
October 8, 2021

Dear Oregon State Bar Member:

I am pleased to invite you to the 2021 OSB House of Delegates meeting, which will begin at **9 a.m. on Friday, October 29, by video conference only.**

The preliminary agenda for the HOD meeting includes, among other things, resolutions to: continue funding of the Oregon State Bar Diversity & Inclusion Department indefinitely as a regular part of the member fee; modify Oregon RPC 5.4(a)(4) to enable fee sharing with nonprofit organizations when fees are awarded by a tribunal; modify Oregon RPC 5.4(a)(5) to remove reference to bar “sponsored” lawyer referral services; support adequate funding for the judicial branch, legal services to low-income Oregonians, and indigent public defense providers; provide financial support for the Oregon Law Foundation through an approved set of recorded mandatory CLE programs; and convene a conference on well-being.

I am pleased to report that the board is not recommending a fee increase for 2022. Instead, because the board is able to reduce the Client Security Fund assessment in 2022, members will see a \$4 decrease in the overall member fees, even with continued funding of the OSB Diversity & Inclusion Department as recommended in BOG Resolution #1.

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

If you have questions concerning the meeting, contact Cassandra Dyke, executive assistant, by email at cdyke@osbar.org or by phone at (503) 431-6386 or (800) 452-8260 ext. 386.

I look forward to the HOD meeting on Friday, October 29, and I thank you in advance for your thoughtful consideration and debate of these items.

David Wade

David Wade
OSB President

OREGON STATE BAR
2021 House of Delegates Meeting AGENDA

Video Conference October 29, 2021

David Wade, OSB President

Reports

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| <p>1. Call to Order
<i>David Wade, OSB President</i></p> <p>2. Adoption of Final Meeting Agenda
<i>David Wade, OSB President</i></p> <p>3. Report of the President
<i>David Wade, OSB President</i></p> <p>4. Report from the Court
<i>Chief Justice Martha Walters,
Oregon Supreme Court</i></p> | <p>5. Report of the Board of Governors Budget & Finance Committee and Notice of 2022 Annual Fees
<i>John Grant, Chair
BOG Budget and Finance Committee</i></p> <p>6. Overview of Parliamentary Procedure
<i>Lori L. Bocker, Parliamentarian</i></p> |
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Resolutions

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| <p>7. Normalize the OSB Diversity & Inclusion Assessment
(BOG Resolution No. 1)
<i>Kamron Graham, BOG, Region 5</i></p> <p>8. Modification to Oregon RPC 5.4(a)(4) to Enable Fee Sharing with Nonprofit Organizations when Fees Awarded by a Tribunal
(BOG Resolution No. 2)
<i>Rob Milesnick, BOG, Region 8</i></p> <p>9. Modification to Oregon RPC 5.4(a)(5) to Remove Reference to Bar "Sponsored" Lawyer Referral Service
(BOG Resolution No. 3)
<i>David Rosen, BOG, Region 1</i></p> <p>10. Support Adequate Funding for the Judicial Branch
(BOG Resolution No.4)
<i>Lee Ann Donaldson, BOG, Region 5</i></p> <p>11. Financial Support for Oregon Law Foundation by Sponsorship of an Approved Set of Recorded Mandatory CLE Programs
(Delegate Resolution No. 1)
<i>Danny Lang, HOD, Region 3</i></p> | <p>12. Adequate Funding for Legal Services to Low-Income Oregonians
(Delegate Resolution No. 2)
<i>Melanie Kebler, HOD, Region 1
Ross Williamson, HOD, Region 2
Sonia Montalbano, HOD, Region 5
Vanessa Nordyke, HOD, Region 6</i></p> <p>13. Affordable Access to Appellate Justice
(Delegate Resolution No. 3)
<i>Danny Lang, HOD, Region 3</i></p> <p>14. Support for Public Defense Providers
(Delegate Resolution No. 4)
<i>Shannon Flowers, HOD, Region 6
Michelle Bartov, HOD, Region 1
Justin Morton, HOD, Region 1</i></p> <p>15. Conference on Well-Being Stakeholders
(Delegate Resolution No. 5)
<i>Vanessa Nordyke, HOD, Region 6</i></p> <p>16. In Memoriam
(BOG Resolution No. 5)
<i>Gabe Chase, BOG, Region 5
Matt McKean, BOG, Region 4
Joseph Hesbrook, BOG, Public Member</i></p> <p>17. Veterans Day Remembrance
(BOG Resolution No. 6)
<i>Colin Andries, BOG, Region 5</i></p> |
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5. Report from the Board of Governors Budget and Finance Committee and Notice of 2022 Annual Fees

The Board of Governors will reduce the Client Security Fund assessment for 2022 from \$30 to \$20. The new assessment will apply to all active Oregon State Bar members.

As of August 31, 2021, the fund balance was \$1,128,048, which is above the \$1 million reserve level required. The previously rapid and dramatic decrease in the fund balance was the result of a significant increase in the number and dollar amount of claims in late 2018 and 2019 from one attorney. Increases in the CSF assessment in 2019 and 2020 were required to meet the outstanding obligations resulting from this attorney's numerous complaints. Over the last year, the number and severity of the claims has returned to more of the historical average. A \$10 decrease in the current CSF assessment still allows the fund to maintain an adequate reserve after inflation.

Assuming D&I funding is normalized as part of the OSB budget for 2022 at a rate that adjusts for inflation as requested in BOG Resolution #1, members will see a net fee decrease of \$4 per member in 2022.

Active Member	<u>2021</u>	<u>2022</u>
D&I Assessment /Fee	\$ 45.00	\$ 51.00
CSF Assessment	30.00	20.00
LRAP Assessment	10.00	10.00
Base Active Fee	532.00	532.00
Total	\$ 617.00	\$ 613.00

Active Member <\$42k AGI	<u>2021</u>	<u>2022</u>
D&I Assessment /Fee	\$ 45.00	\$ 51.00
CSF Assessment	30.00	20.00
LRAP Assessment	10.00	10.00
Base Active Fee	426.00	426.00
Total	\$ 511.00	\$ 507.00

The due date for the 2022 membership fee is Monday, January 31, 2022. Fees paid after the due date will incur late fees. This chart shows the fee schedule for the 2022 membership fees.

Membership Fee Status	Fee Through January 31, 2022	Fee Effective February 1, 2022
Active	\$613	\$ 713
Income Less than \$42,000	\$ 507	\$ 607
Active Pro Bono	\$ 150	\$ 200
Inactive	\$ 150	\$ 200
Retired	\$ 150	\$ 200

7. Normalizing the OSB Diversity & Inclusion Department Funding (Board of Governors Resolution No. 1)

Whereas, the 1974 Oregon State Bar Annual Meeting approved the creation of an Oregon State Bar Affirmative Action Program (AAP) with the goal of “achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon, while at the same time not lowering the standards for admittance....”; and

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

Whereas, in 2011 the bar changed the name of the AAP to the Diversity & Inclusion Department (D&I Department) to account for expanded programs, services, and initiatives, with the goal of increasing diversity and inclusion in Oregon’s bench and bar; and

Whereas, in 2013 the HOD approved a resolution increasing the assessment from \$30 to \$45 to fund the D&I Department; and

Whereas, since the mid-1970s, the percentage of bar members who identify as racial and ethnic minorities has increased to 8.75% (EOY 2020), while the population of racial and ethnic minorities in Oregon has increased to 24% (2016 Census data); and

Whereas, a diverse and inclusive bar and bench are necessary to improve the quality of legal services and increase access to justice for Oregon’s increasingly diverse population; and

Whereas, a separate fixed assessment for the D&I Department does not account for increases in programming costs year to year; and

Whereas, no other bar program requires reauthorization by the HOD; and

Whereas, the special treatment for D&I Department funding reinforces inequity, rather than working against it; now, therefore, be it

Resolved, that beginning January 1, 2022, funding for the Oregon State Bar D&I Department be continued indefinitely not as a separate assessment, but as a regular part of the member fee at an amount not less than 9.5% of the overall bar membership fee.

Background

Historically, the D&I Department (and its predecessor program) has been funded by a separate assessment approved by the HOD for 15-year terms. The current term’s assessment of \$45 was increased from \$30 in 2014 and is up for renewal at the end of 2021. As the work of the D&I Department has developed over the years to meet the bar’s mission, this year’s renewal provides an opportunity to consider a different funding option for the department.

The separate fixed assessment for the D&I Department is problematic for several reasons. First, it does not account for increases in costs over the course of 15 years. Planning programming over 15 years with flat funding for that period is extremely challenging and inhibits innovation. There is currently no mechanism to increase the assessment to account for annual cost increases. Instead, the D&I Department

must approach the HOD separately to request assessment increases. Because adjustments are not tied to regular fee increases, they are less likely to be made.

Second, it is a model meant for discrete, individual programs, a model that no longer fits the expanded role of the D&I Department. The D&I Department continues to administer several key programs that contribute to helping Oregon's legal community meet the legal needs of the state's increasingly diverse population. Over the last 10 years, however, the D&I Department has also taken on a more operational role, providing technical expertise around issues such as increasing the diversity of employees and volunteers, communicating and engaging with the bar's diverse membership, and ensuring that bar programs are operated in a fair and inclusive manner. A fixed program assessment does not easily allow for this expanded and critical role.

Third, and most disturbing, it requires reauthorization by the HOD every 15 years—a requirement that is not made for any other bar program. We should acknowledge that the D&I Department will contribute to the bar's mission indefinitely, and that its work should not be considered in 15-year increments. This disparate treatment of the program, and the need for HOD approval for inflation- or cost-adjusted increases, reinforces the perspective that the D&I programs are different than other programs and should be examined regularly by the HOD for possible removal, instead of the BOG providing the same oversight for the D&I programs that it does for all other OSB programs.

Some type of reauthorization resolution must be adopted at the 2021 HOD meeting in order to continue the work of the D&I Department. The Board of Governors recommends the HOD reauthorize the bar's D&I programming indefinitely as a percentage of the overall bar license fee, making the D&I programming part of a regularly funded department of the Oregon State Bar. At 9.5% of the member fee, funding for the program will be increased by \$6 per member in 2022. This increase in funding for the D&I programming will not, however, result in an increase in the overall member fees for 2022.

Instead of being labeled and funded as "special," incorporating the D&I assessment into the regular member fee will make D&I programming a secure and sustainable part of the bar's normal budget process, and will enhance the program's ability to engage in long-term program planning. Ending the sunset provision and normalizing the D&I budget as a set percentage of the overall member fee will eliminate the possibility of the HOD or BOG defunding the department and will visibly demonstrate the bar's ongoing commitment to diversity and inclusion work as critical to achieving its mission.

The Board sought the input from the Advisory Committee on Diversity & Inclusion (ACDI) regarding this proposal. The ACDI voted unanimously in favor of this approach.

Financial Impact

Increase D&I Department funding by \$6 in 2022, and continue funding indefinitely thereafter at an amount not less than 9.5% of the overall membership fee.

Presenter:

Kamron Graham, BOG, Region 5

8. Modification to Oregon RPC 5.4(a)(4) to Enable Fee Sharing with Nonprofit Organizations when Fees Awarded by a Tribunal (Board of Governors Resolution No. 2)

Whereas, the Legal Ethics Committee and the Board of Governors formulated the following amendment to Oregon Rule of Professional Conduct 5.4(a)(4);

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 Rule of Professional Conduct 5.4(a)(4) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

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

(4) A lawyer may share ~~[court-awarded]~~ legal fees awarded by a tribunal with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter;

Background

Oregon RPC 5.4(a)(4)'s exception to the general fee-sharing prohibition for sharing court-awarded legal fees with nonprofit organizations is based on a recognition that sharing fees with a nonprofit organization is less of a threat to a lawyer's independent judgment than sharing fees with other nonlawyer entities. See ABA Formal Opinion 93-374 (1993); *Inmates of R.I. Training Sch. V. Martinez*, 465 F. Supp. 2d 131 (D.R.I. 2006); and Ill. Ethics Op. 15-04 (2015).

In some administrative law proceedings, such as claims for Social Security Disability benefits, an award for attorney fees may be made long before the proceeding reaches the level of determination by an administrative law judge or a district court. Additionally, in Social Security Administration proceedings, individuals may be represented by nonlawyers, and nonlawyers may receive fees for providing representative services. See *In re Disciplinary Proceedings Against Creedy*, 358 Wis. 2d 345, 352 (2014).

Nonprofit organizations may assist individuals with claims before administrative agencies at the state and federal level. These organizations may refer individuals to attorneys practiced in particular areas of administrative law. Referring organizations may seek to obtain a portion of the fee obtained by a lawyer for successful representation of the referred individual. Sharing of fees in this manner is permissible under Rule 5.4(a)(4) so long as the fee was "court-awarded."

The term "court-awarded" within Rule 5.4(a)(4) may be read to prohibit sharing of fees awarded in some administrative proceedings. According to Merriam-Webster's Dictionary, "court" has numerous meanings, including:

- 3a: an official assembly for the transaction of judicial business;
- b: a session of such a court;
- c: a place (such as a chamber) for the administration of justice;
- d: a judge or judges in session;

also: a faculty or agency of judgment or evaluation;
4a: an assembly or board with legislative or administrative powers;
b: PARLIAMENT, LEGISLATURE

Within these various definitions, it is unclear whether “court” awarded fees would include those from prehearing awards of fees by non-administrative law judges or awards made in other administrative proceedings. Under the existing Rules of Professional Conduct, however, “tribunal” is broadly defined in Oregon RPC 1.0(p):

(p) “Tribunal” denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

To address the lack of clarity in the existing rule, Washington, D.C., and Massachusetts each amended their equivalent rules of professional conduct to include fees awarded by “tribunals” in order to ensure that fees awarded by administrative agencies would be captured in RPC 5.4(a)(4). The Legal Ethics Committee recommended that Oregon pursue a similar approach and the Board of Governors agreed. The proposed amendment would provide greater clarity that a lawyer may share legal fees awarded by an administrative tribunal with a nonprofit organization that employed, retained, or recommended employment of the lawyer.

Financial Impact

None.

Presenter:

Rob Milesnick, BOG, Region 8

9. Modification to Oregon RPC 5.4(a)(5) to Remove Reference to Bar “Sponsored” Lawyer Referral Service (Board of Governors Resolution No. 3)

Whereas, the Board of Governors formulated the following amendment to Oregon Rule of Professional Conduct 5.4(a)(5);

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 Rule of Professional Conduct 5.4(a)(5) as set forth below is approved and shall be submitted to the Oregon Supreme Court for adoption:

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

(5) A lawyer may pay the usual charges of a ~~bar-sponsored or operated~~ not-for-profit lawyer referral service, including fees calculated as a percentage of legal fees received by the lawyer from a referral.

Background

In 2019, the Board of Governors received a request to “sponsor” a not-for-profit lawyer referral service. The Board asked the OSB Legal Ethics Committee for guidance on what “sponsorship” would entail. In 2020, the Legal Ethics Committee advised the BOG that the Oregon Rules of Professional Conduct do not define “bar-sponsored,” there is no case law interpreting the term in Oregon, and no other jurisdictions have a provision similar to Oregon RPC 5.4(a)(5). Further, at the time of adoption of this rule nearly 10 years ago, there was no discussion by the BOG, HOD, or Oregon Supreme Court about what bar sponsorship of a referral service meant or would look like.

In the end, the BOG determined that sponsorship of a lawyer referral service would require development of a new program—with detailed standards and guidelines for sponsorship as well as administrative support for implementation—at potentially significant cost to the bar. Further, it was unclear to the BOG whether development of such a program would significantly further the bar’s mission. Rather than develop a new lawyer referral sponsorship program, the Board recommends that the term “sponsorship” be eliminated from Oregon RPC 5.4(a)(5).

Financial Impact

None.

Presenter:

David Rosen, BOG, Region 1

10. Supporting Adequate Funding for the Judicial Branch (Board of Governors Resolution No. 4)

Whereas, the Oregon State Bar Board of Governors must at all times direct its power to serve the public interest by (a) regulating the legal profession and improving the quality of legal services; (b) supporting the judiciary and improving the administration of justice; and (c) advancing a fair, inclusive, and accessible justice system; and

Whereas, the 2020–22 Strategic Campaign adopted by the Judicial Department focused on important shared goals, such as improving services to vulnerable and marginalized people, expanding access to justice, assisting the Office of Public Defense Services in monitoring its attorney caseloads and performance, and expanding its efforts to support diversity, equity, and inclusion in court services and the legal profession; and

Whereas, the 2021 Legislative Assembly recognized the impact of court services in providing justice services as well as addressing urgent issues facing Oregon, such as housing, behavioral health, and criminal justice reform, and provided additional funding to the Judicial Department to continue expanding its efforts under the Strategic Campaign; now, therefore, be it

Resolved, that the Oregon State Bar applaud the Legislative Assembly for its support for adequate funding in 2021–23 for Oregon’s judicial branch; encourage all members of the Oregon State Bar to apprise legislators of their thanks for funding the judicial branch and the importance of continued support for justice in Oregon; and continue to advocate that the Legislative Assembly improve funding to provide needed court services, support suitable and sufficient court facilities, ensure adequate judicial salaries that attract and retain high-quality judges, and support the goals of the Judicial Department Strategic Campaign.

Background

The Oregon State Bar applauds the current legislature’s recognition of the value of the court system to Oregonians. Funding reductions to the Oregon Judicial Department since the 2009 recession have resulted in fewer staff and limited hours of operation when Oregonians could access many court services. As recently as 2020, the Oregon Judicial Department had fewer positions than before the recession and was forced to impose furloughs on court staff. In response, the Oregon State Bar and its members advocated for improvements in court funding in the 2021 legislative session, and 2021 saw significant progress toward meeting that goal.

The 2019–2021 biennium was particularly challenging for Oregon and its court system. In the face of those challenges, the Oregon Judicial Department was able to prioritize access to the justice system. In spite of the many challenges Oregonians faced in 2020 and 2021, courts remained open throughout. Further, judges and court staff were able to pivot and work and conduct proceedings remotely. Many of these challenges of the last 18 months remain, but because of the efforts of the court system, our courts remain open and accessible.

The 2021–2023 legislatively approved budget for Oregon’s court system includes a General Fund increase of 12.7% from the 2019–2021 legislatively approved budget. General Fund dollars are used primarily for the administration and operations of Oregon’s court system. In addition to the statewide funding, the Oregon Judicial Department received funding for two new judicial seats and support staff in Deschutes County, and continues to work with the Oregon legislature to rehabilitate, update, and replace courthouses throughout the state. As a result of this budget cycle, courts will continue to make progress on their strategic campaign initiatives.

Though courts have faced unparalleled challenges, judges and staff have continued to focus on OJD’s Strategic Campaign initiatives: improving services for underserved, vulnerable, and marginalized Oregonians; reducing barriers to access to justice; enhancing public trust and confidence in Oregon’s government; and creating a supportive, inclusive, and welcoming courthouse and workplace environment.

While important progress was made in 2021, additional challenges will remain in the coming biennia. It is critical that the Oregon State Bar and its members continue to support OJD’s strategic initiatives, courthouse improvements, and adequate funding for the court system to ensure that court services remain accessible to all Oregonians.

Financial Impact

None.

Presenter:

Lee Ann Donaldson, BOG, Region 5

11. Financial Support for the Oregon Law Foundation by Sponsorship of an Approved Set of Recorded Mandatory CLE Programs

(Delegate Resolution No. 1)

Whereas, programs providing Access to Justice to all Oregonians are a fundamental component of the Oregon State Bar efforts to provide such Access;

Whereas, pursuant to ORS 9.572, the Oregon State Bar operates the Legal Services Program by management and oversight of funds allocated by the State of Oregon for Legal Aid;

Whereas, revenue from Interest on Lawyer Trust Accounts has dwindled with the decline in Interest Rates;

Whereas, the Oregon Legal Aid Program does not have sufficient funding to meet 80% of the needs of Oregonians for Legal Representation in Civil Matters;

Whereas, given the experience developed, during the COVID-19 Pandemic; Remote Viewing has become acceptable in lieu of personal appearances and attendance at CLE Programs;

Whereas, the number of Mandatory CLE Subjects has expanded since inception, such that OSB Members will be benefited by knowing that they can achieve full compliance from a single provider;

Whereas, the Oregon State Bar has the ability to make available Video Recorded CLE Programs and related Written Materials; now, therefore, be it

Resolved, that the Oregon State Bar;

(1) Board of Governors appoint a Volunteer Committee, in coordination with the Oregon Law Foundation and the Sections of the Oregon State Bar, to develop, produce, and make available to OSB Members, a single complete **Set of Recorded Mandatory CLE Programs** with sufficient content needed to provide full compliance with all the OSB Mandatory Continuing Legal Education Subject Requirements; and,

(2) That by Certifying via a Declaration of Completion, OSB Members will be deemed to have complied with the Mandatory OSB CLE Requirements; and,

(3) That the Revenue, after costs of production, from the Sale or Licensing of the OSB Approved Set of Recorded Mandatory CLE Programs be devoted to Funding Support for the Oregon Law Foundation commitment to Equal Justice for Oregon Legal Aid Programs.

Financial Impact

None stated.

Presenter:

Danny Lang, HOD, Region 3

12. Support of Adequate Funding for Legal Services to Low-Income Oregonians (Delegate Resolution No. 2)

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

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

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

Whereas, 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, the health and financial impacts of the COVID-19 pandemic are disparately impacting people from Black, Indigenous, and other people of color (BIPOC) communities, and from low-income communities;

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, and a 50% contribution rate by all lawyers;

(5) Support the Oregon Law Foundation and its efforts to increase resources through the Interest on Lawyer Trust Accounts (IOLTA) program, and encourage Oregon lawyers to bank with financial institutions that are OLF Leadership Banks, meaning that pay the highest IOLTA rates;

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

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

(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 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. 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, 2005–2020). This resolution is similar to the resolution passed in 2020. 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 nonprofits that work together as part of an integrated service delivery system designed to provide high-priority free civil legal services to low-income Oregonians in all 36 Oregon counties through offices in 17 communities. There are two statewide programs, Legal Aid Services of Oregon (LASO) and the Oregon Law Center (OLC); and one county-wide program, the Center for NonProfit 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 2020, about 28% of legal aid’s cases were family law cases, usually helping victims of domestic violence. Another 33% 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 24,000 clients. An additional 110,000 Oregonians were served through impact litigation. Furthermore, hundreds of thousands of Oregonians were served through administrative advocacy. Legal aid’s website, www.oregonlawhelp.com received over 470,000 unique visitors a year. Additional Oregonians who were victims of wildfires received vital self-help information and referrals through legal aid’s disaster service website, <https://oregondisasterlegalservices.org>.

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

Financial Impact

None stated.

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

*Ross Williams,
OSB#014548
HOD, Region 5*

*Sonia Montalbano,
OSB#970821
HOD, Region 5*

*Melanie Kebler,
OSB#083798
HOD, Region 1*

13. Affordable Access to Appellate Justice (Delegate Resolution No. 3)

Whereas, the Mission of the Oregon State Bar is to serve Justice by promoting respect for the Rule of Law, by improving the quality of legal services, and by increasing Access to Justice, OSB Bylaw 1.2;

Whereas, Access to Justice plays an important role in the perception of fairness of the Justice System;

Whereas, Members of the Oregon State Bar tend to Practice Law within well-defined areas of Law;

Whereas, the Oregon Judicial Branch has developed a separate set of specific required procedures, identifiable as the Oregon Rules of Appellate Procedures [ORAP];

Whereas, Appellate Practice in Oregon has developed into a well-defined specialized area of Law;

Whereas, The technical, substantive, and procedural requirements for formal Appellate Practice before the Oregon Court of Appeals and the Oregon Supreme Court, generally and specifically, now required highly specialized knowledge and professional skill sets;

Whereas, Costs mandated by the Oregon Rules of Appellate Procedures, such as Certified Court Reporter Fees for preparation of Formal Transcripts of the Record, make access to Justice in the Oregon Appellate Courts beyond the affordability of most Oregon Families, Small Businesses, and Individuals [compared to the affordability by large Organizations and Corporations]; in addition to the substantial expense of Appellate Counsel Legal Fees;

Whereas, the foregoing combined expenses of pursuing an Appeal can easily range from \$10,000.00 – \$30,000.00, or more;

Whereas, The Oregon State Bar has previously determined that more than 80% of Oregonians are unable to afford needed Civil Legal Services [See OSB BULLETIN – “Examining the Pro Se Justice Gap; July 2021”];

Whereas, the aforementioned financial barriers, unintentionally but effectively, constitute real life barriers to Affordable Access to Appellate Justice;

Whereas, the Oregon Judicial Branch – Strategic Campaign 2020-2021, Commitment 2 – states “We will improve access to justice by eliminating barriers; continuing to simplify and streamline our processes and forms; enhancing service options; leveraging technology; improving interpreter services; and advocating for resources to keep courts open, safe, and secure. 2.1 We will launch and participate in collaborative initiatives to better serve self-represented litigants throughout the state”;

Whereas, the Oregon State Bar has appointed Advisory and Implementation Committees to undertake innovations to remove financial barriers at the Trial Court and Administrative Hearing level by the

forthcoming licensing of Paralegals/Paraprofessionals needed to provide Affordable Access to Justice in other underserved areas of Law; now, therefore be it

Resolved, that the House of Delegates recommends that the Board of Governors appoint a Volunteer Committee to study innovations designed to make standard simplified Appellate Forms available; and, develop economic protocols, such as allowing Digitally Prepared Transcripts of the Record, to enable Pro Per Appellants to realize Affordable Access to Appellate Justice.

Financial Impact

None stated.

Presenter:

Danny Lang, HOD, Region 3

14. Support for Public Defense Providers (Delegate Resolution No. 4)

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 indigent 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, 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.

Financial Impact

None stated.

Presenters:

Shannon Flowers, HOD, Region 6

Michelle Bartov, HOD, Region 1

Justin Morton, HOD, Region 1

15. Conference of Well-Being Stakeholders (Delegate Resolution No. 5)

Whereas, the Well-being of the legal profession is of integral importance to the OSB, the PLF, the OJD, Oregon Law Schools, Affinity Bars, Legal Employers, and the OAAP. These stakeholders have been working toward improving the well-being of the Oregon legal community and collaboration is necessary to achieve the goal of improving well-being.

Whereas, Equity is a vital component of all well-being efforts in our professional community.

Whereas, Oregon is a national leader in well-being efforts within our profession and, despite many improvements having been made, there remain areas in need of attention. The following areas should be explored:

- i. Informing well-being efforts using diversity, equity, and inclusion principles and values,
- ii. Reducing stigma/shame and increasing help-seeking behaviors,
- iii. Vicarious trauma within our profession,
- iv. Lawyer Education and Law School practices,
- v. Regulatory and disciplinary practices that affect well-being,
- vi. Well-being in the workplace and evolving legal culture,
- vii. Law practice management,

- viii. Structural impediments to well-being including UTCRs, court timelines, and trial court administration,

Now, therefore, be it

Resolved, that the HOD directs the Oregon State Bar and stakeholders within its authority, and strongly recommends to those stakeholders who are not, to convene the Conference of Stakeholders to address the foregoing areas of concern by June 2022 and provide a provisional report to the HOD at its annual meeting in November 2022. The goal of the Conference of Stakeholders is to improve well-being through collaborative efforts in each of the areas of concern. There will be costs attached to this endeavor and stakeholders will discuss distribution of those costs.

Financial Impact

None stated.

Presenter:

Vanessa Nordyke, HOD, Region 6, OSB Past President 2018

16. In Memoriam

(Board of Governors Resolution No. 5)

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 2020 House of Delegates Meeting.

Marcia L. Alvey	Robert D. Heffernan	Kendrick M. Mercer
Sharon G. Ballin	Jeffery D. Herman	Sean E. M. Moore
Ann V. Bartsch	Walter B. Hogan	Christine N. Moore
Kerry Bleskan	Mark W. Hohlt	Alan T. Nettleton
G. Duff Bloom	William H. Hubert	Alice M. Plymell
Lyle Bosket	Leigh A. Hudson	Jacob C. Rasmussen
Bobby B. Bouneff	Jeffery D. Jones	Michael H. Schmeer
Gregory A. Bunnell	Michael K. Kelley	Janice P. Shea
Eldon F. Caley	Scott A. Kelly	Marsha R. Skudlarek
Frederick J. Carleton	William H. King	Gene Stunz
Lauren E. Charles	James R. Kuhn	Thane W. Tienison
Clifford G. Collard	Don A. Larsen	W. Todd Westmoreland
Arie C. DeGroot	James E. Leuenberger	Nicholas D. Zafiratos
Hon. Stephen L. Gallagher	Noreen A. McGraw	Gary J. Zimmer
Thomas J. Greif		
Kurt F. Hansen		

Presenters:

Gabe Chase, BOG, Region 5

Matt McKean, BOG, Region 4

Joseph Hesbrook, BOG, Public Member

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

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

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

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

Presenter:

Colin Andries, BOG, Region 5