <p>13. In Memoriam (Board of Governors Resolution No. 1)<br/><i>Tom Peachey, BOG, Region 1</i><br/><i>Guy Greco, BOG, Region 4</i><br/><i>Chris Costantino, BOG, Region 5</i></p> <p>14. Veterans Day Remembrance (Board of Governors Resolution No. 2)<br/><i>Jim Chaney, BOG, Region 2</i></p> |
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**Excluded from HOD Agenda**

CLE Credit for HOD Delegates  
(Delegate Resolution No. 2)  
*Danny Lang, HOD, Region 3*

## 5. Report to House of Delegates - 2018 OSB Membership Fee

Based on a recommendation from the Client Security Fund (CSF) Committee, the Board of Governors resolved to reduce the CSF assessment for 2018 from \$15.00 to \$10.00. The new assessment applies to all active Oregon State Bar members.

Members may recall that an unprecedented large amount of claims in 2012 and 2013 caused the board to raise the CSF assessment to \$45 and the reserve to \$1 million effective in 2013. After three years, the new reserve was reached, and the assessment was lowered again to \$15 in 2016. Since then, the CSF has seen a low number and dollar amount of claims, resulting in the reserve balance continuing to rise. As of September 30, 2017 the fund balance was \$1.288 million. With the assessment set at \$10, the fund balance is expected to slowly decline to its \$1 million reserve level, barring any unforeseen increase in volume and dollar amount of claims.

This chart shows the Fee Schedule for the 2018 Membership Fees. The due date for the 2018 membership fee is Wednesday, January 31, 2018.

<b>Membership Fee Status</b>	<b>Fee through January 31</b>	<b>Fee effective February 1</b>
Active Over Two Years	\$552.00	\$652.00
Active Under Two Years**	\$465.00	\$565.00
Active Pro Bono	\$125.00	\$125.00
Inactive	\$125.00	\$175.00
Retired	\$125.00	\$175.00

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**7. Amendment to ORPC 5.4(a)(5) and 7.2(b)(2) re: Professional Independence of a Lawyer, and Advertising  
(Board of Governors Resolution No. 3)**

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

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

*Resolved*, that the amendment of Oregon Rules of Professional Conduct 5.4(a)(5) and 7.2(b)(2) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

**RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER**

(a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

(1) an agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter; and

(5) a lawyer may pay the usual charges of a ~~bar-sponsored or operated not-for-profit lawyer-referral service~~, **including sharing legal fees with the service, only if:**

**(i) the lawyer communicates to the client in writing at the outset of the representation the amount of the charge and the manner of its calculation; and**

**(ii) the total fee for legal services rendered to the client combined with the amount of the charge would not be a clearly excessive fee pursuant to Rule 1.5 if it were solely a fee for legal services**, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

(b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

(3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

(e) A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

## **RULE 7.2 ADVERTISING**

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

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

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

(2) pay the usual charges of a legal service plan or a lawyer-referral service **in accordance with Rule 5.4**; and

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

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

## **Background**

With limited exceptions, Oregon Rule of Professional Conduct 5.4 prohibits lawyers from sharing legal fees with nonlawyers. One current exception allows lawyers to share their legal fees with bar-sponsored or operated not-for-profit lawyer referral services. ORPC 5.4(a)(5). As a result, lawyers who sign up with bar-sponsored or operated not-for-profit referral services and receive client referrals from those services may pay for the services by sharing a portion of the legal fees earned from referred clients.

The present rules, however, do not allow fee sharing with for-profit referral services or not-for-profit referral services that are not sponsored by or operated by a bar. The Oregon State Bar's Futures Task Force examined this limitation in light of pressing access to justice concerns and concluded that the current rule is ill-suited to a changing market in which online referral services

(whether they be for-profit or not-for-profit) may be the only means through which many consumers are finding legal services. The task force proposed a modification to the rules to allow greater flexibility for Oregon attorneys and to enable consumers to access lawyers through online lawyer referral services.

The proposed amendments to ORPC 5.4(a)(5) and 7.2(b)(2) would enable Oregon lawyers to share fees with for-profit lawyer referral services or independent non-profit referral services, but would also retain important client protections. First, the proposed amendment to ORPC 5.4 would require written disclosure of the fact of a fee split with a lawyer referral service and the manner of its calculation. (This disclosure could be made by a lawyer, or caused to be made by a lawyer through a third-party.) Second, the proposed rule would prohibit charging clients referral and legal fees that, when combined, are clearly excessive as defined in ORPC 1.5.

Third, the amendment would not change a lawyer's obligation to exercise independent professional judgment when representing a client. Present-day fee-sharing prohibitions grew out of the concern that allowing lawyers to split fees with nonlawyers could compromise lawyers' professional judgment. Oregon RPC 2.1 requires "[i]n representing a client, a lawyer shall exercise independent professional judgment and render candid advice." Further, ORPC 5.4(c) provides that "[a] lawyer shall not permit a person who recommends ... the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services." If participating in a lawyer referral service would run afoul of these protections, participation would remain prohibited under the proposed amendments.

Finally, these proposed rule changes would not alter existing statutory restrictions on sharing fees with nonlawyers in personal injury matters. ORS 9.505.

Some jurisdictions have determined that several popular online attorney-client matchmaking services are prohibited by ethics rules on fee-sharing that are similar to those in Oregon. There are many lawyers in Oregon who participate in such services and have expressed concerns about whether doing so makes them at risk of discipline under the current rules of professional conduct. As yet, the bar has neither received a complaint nor issued a formal ethics opinion on the issue. The proposed amendments to ORPC 5.4(a)(5) and 7.2(b)(2), however, would resolve that uncertainty.

### **Financial Impact**

None stated.

*Presenter: Amber Hollister  
OSB General Counsel*

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### **8. Amendment to ORPC 7.3 re: Solicitation of Clients (Board of Governors Resolution No. 4)**

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

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

Resolved, that the amendment of Oregon Rule of Professional Conduct 7.3 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

### **RULE 7.3 SOLICITATION OF CLIENTS**

~~(a) A lawyer shall not by in person, live telephone or real-time electronic contact solicit professional employment~~ **by any means if** ~~when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:~~

~~(1) is a lawyer; or~~

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

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

~~(a) (1)~~ the lawyer knows or reasonably should know that the physical, emotional or mental state of the person who is the ~~target~~ **subject** of the solicitation is such that the person could not exercise reasonable judgment in employing a lawyer;

~~(b) (2)~~ the **person who is the subject** ~~target~~ of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

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

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

### **Background**

As presently written, Oregon Rule of Professional Conduct 7.3 requires lawyers to avoid any “in-person, live telephone or real-time electronic” solicitation of a potential client unless the lawyer has an existing close personal or business relationship with the potential client, or the potential client is also a lawyer. The OSB Futures Task Force examined this prohibition in light of Oregon’s pressing access to justice gap, and concluded it was overly restrictive. In fact, the task force questioned whether the regulation of attorney speech has once again, in part because of advances in technology, run up against the constitutional barrier of Oregon’s free speech protections. The proposed amendment eases the restrictions of ORPC 7.3, allowing lawyers to more freely engage with Oregonians, while retaining protections designed to protect consumers from overreaching and abuse.

The task force found that individuals often do not recognize when they have a legal need and, even when they do, do not know who to ask for help or do not think a lawyer will make any difference. At a time when low- and middle-income Oregonians are struggling to find meaningful access to lawyers, the task force reasoned that any barrier to communication should be firmly rooted in the principles of consumer protection. In-person advertising limitations were originally intended to prevent lawyers from unduly pressuring clients with their persuasive sales pitches. In the modern context, however, the limitations in ORPC 7.3 act as unnecessary barriers to effective communication between consumers and lawyers in popular online mediums and in traditional social settings.

The proposed change to ORPC 7.3 is designed to provide lawyers with greater flexibility to help consumers understand their legal needs and offer legal assistance, while still protecting Oregonians. Under the proposed ORPC 7.3, lawyers who identify a prospective client with a legal need will be able to offer proactive help, as long as one of the well-tailored exceptions in *Amended* ORPC 7.3(a) through (c) does not apply. Lawyers would still be prohibited from engaging in solicitation when the lawyer knows or reasonably should know that a prospective client is in a physical, emotional or mental state that prevents the person from exercising reasonable judgment about hiring a lawyer. Coercive and harassing solicitations would remain banned, as would soliciting a prospective client who has expressed a wish not to be contacted by the lawyer.

With these changes, lawyers who engage in conversations at social events, in online chats, or on social media will be empowered to offer their services to prospective clients, as long as the offer complies with the other ethics rules – most importantly, by not being misleading, as is separately prohibited by ORPC 7.1.

This proposal would not alter the statutory restrictions on nonlawyer solicitation in personal injury cases, or on lawyers soliciting personal injury cases at certain sensitive locations including hospitals. ORS 9.500, 9.510.

#### **Financial Impact**

None stated.

*Presenter: Amber Hollister  
OSB General Counsel*

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#### **9. Amendments to ORPC 8.3 re: Reporting Professional Misconduct (Board of Governors Resolution No. 5)**

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

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



*Resolved*, that the amendment of Oregon Rule of Professional Conduct 8.3 as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

### **RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT**

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:

(1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;

(2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or

(3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

**(d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.**

### **Background**

Oregon law provides that, with limited exception, mediation communications are confidential and may not be disclosed to any other person. ORS 36.220(1)(a). By contrast, Oregon Rule of Professional Conduct 8.3(a) provides that a lawyer who "knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer" has a duty to report the misconduct to the Oregon State Bar's Client Assistance Office. Given these two conflicting directives, lawyers may be uncertain whether to report misconduct if their knowledge is based upon protected mediation communications.

Lawyers serving as mediators are most likely to face the dilemma of whether to make a report of misconduct based upon confidential mediation communications. If a lawyer is serving as a lawyer to a party in mediation then it is likely that any report that comes up in the context of a mediation will be prohibited by ORPC 8.3(c)'s exception for information "otherwise protected by Rule 1.6 or ORS 9.460(3)" and the issue will not arise.

The question of whether to report misconduct learned from confidential mediation communications is not purely academic; lawyers may be disciplined for improperly disclosing confidential mediation communications.

When enacting ORS 36.220, the Oregon Legislature determined it was in the best interest of Oregonians to facilitate alternative dispute resolution by allowing for the confidentiality of

mediation communications. In light of this legislative decision, the Board of Governors and Legal Ethics Committee, based on a recommendation from the OSB Fee Mediation Task Force, determined an amendment to ORPC 8.3 for confidential mediation communications is warranted.

The proposed rule does not seek to define what constitutes a mediation communication, as that is a matter of substantive law. The amendment proposed will provide greater clarity to lawyers who participate in mediation by resolving any potential inconsistency between ORS 36.220's mandate of confidentiality and ORPC 8.3(a)'s mandate of disclosure. Under the amended version of Rule 8.3, lawyers will not be required to report knowledge of other lawyers' misconduct if that report would be based upon confidential mediation communications.

#### **Financial Impact**

None stated.

*Presenter: Amber Hollister  
OSB General Counsel*

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#### **10. 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 program currently has resources to meet about 15% of the civil legal needs of Oregon's poor creating barriers to justice for low-income and vulnerable Oregonians in recent history;

*Whereas*, Oregon currently has 2 legal aid lawyers for every 17,000 low-income Oregonians, but the national standards for a minimally adequately funded legal aid program is 2 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 at OLF Leadership Banks that pay the highest IOLTA rates.
- (6) Support the Campaign for Equal Justice in efforts to educate lawyers and the community about the legal needs of the poor, legal services delivery and access to justice for low-income and vulnerable Oregonians.
- (7) Encourage Oregon lawyers to support civil legal services programs through enhanced pro bono work.
- (8) Support the fundraising efforts of those nonprofit organizations that provide civil legal services to low-income Oregonians that do not receive funding from the Campaign for Equal Justice.

### **Background**

"The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice." OSB Bylaw 1.2. One of the four main functions of the bar is to be "a provider of assistance to the public. As such, the bar seeks to ensure the fair administration of justice for all." *Id.*

The Board of Governors and the House of Delegates have adopted a series of resolutions supporting adequate funding for civil legal services in Oregon (Delegate Resolutions in 1996, 1997, 2002, 2005–2016). This resolution is similar to the resolution passed in 2016, 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 four 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 two county wide programs, Lane County Legal Aid and Advocacy Center and 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 34% 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, oregonlawhelp.com receives about 230,000 unique visitors a 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: 75% 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, 75% 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 Evans, HOD, Region 6*

*Ed Harnden, HOD, Region 5*

*Ross Williamson, HOD, Region 2*

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## **11. Study the Professional Liability Fund Program Flat Per Capita Rate Structure (Delegate Resolution No. 3)**

*Whereas*, the flat-rate, per-capita Professional Liability Fund assessment ignores differences in payout risks across attorney practice areas, practice volume (full- vs. part-time vs. occasional practice), firm revenue and case size, and clientele (such as attorneys serving clients with modest means for small cases);

*Whereas*, the current PLF fee structure may be creating a barrier to newer lawyers, lawyers who primarily serve the poor with low-value but very real problems of poverty, and lawyers who would like to maintain a reduced caseload without sacrificing the ability to remain in private practice; now, therefore, be it;

*Resolved*, that the Board of Directors shall form a committee to carefully survey the entire PLF-paying bar membership and study the effects of the current PLF rate structure on new lawyers,

lawyers who predominantly serve low-income clientele, lawyers who wish to reduce their caseloads while remaining in active practice and quantify the cost-benefit ratio of the PLF assessment on each income quintile of the bar's members who pay into the PLF.

#### **Financial Impact**

None stated by the delegate.

*Presenter:*  
*John Gear, HOD, Region 6*

Pursuant to OSB Bylaw Section 3.3, the OSB Board of Governors estimates that the financial impact of this resolution on the OSB operating budget would be a one-time payment of approximately \$25,000 to \$35,000, as it would require retaining a third-party service or services to conduct the survey and analysis as set forth in the resolution.

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#### **12. Give Members the Right to Redirect Funds Currently Directed for them to the Loan Repayment Assistance Program (LRAP) (Delegate Resolution No. 4)**

*Whereas*, the Loan Repayment Assistance Program offers a select few attorneys who are employed in public service positions a series of forgivable loans of up to \$22,500 to reduce their student loan debts;

*Whereas*, attorneys eligible for LRAP typically do not pay their own Professional Liability Fund premium or are not required to carry it at all (government service exemption); do not pay their own bar dues in many instances; and hold steady, gainful employment with good to excellent benefits;

*Whereas*, the funds for LRAP are provided by all attorney members of OSB;

*Whereas*, many attorneys ineligible for LRAP have the same student loan debt loads, pay their own annual PLF premium, their own bar dues, and have no employment benefits or salary;

*Whereas*, there are attorneys ineligible for LRAP who are earning so little that they are eligible for SNAP ("food stamp") benefits and who are working non-law jobs just to earn the money to pay bar dues and PLF assessments; now, therefore, be it;

*Resolved*, the Board of Directors shall either discontinue the LRAP or develop a program by which each bar member can designate whether they want their share of the LRAP grants to be used for that purpose or to designate instead a particular grant recipient whose work increases access to justice in Oregon (such as the Northwest Workers Justice Project, the ACLU, the NAACP Legal Defense Fund, the Institute for Justice, etc.)

#### **Financial Impact**

None stated by the delegate.

*Presenter:*  
*John Gear, HOD, Region 6*

Pursuant to OSB Bylaw Section 3.3, the OSB Board of Governors estimates that the financial impact of this resolution would be a \$10 reduction in the annual member fee if the Loan Repayment Assistance Program were eliminated entirely, which would equate to a loss of \$151,600 in revenue. In addition, there would be a reduction of administrative costs for running the program of approximately \$11,400.

If the program were changed in the manner proposed—rather than eliminated entirely—the anticipated financial impact would be a decrease in the assessment collected and an increase in administrative expense. If the LRAP assessment were used to support political advocacy groups, it is likely that the fee would implicate *Keller v. State Bar of California*, 496 US 1 (1990), and a number of lawyers would elect to opt-out of paying the assessment. In addition, the administrative costs of running the program are expected to increase if the LRAP assessment were directed by individual members to various advocacy and nonprofit organizations.

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### **13. 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 2016 House of Delegates Meeting.

John D. Albert	Walter H. Evans	Richard D. Lee	Robert J. Smith
Richard D. Barber	Todd French	Hon. Michael H. Marcus	Harold A. Snow
Melvin J. Beck	William O. Geny	James E. McCobb	Katherine S. Somervell
John W. Billington	Clarence H. Greenwood	Deborah J. Mitchell	Robert E. Thompson
William D. Brewer	Dale M. Harlan	Daryl M. Pulley	Michael W. Wagner
Sid Brockley	Isaac R. Jackson	David A. Rhoten	James L. Wolfe
Melinda J. Davison	Henry Kane	Garret L. Romaine	Terence J. Yamada
Richard Egner	Hon. William L. Lasswell	Sheldon I. Rubin	Denny Z. Zikes
Charles S. Evans			

*Presenters:*

*Tom Peachey, BOG, Region 1*

*Guy Greco, BOG, Region 4*

*Chris Costantino, BOG, Region 5*

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### **14. 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: Jim Chaney  
Board of Governors, Region 2*

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#### **EXCLUDED FROM HOD AGENDA:**

##### **CLE Credit for HOD Delegates (Delegate Resolution No. 2)**

*Whereas*, Members of the House of Delegates, who are also Members of the Oregon State Bar, have and continue to generously donate travel time, preparation, and participation at the Annual Meeting of the House of Delegates;

*Whereas*, the foregoing voluntary contribution by Delegates, on behalf of the Membership in General, benefits all Members of the Oregon State Bar;

*Whereas*, Delegates, who participate by attending the Annual HOD Meeting, voluntarily contribute time that Delegates could otherwise devote to Professional Practice, Community Service, or other Personal Interests;

*Whereas*, the Annual HOD Meeting provides a forum that includes presentations by the Chief Justice of the Oregon Supreme Court [Report of the Judicial Branch]; President of the Oregon State Bar; Executive Director of the Oregon State Bar and Members of the Board of Governors;

*Whereas*, such Presentations, and Debate of Agenda Items, address past, present, and future significant issues, practices, and policies have substantial Professional Legal Educational Value;

*Whereas*, in prior years Delegates attending Annual HOD Meetings were courteously provided with a complimentary CLE Program [i.e. scheduled earlier on the morning of the HOD Meeting]; which, provided both a benefit and incentive for attendance needed to ensure a Quorum; now, therefore, be it;

*Resolved*, that the House of Delegates recommend that the Board of Governors provide Delegates, who are Members of the Oregon State Bar, a “CLE Credit for an appropriate amount of hours” in consideration of the Educational Value derived from attending the Annual House of Delegates Meeting.

##### **Financial Impact**

None stated by the delegate.

*Presenter:  
Danny Lang, HOD, Region 3*