

Memorandum

Date: April 6, 2018

To: Steven C Berman, Mika N Blain, Thomas M Christ, Ankur Has Mukh Doshi, Leigh Francis Gill, Kurt F Hansen, C Scott Howard, Robert C Kline Jr., Angela Therese Lee-Mandlin, Sarah M Litowich, Tara Kaylene Millan, Michael D O'Brien, Erin Pettigrew, Rep. Karin Power, Catherine M. Schulist Yao, Erin J Zemper

From: Vanessa Nordyke

Cc: Michael Rondeau, Robert Gratchner, Helen Hirschbiel, Susan Grabe

Re: Referral Fees Committee

Thank you for your interest in serving on the Committee to Study Referral Fees. Kurt Hansen has agreed to chair the committee, and OSB CEO Helen M. Hirschbiel and Director of Public Affairs Susan Grabe will staff the Committee.

At the November 4, 2017 House of Delegates meeting, the HOD voted to refer back to the Board for further study BOG Resolution #3, which resolved that amendments to Oregon Rules of Professional Conduct 5.4(a)(5) and 7.2(b) be submitted to the Oregon Supreme Court for adoption. The proposed amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force Regulatory Committee. The Futures Task Force charge was to:

Examine how the Oregon State Bar can best protect the public and support lawyers' professional development in the face of the rapid evolution of the manner in which legal services are obtained and delivered. Such changes have been spurred by the blurring of traditional jurisdictional borders, the introduction of new models for regulating legal services and educating legal professionals, dynamic public expectations about how to seek and obtain affordable legal services, and technological innovations that expand the ability to offer legal services in dramatically different and financially viable ways.

The Regulatory Committee was charged to:

Examine new models for the delivery of legal services (e.g., online delivery of legal services, online referral sources, paraprofessionals, and alternative business structures) and make recommendations to the BOG regarding the role the OSB should play, if any, in regulating such delivery models.

The discussion at the HOD meeting revealed that members of the HOD were unified in their commitment to improve access to justice. Further, members expressed an interest in exploring ways to ensure that lawyers have the ability to utilize modern tools to connect with clients, but wanted to avoid making changes to the rules that could erode consumer protection.

In light of the conversation at the HOD meeting, and because the HOD resolution that proposed amendments to RPC 5.4(a)(5) and 7.2(b) arose out of the Futures Task Force, the Board of Governors determined that the Futures Task Force and Regulatory Committee charges and findings should serve as a backdrop for continued study of these rules. Therefore, the Board of Governors approved the following charge for the Referral Fees Committee:

Study the rules that govern the circumstances under which a lawyer may pay a for-profit company for directing clients to that lawyer (esp. 5.4(a)(5) and 7.2(b)), in light of changing models for obtaining and delivering legal services. Consider how such rules should be amended in order to account for these changes, while still protecting the public and allowing for greater access to legal services.

If you have any questions, please do not hesitate to contact Helen M. Hirschbiel at hhirschbiel@osbar.org or 503-431-6361.