



Oregon Assembly For Black Affairs

P. O. Box 12485
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<http://www.oaba.us/>

January 29, 2011

TO: OREGON STATE BAR BOARD OF GOVERNORS

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SUBJECT: "Questions For The Oregon State Bar Board Of Governors"

On behalf of the Oregon Assembly for Black Affairs (OABA), I want to share with you its purpose before OABA asks you its questions.

The purpose of the Oregon Assembly for Black Affairs (OABA) is to improve the political, educational, social, **legal**, and economic status of Blacks in Oregon. OABA knows "What Benefits Black Oregonians Benefits ALL Oregonians", and this does not work in reverse. OABA is an organization for change. OABA believes that Attorneys are the key for the U.S. Society and the Oregon Society to change to see all citizens of the United States as being one nation. Attorneys must become change agents who can provide unbiased and effective legal representation for all clients regardless of whether the attorneys look like the clients or regardless of the status of the clients in society or their ability to pay.

There is a state law in Oregon that defines the duties of an attorney licensed by the State of Oregon. That law is ORS 9.460. ORS 9.460 defines the duties of an attorney licensed by the State of Oregon. ORS 9.460 states: " An attorney shall:

- (1) Support the Constitution and laws of the United States and of this state;
- (2) Employ, for the purpose of maintaining the causes confided to the attorney, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of law or fact;
- (3) Maintain the confidences and secrets of the attorney's clients consistent with the rules of professional conduct established pursuant to ORS 9.490; and
- (4) Never reject, for any personal consideration, the cause of the defenseless or the oppressed."

There is **no state law in Oregon** that requires attorneys licensed by the State of Oregon to be accountable to all their clients by providing unbiased and effective representation when the

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clients retain these attorneys. According to ORS 9.310 and ORS 9.320, **ONLY** an attorney licensed by the State of Oregon can represent another person in Oregon courts. The Oregon State Bar opposed two bills (HB 2886 in 2007 and SB 818) that would have amended ORS 9.460 to state “An attorney shall ‘provide unbiased and effective representation for all clients’.” These bills would have brought independent oversight and statutory accountability on how an attorney licensed by the State of Oregon performed the statutory duties in handling the legal issues of clients. OABA recognizes and understands that the Oregon State Bar wants to use Oregon statutes to prevent others from carrying out these attorney duties defined by ORS 9.460, but the Oregon State Bar does not seem to want statutory standards and accountability for attorney.

The Oregon Assembly for Black Affairs (OABA) is aware that there are and will be more laws being passed by the United States Congress and state legislatures, as well as local governmental units, that will require licensed attorneys to assist citizens to understand and protect their citizenship rights.

Also, the Oregon Assembly for Black Affairs (OABA) recognizes that, in the future, there will be many life events in which attorneys licensed by the State of Oregon will be required. These attorneys licensed by the State of Oregon must be capable of providing unbiased and effective representation for their clients. **Unbiased legal representation** is the refusal by an attorney licensed by the State of Oregon to allow the attorney’s personal considerations, cultural understandings or backgrounds, and traditional or historical views of the client to dictate how the attorney should represent the client’s issue. **Effective legal representation** is a process of aggressively using the laws, facts and truths by an attorney licensed by the State of Oregon in handling the legal issue of a client, regardless of the client’s status in society or ability to pay. Oregon citizens need to know that attorneys licensed by the State of Oregon can provide unbiased and effective representation and can be held accountable by state law.

Since its establishment in 1977, OABA has received many complaints from many Blacks in Oregon. Among such complaints, it has been revealed to OABA that these Black individuals have had extreme difficulties in finding attorneys licensed by the State of Oregon who would take their cases. When these individuals were able to obtain legal counsel, the attorney did not pursue the case with vigor nor provide the effective legal representation that leads to good results. OABA concluded that because many Black Oregonians have experienced tremendous difficulty in securing effective legal representation, many Blacks in Oregon feel they must bear with, even tolerate, crimes or discrimination against them rather than be further victimized, even humiliated, by not being able to get effective legal representation. Yes, some Black Oregonians are scared to talk about this, and they will deny it when they are asked about it, and they get silent by saying that is just the way it is. The Oregon Assembly for Black Affairs (OABA) is aware that other people of color as well as some White Oregonians have experienced biased and ineffective legal representation from some attorneys licensed by the State of Oregon whom they retained to handle their legal issues. Thus, the problem is the difficulties that some Black Oregonians as well as other Oregonians have had in obtaining unbiased and effective legal representation from some attorneys licensed by the State of Oregon, regardless of their ability to pay or their status in society.

It is OABA position that some Blacks in Oregon receive ineffective legal representation because of **attorney fear and racism**. Also it is the position of the Oregon Assembly for Black

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Affairs (OABA) that racism is one issue that stops some lawyers from taking cases involving Black Oregonians. If the Black Oregonians do not play down the racism that they have confronted, it is extremely difficult for them to get legal representation. The racism that exists in institutions within the Oregon society causes some White attorneys to not provide effective legal representation. In many instances, most White attorneys opt out rather than take cases involving Black Oregonians. The two bills that the Oregon Status Bar opposed in 2007 and 2009 exposed the problem. OABA knows what it does to improve access to unbiased and effective legal representation for Black Oregonians will benefit **ALL** Oregonians.

The United States has not healed from its history of slavery and racism. Historically, the impact of slavery and racism is embedded in the U.S. legal system with all its secrets to keep White Americans in a superior position and to keep Black American in an inferior position. Nor has Oregon been truly healed from its past of denying Black Americans. Long after the repeals of exclusionary laws in Oregon, the unspoken and unwritten legal practice appears to be that Black Oregonians have no rights that White men are bound to respect. For example, the legal system is one of the institutions in the United States Society and in the Oregon Society that fostered the racial divide in our society; and, one of its components, attorneys, must become a key part of the solutions to such divide. The Oregon Supreme Court in its 1994 report confirmed this in many ways.

There are two systems of justice operating in Oregon, as well as in the United States, today? One is for Blacks; the other is for Whites. The aftermaths of the recent killings of Blacks in Portland, Oregon demonstrated this. One fundamental question is being raised. Are Black Oregonians too blind to use any means necessary to expose, challenge and transform these double systems in Oregon? Understanding the histories of the National Bar Association and American Bar Association can shed light on these double standards. Also, knowing that there were times in the United States and Oregon that Black Americans could not be members of the American Bar Association, and that they could not be attorneys or judges will help you understand why the Oregon Assembly for Black Affairs (OABA) is seeking an amendment to the Oregon statute that defines the duties of an attorney licensed by the State of Oregon. Also, understanding the impact of integration on the United States Society and the Oregon Society is crucial to this discussion.

“...Integration taught Blacks to go to White schools and not be part of the schools, to live in White communities and not be part of these communities, to out-white White people but not be White. Although integration came, many Black people were made to feel that they were not citizens of the United States. Also integration did not teach Black people how to be citizens of the United States and how to use their citizenship power to uplift themselves, their community collectively and the society as a whole. Integration has not taught the people of the United States to be citizens of the United States and to see all the people of the United States as being one Nation.”

Since improving the legal status of Blacks in Oregon is part of OABA purpose, OABA believes that attorneys licensed by the State of Oregon who can provide unbiased and effective legal representation for all clients are essential to Oregon Society in overcoming racism in its legal system. HB 2886 in 2007 and SB 818 in 2009 exposed the problem of the failure that some Oregon citizens have in receiving unbiased and effective representation from some attorneys licensed by the State of Oregon. Also these bills would have offered some education

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requirements of current and future attorneys licensed by the State of Oregon. The Oregon State Bar opposed both bills and the Oregon State Bar did not offer any suggestions to improving the bill whereby attorneys licensed by the State of Oregon could provide unbiased and effective legal representation of all clients.

Perhaps, you, as a member of the Oregon State Bar Board of Governors, are wondering why the Oregon Assembly for Black Affairs (OABA) is pursuing this legislative action. In 2006, when OABA learned that some members of the Oregon State Bar were trying to eliminate mandatory bias training for attorneys and that the Oregon State Bar was planning to eliminate its Affirmative Action Committee, former Oregon State Bar Executive Director Karen L. Garst was invited to OABA Board Meeting on January 6, 2007, to discuss these issues. Ms. Garst revealed that when the Oregon State Bar sent a question to its membership to decide whether there should be bias training, 65% of the attorneys licensed by the State of Oregon failed to vote on the question of bias training. When the results were announced on April 17, 2006, approximately 35% of members voted on the question. Of those voting, 67% voted "yes" (to eliminate sanctions for not completing the requirement) and 33% voted "no." After this vote, an **Oregon State Bar Task Force** was set up and it included two members of the Oregon Supreme Court on it. It is OABA understanding that this **Oregon State Bar Task Force** recommended the elimination of the bias requirement. In its letter dated January 8, 2007, to former Oregon State Bar Executive Director Karen L. Garst, OABA notified her and the Oregon State Bar Board of Governors that "During 2007, the Oregon Assembly for Black Affairs (OABA) will undertake the task of exposing the difficulty that Black Oregonians have in obtaining **effective legal representation** in Oregon, regardless of their ability to pay or their status in society." Also in this letter, it was stated: "In addressing this issue (lack of effective legal representation of Black Oregonians), the Oregon Assembly for Black Affairs (OABA) is planning to work with the Oregon State Bar, the National Bar Association, the Oregon Supreme Court and the Oregon Legislative Assembly as well as Oregon Governor. Also we are planning to work with the Oregon law schools to help future Oregon attorneys to be aware of this need. We look forward to working with you and the Oregon State Bar." This led to the introduction of HB 2886 in the Regular Session of the 2007 Oregon Legislature by State Representative Chip Shields.

In the 2007 Regular Session of the Oregon Legislature, **HB 2886** was sponsored by Representative SHIELDS; Representatives BARKER, BEYER, BOQUIST, CAMERON, DINGFELDER, C EDWARDS, D EDWARDS, GELSER, HOLVEY, KOTEK, MERKLEY, TOMEI, WITT, Senators BATES, COURTNEY, DECKERT, G GEORGE, GORDLY, MONNES ANDERSON, MONROE, MORRISSETTE, MORSE, SCHRADER, WALKER, WESTLUND, WINTERS (at the request of Oregon Assembly for Black Affairs). HB 2886 was assigned to the House Judiciary Committee. In 2007, the House Judiciary Committee Chair was State Representative Greg Macpherson, who is an attorney and a member of the Oregon State Bar. Chair Macpherson did not want to hold a hearing, but House Speaker Jeff Merkley told him to hold a hearing on SB 2886. House Judiciary Committee Chair Greg Macpherson did hold a hearing but he refused to hold a work session on the bill, but he did not announced publicly that he had a conflict of interest with regards to HB 2886.

In the 2009 Regular Session of the Oregon Legislature, **SB 818** was sponsored by Senators WINTERS, WALKER; Senators BATES, BOQUIST, COURTNEY, DINGFELDER, FERRIOLI, HASS, KRUSE, MONNES ANDERSON, MONROE, MORRISSETTE, MORSE, ROSENBAUM, TELFER, VERGER, Representatives BAILEY, DEMBROW, ESQUIVEL,

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GELSER, HOLVEY, HUNT, KOTEK, MAURER, RILEY, SCHAUFLEER, SHIELDS, THATCHER, WEIDNER (at the request of Oregon Assembly for Black Affairs). SB 818 was assigned to the Senate Judiciary Committee. The Senate Judiciary Committee Chair Floyd Prozanski, who is an attorney and a member of the Oregon State Bar, told the OABA President that he had made an individual decision not to hear SB 818, and he essentially argued the position of the Oregon State Bar as the bases of his decision. After Senator Prozanski refused to call a hearing on SB 818, OABA requested Oregon Senate President Peter Courtney to take action to move SB 818 through the Senate, but he did not take the actions requested. Instead, His office expressed that Senator Courtney wanted a hearings to be held on the bill after the regular session. During the 2009 Regular Session, Senator Prozanski did not announce publicly that he had a conflict of interest with regards to SB 818. Nor did he hold a hearing on the bill so that he could make this announcement. Because of Senate President Courtney's office, a joint interim judicial committee meeting was held on May 24, 2010.

On May 24, 2010, a joint meeting of the Senate Interim Judiciary Committee and the House Interim Judiciary Committee was held regarding SB 818. At this meeting on SB 818, it is OABA's understanding that your General Counsel Sylvia Stevens, who is now your Executive Director, told the joint committees that minority groups need attorneys who look like them to represent their legal issues. Also the Oregon State Bar sent its Oregon Minority Lawyers Association Chair Derily Bechtold and its Diversity Administrator Frank Garcia to this meeting to represent Oregon State Bar's opposition to SB 818. Mr. Garcia told the joint committees what he was doing to encourage minority high school students to consider becoming attorneys. Ms. Bechtold stated that she was opposed to SB 818 and that two Black female attorneys had told her that they were opposed to SB 818. At this meeting, OABA representatives stated their support of SB 818. Also the Eugene NAACP Branch President spoke in favor of SB 818. A county district attorney spoke in favor SB 818, and an Oregon law school dean sent a letter in support of SB 818.

Please understand that the bills in 2007 and 2009 did not state that an attorney licensed by the State of Oregon is forced to represent an individual. These bills did not state that the attorneys licensed by the State of Oregon must look like the clients. However, when an attorney licensed by the State of Oregon agrees to represent an individual and that individual becomes a client, the attorney should not allow his or her personal biases toward the individual to prevent him or her from providing the individual **unbiased and effective representation**.

Also the Oregon Assembly for Black Affairs (OABA) is writing to you as members of the Oregon State Bar Board of Governors because OABA wants you to know that OABA is requesting that ORS 9.460 be amended to state that an attorney (licensed by the State of Oregon) shall **"provide unbiased and effective representation for all clients."** OABA wants to know why the Oregon State Bar Board of Governors is opposed to a statutory requirement for attorneys licensed by the State of Oregon to provide unbiased and effective representation for all clients in the way the attorney handles the legal issue of the client. OABA wants to have a clear understanding of the role of the Oregon State Bar and its opposition to protecting the public from attorneys who are licensed by the State of Oregon, who are members of the Oregon State Bar and who provide ineffective legal representation because of **the attorney's bias toward the client**. Below are some questions whose answers, from the Oregon State Bar Board of Governors, might help to explain why the Oregon State Bar is opposed to amending ORS 9.460 to state that an

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attorney (licensed by the State of Oregon) shall “**provide unbiased and effective representation for all clients.**”

1. As a member of the Oregon State Bar Board of Governors, have you read and discussed the Report of the Oregon Supreme Court Task Force on Racial/ethnic Issues in the Judicial System dated May 1994?
2. As a member of the Oregon State Bar Board of Governors, what is your “learned knowledge” about how attorneys licensed by the State of Oregon use their knowledge and attitudes toward their clients to determine how these attorneys would handle the legal issues of the clients who retained them?
3. As a member of the Oregon State Bar Board of Governors, what is your “learned knowledge” about how attorneys licensed by the State of Oregon fail to provide unbiased and effective legal representation for clients (Black Oregonians, Other peoples of Color, women, senior citizens, and Others) because of these attorneys’ attitudes toward the clients?
4. Does the Oregon State Bar have a code or a rule that provides that its members must provide unbiased and effective legal representation? **Unbiased legal representation** is the refusal by an attorney licensed by the State of Oregon to allow the attorney’s personal considerations, cultural understandings or backgrounds, and traditional or historical views of the client to dictate how the attorney should represent the client’s issue. **Effective legal representation** is a process of aggressively using the laws, facts and truths by an attorney licensed by the State of Oregon in handling the legal issue of a client, regardless of the client’s status in society or ability to pay.
5. Since the Oregon State Bar opposed HB 2886 in 2007 and SB 818 in 2009, should the Oregon law schools teach current attorneys licensed by the State of Oregon how to provide unbiased and effective legal representation and on how these attorneys should not allow their attitudes or view toward the clients to dictate how these attorneys would handle the legal issues of the clients who retained them?
6. Should Oregon law schools be teaching future attorney who would be licensed by the State of Oregon how to provide unbiased and effective legal representation and on how they should not allow their attitudes or views toward the clients to dictate how these attorneys would handle the legal issues of the clients who retained them?
7. Since the Oregon State Bar has been successful in getting the Oregon State Legislature to past laws that prevent other citizens from representing other citizens in Oregon Courts, why has the Oregon State Bar been opposed to legislations (HB 2886 in 2007 and SB 818 in 2009) that would require attorneys licensed by the State of Oregon to provide unbiased and effective legal representation for all clients?
8. ORS 9.460 defines the duties of attorneys. One of these duties is “An attorney shall never reject, for any personal consideration, the cause of the defenseless or the oppressed.” When an attorney licensed by the State of Oregon tells an individual that the attorney lives in the community, or that the attorney has conflict of interest when that

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- attorney does not, or when the attorney sets the hourly rates so high that it makes it impossible for one to retain the attorney, are these acts that violate this provision?
9. Who should provide independent oversight over attorneys licensed by the State of Oregon who are carrying out duties assigned to them by the Oregon State Legislature?
 10. Who licenses attorneys in the State of Oregon?
 11. What is the Oregon State Bar? To whom is the Oregon State Bar answerable?
 12. Is the Oregon State Bar a state agency of the State of Oregon?
 13. Is the Oregon State Bar part of Oregon Executive Department or is it part of Oregon Judicial Department of government?
 14. Since the Oregon State Bar got the Oregon Legislature to statutorily require attorneys licensed by the State of Oregon to be members of the Oregon State Bar, are attorneys licensed by the State of Oregon only responsible to the Oregon State Bar?
 15. If the Oregon State Bar is a body created by the Oregon State Legislature, why isn't its rules that govern attorneys licensed by the State of Oregon or that govern attorneys who become judges of Oregon Courts being published in Oregon Administrative Rules?
 16. Are attorneys who become judges for Oregon Courts only responsible to the Oregon State Bar?
 17. Who can be members of the Oregon State Bar?
 18. Can attorneys who are not licensed in the State of Oregon be members of the Oregon State Bar?
 19. Is the Oregon State Bar responsible for protecting only the attorneys who are members of it?
 20. Is the Oregon State Bar responsible for protecting the public? Does the Oregon State Bar have a duty and obligation to protect the public from its members who are biased toward their clients and who provide their clients ineffective legal representation in how they handle their clients' legal issues?
 21. Do members of Oregon Legislative Assembly who are members of the Oregon State Bar have to follow instructions from the Oregon State Bar concerning legislative issues before their committees?
 21. When the Oregon Legislature assigns duties to attorneys licensed by the State of Oregon, who is responsive for providing oversight to ensure that attorneys licensed by the State of Oregon carry out these duties?

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22. When members of Oregon Legislature are members of the Oregon State Bar, does the Oregon State Bar require them to carry out the Oregon State Bar's positions on bills that might point out problems with attorneys licensed by the State of Oregon in providing unbiased and effective legal representation for all clients?

It is extremely important to have sunshine on how the Oregon State Bar operates to stop legislation that addresses failures of its members to provide unbiased and effective representation for all clients. The Oregon Assembly for Black Affairs (OABA) believes that this letter and your answers to the questions will help you understand why ORS 9.460, that defines the duties of attorneys licensed by the State of Oregon, needs to be amended to state that an attorney shall **“provide unbiased and effective representation for all clients.”**

Sincerely,



Calvin O. L. Henry, Ph.D.
OABA President

Cc: United States President Barack Obama
Oregon Governor John Kitzhaber
Oregon Senate President Peter Courtney
Oregon House Co-Speaker Bruce Hanna
Oregon House Co-Speaker Arnie Roblan
Oregon State Senators
Oregon State Representatives
Oregon Supreme Court Chief Justice Paul J De Muniz
Oregon Court of Appeals Chief Judge David V Brewer
Oregon Supreme Court Justices
Oregon Court of Appeals Judges
Oregon Secretary of State Kate Brown
Oregon Attorney General John Kroger
Oregon BOLI Commissioner Brad Avakian
OAC Administrator Lucy Baker
OCBA Chair Clifford Walker
OCW Chair Susan Castner
OCAA Chair Liani Jean Heh Reeves
OCHA Chair Jose Ibarra
U.S. Senator Ron Wyden
U.S. Senator Jeff Merkley
U.S. Representative Earl Blumenauer
U.S. Representative David Wu
U.S. Representative Kurt Schrader
U.S. Representative Greg Walden
U.S. Representative Peter DeFazio
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