

Government Relations and Public Affairs Department Background

Overview

The Oregon State Bar is directed to advance the science of jurisprudence and to improve the administration of justice. As a consequence, it has an obligation to the citizens of Oregon to participate in the law improvement process. The knowledge and expertise of its members is an invaluable resource to our citizen legislators. If the bar ever withdraws from the legislative arena, other organizations representing special interest groups will attempt to step in to fill the void. Unfortunately, those groups do not have the same balanced approach engendered by bar groups. Nor would they achieve the same level of success when it comes to enacting important statutory revisions.

The Oregon State Bar's commitment to improving its relations with the legislature was initiated by the membership at the 1978 annual meeting. The resolution adopted at that time directed the bar to develop a full time public affairs position to coordinate an expanded government relations program. The public affairs committee of the BOG was created at the same time to act on issues and to determine the program's emphasis. Later, support staff was approved to provide legislative assistance during the session. In 1990, due to increasing demands caused by the growing number of lawyers in Oregon, the BOG expanded that temporary position into a law improvement coordinator position. Now the bar's government relations program includes the responsibility for lobbying activities, and a wide variety of special projects involving public policy and law improvement.

Why Lawyers Should be Involved

The bar's law improvement program provides an important service to its members and the public by developing and maintaining a strong and effective presence in the legislature. Contrary to popular belief, most legislators are not lawyers. This means the intricacies of certain complex legal issues and the broad impact of legislative actions are not always understood by non-lawyers.

Moreover, many issues addressed by legislative bodies are of particular interest to lawyers, their clients and the public. Examples of these issues from the past include the legislature's attempt to regulate the legal profession by imposing mandatory pro bono requirements, eliminating the bar

exam and imposing a surcharge tax on professional services.

There are many reasons for lawyers to be involved in the legislative process: 1) lawyers have the legal training, education, experience and expertise to provide valuable assistance to legislative bodies; 2) lawyers can provide objective, well-reasoned and analytical responses to difficult and complex questions; and 3) lawyers can play the role of technical advisor rather than advocate, and can provide "white papers" on topics of interest to the legislature. Sections and committees frequently provide the best, and sometimes only, structure for delivery of these important services and a balanced perspective to the legislature.

Keller v. State Bar of California

In light of the U.S. Supreme Court opinion in *Keller v. State Bar of California*, (June 4, 1990), the Oregon State Bar BOG reevaluated its program planning and operations to ensure that the bar is operating within the broad guidelines set forth in that case. During this process the bar, as a member service organization, emphasized volunteer hours. The bar's success with its government relations/law improvement program and its growing influence as a valuable resource in the legislative community was recognized as a vital part of the bar's mission to further the administration of justice, ensure the provision of legal services and monitor the practice of law. The board was careful not to overreact to Keller and unduly restrict the range of activities in which it is involved. Sections and committees continue to have authority to act on relevant issues. On occasion, you may be asked to provide the board's Public Affairs Committee with the detailed reasons your group believes a particular request is within the scope of *Keller*.

During the past few years the public affairs program has drawn the line between 1) law improvement information and 2) aggressively pursued public affairs positions. Law improvement information services can be categorized as non-lobbying activities and the Public Affairs Committee minimizes interference with that process. The regulation and oversight of bar lobbying on public affairs positions (state bar positions), because it is where any major public policy influence would be exerted, should continue to be the focus of the Public Affairs Committee.

Although infrequent, section and committee activity that has a major political or policy impact must be endorsed by the Public Affairs Committee.

In the past, sections and committees have been cooperative and stayed within their prescribed jurisdictions. It is important that sections and committees represent the interests of their membership and are well balanced in their approach to issues in each substantive area of law.

In *Keller*, a member of the California bar contested the bar's use of compulsory bar dues to support and/or advocate "political or ideological" views in violation of his first Amendment rights. The U.S. Supreme Court held that the petitioner's rights were not violated if "the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or improving the quality of legal service available to the people of the state."

The court did not specifically elaborate on what constitutes permissible or impermissible dues-financed activities. However, it stated that the extreme ends of the spectrum were: endorsing or advancing gun control or a nuclear weapons freeze as unacceptable, on the one hand; and disciplining bar members or proposing the profession's ethics code as acceptable, on the other hand. The broad middle area of law improvement is appropriate if it is germane to the OSB's role in improving the quality of legal services to the people of the state of Oregon or relates to the regulation of the legal profession. As an example, we believe judicial administration issues constitute an appropriate activity under *Keller*.

Contrary to a few other integrated bars, the Oregon State Bar has operated in a reasonable, thoughtful manner in its program planning and operations, including its legislative program. The bar's track record during recent years suggests that it has been

in compliance with the *Keller* principles. Moreover, the *Keller* case has improved the bar's ability to maintain an aggressive, effective government relations and law improvement program.

OSB Public Affairs Program

The government relations and law improvement program is responsible for improving the bar's liaison role with all levels of government on a year-round basis. This is intended to enhance the organization's credibility on issues of public policy that concern the practice of law, the administration of justice and quality legal services. Staff duties include representing official bar positions; keeping abreast of legislation of interest to the bar; facilitating the exchange of information between governmental bodies and bar members involved in sections, committees or other related bar organizations; and responding to inquiries from lawyers, the public, and legislators and their staff.

Due to the joint effort of bar volunteers and bar staff, law improvement legislation sent to the legislature during recent sessions has fared well. The bar works for more law improvement legislation with more success than any other group.

The effectiveness of the law improvement program can be attributed to its organization. The Public Affairs Committee of the Board of Governors commits many hours to issue review and to direct interaction with decision-makers. In 1979, a bar ad hoc committee headed by now Chief Justice Wallace P. Carson, Jr. reviewed the structure and operations of the bar's legislative program. The ad hoc committee was formed as a result of controversy surrounding the bar's involvement in several high profile public policy issues in the 1979 session. The current public affairs program and the provisions of the BOG Policies, Ch. 11 are the product of that commission's findings and recommendations.

Section/Committee Legislative Process

Bar sections and committees are encouraged to have a legislative subcommittee that is involved in the legislative process. Some groups will be more active in the process than others, e.g., some will initiate legislation, and all sections and committees are requested to monitor legislative activity in their respective area of expertise and to provide objective technical assistance. For more information, see, BOG Policies on Legislation and Public Policy, p. 8.

Sections and committees should be prepared to provide technical analysis on key bills relating to their particular area of expertise. This type of assistance amounts to what the bar calls “law improvement.” This includes reviewing proposed legislation or amendments for internal consistency and consistency with existing law, suggesting technical changes to better address the intent of the drafters, and preparing summaries and commentaries. Assistance from bar groups is invaluable because it is often more objective than the comments of the proponents who testify on the merits of a proposal.

When a section or committee provides input or feedback on a request, either from the bar or from someone at the legislature, it is important that program staff is notified. This is particularly important if your section or committee wants to take a position for or against a bill. Also, if your group is interested in particular issues within your area of expertise, let us know so we can help you during the session.

If a section or committee decides to take a position on a bill, it must make a written request to the Public Affairs Committee setting forth its position and how it is appropriate under the legislative guidelines established by the Board of Governors. See, BOG Policies Section 11.800(A), p. 9. The section or committee is then responsible for monitoring and presenting its position and testimony on that bill. See, OSB Legislative Guidelines, p. 6.

Department staff lobbies only on positions that are designated as bar priorities by the Public Affairs Committee. Bar priorities include major public policy and political issues and must receive the BOG’s Public Affairs Committee approval.

The public affairs program is available to assist with fine-tuning section proposals. We appreciate being informed of executive committee or legislative subcommittee meetings dealing with legislative issues. This allows us to stay current on the status of individual projects. It also allows us to share information with you and various interest groups affected by the legislation.

Most of the legislation from bar groups go through the judiciary committees of the legislature. Please encourage members of your group to maintain contact with their own legislators and any lawyer legislators with whom they are acquainted.

2003 Legislative Session

The 2003 legislative session will convene in January with the state in a major budget crisis and with a significant budget shortfall for the remaining six months of the 2001-2003 biennium. In addition, economic recovery continues to elude the state and has become Governor-elect Kulongoski's first focus going into 2003. Bar groups and individual lawyers need to be involved with the players and issues that will affect them. They must also understand the fiscal challenges that await the 2003 Legislature. For example, they should be ready to address pro-

posals for changing and economizing the justice system. It is also important to begin identifying future state bar priorities.

The Public Affairs Committee will continue to give attention to improving bar relations with legislators. We encourage you to do likewise. Please let our chair William Carter know if you have suggestions for program adjustments or law improvement projects. We look forward to working with you during the challenging political year ahead.

Government Relations and Law Improvement Services

The department provides the following services:

1. Advice on legislation and related communications—participation in strategy sessions
2. Assistance in obtaining board or BOG-PAC ratification of proposed positions and consideration of requests for bar lobbying assistance on major bills or positions
3. Coordinate written dissemination of issues and legislative information within the bar through the Bulletin and the Capitol Insider newsletter, and the program website, www.osbar.org/2practice/lawimprovement/legislation.html
4. Forward legislative information, circulate key bills and respond to questions from bar groups
5. Provide general liaison services between sections and government agencies, legislators and their staff, bar related organizations and the public
6. Assist in coordination among sections and committees on legislative bills
7. Assist in identification of and prioritization of appropriate legislation and issues as they develop
8. Respond to public policy or government related requests from bar groups

OSB Legislative Guidelines

The Board of Governors has determined that the use of bar dues to participate in shaping legislation involving the regulation of the legal profession and matters concerning the improvement of the quality of legal services available to the people of Oregon is germane to the state bar's legitimate role and is in the public interest.

11.800 Government Relations Guidelines

(A) Oregon State bar legislative or policy activities shall be limited to those reasonably related to any of the following subjects:

1. The regulation and discipline of attorneys
2. The improvement of the functioning of the courts, judicial efficacy and efficiency;
3. The availability of legal services to society;
4. The regulation of attorney trust accounts;
5. The education, ethics, competence, integrity and regulation as a body, of the legal profession; or
6. The provision of law improvement assistance to elected and appointed government officials;
7. Issues involving the structure and organization of federal, state and local courts in or affecting Oregon;
8. Issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or
9. Issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

(B) The bar will make every reasonable effort to inform members of legislative positions taken by it or its committees or sections and will encourage as wide a participation as possible in formulating positions on legislative issues.

(C) Members of the bar should be persuaded to participate in their association's representative process. The Board of Governors and its public affairs committee should endeavor to respect the divergent opinions of subgroups within the legal profession. Furthermore, providing more assistance to bar sections and committees should become a vital part of the bar's public affairs effort. Such staff

support activities deserve a strong commitment of bar resources.

(D) Specific

(1) bar positions on major issues will be taken by majority vote at the annual meeting of the House of Delegates. The board and its public affairs committee has the authority between meetings of the House of Delegates to take necessary action on legislative matters pursuant to the guidelines established.

(2) After receiving input from many different points of view, the board, or at the direction of the board, its public affairs committee will establish priorities for positions taken on public policy proposals. Every reasonable effort will be made to avoid committing bar funds to issues which are divisive or result in creating factions within the profession.

(3) Public Affairs Committee

(a) The public affairs committee shall encompass a balance of interests within the bar and it must consult frequently with the Board of Governors.

(b) Members of the public affairs committee will be assigned liaison responsibilities for the primary legal subgroups and a reasonable effort should be made to keep interested parties informed about the status of particular issues.

(4) Although the board retains the authority to contract for independent lobbying services, any outside lobbyist utilized by the bar should have the skills and the mandate to provide a range of technical support. Furthermore, board members and bar staff shall have primary responsibility for coordinating the public affairs program and formally presenting bar positions.

(5) The annual meeting of the House of Delegates shall be used when possible to determine major bar positions, but members should be discouraged from using the meeting to advance the cause of special interests within the bar.

(6) Communications

(a) Attention shall be given to informing bar members about how the bar takes public policy positions.

(b) When bar positions are taken, timely membership communications shall occur. General membership involvement in the political process will be stressed.

(c) The board may use the referendum mechanism or other techniques to determine the opinion of the membership to find whether a significant membership consensus exists on major public policy questions when possible and practical.

(7) Committees/Sections

(a) bar staff services to committees and sections shall be expanded and integrated with the public affairs program. Committees and sections are encouraged to be more active in the legislative process.

(b) Within their areas of jurisdiction, committees and sections should provide substantial volunteer assistance to policy makers. Whenever possible these bar groups, with board or public affairs committee approval, should be allowed to present their own position on legislation.

(c) bar committees or the executive committees of sections may tentatively approve positions within their jurisdiction. The position of the bar committee or section becomes official only upon approval of the board or Public Affairs Committee.

(8) The expanded public affairs division of the bar will further develop and utilize the key person network for grassroots contacts. Closer relations with local bars shall be fostered and their leaders asked to designate public affairs contacts. The bar shall pursue the goal of achieving closer cooperation between the members of the so-called legal and judicial lobbies.

Board of Governors Policies: Chapter 11

Legislation and Public Policy*

**approved by Board of Governors through June 1, 2002*

Chapter 11 - Legislation and Public Policy

11.100 Committee and Section Legislation

(A) No committee of the bar shall represent to the legislature, or any individual, committee or agency thereof, a position, or proposal, or any bill or act, as the position of that committee of the bar without the majority approval of the members of that committee and the prior approval of the board, except as is provided in Policy 11.310.

(B) No section of the bar shall represent to the legislature, or any individual, committee or agency thereof, a position or proposal, or any bill or act, as the position of that section of the bar without the majority approval of the executive committee of that section and the prior approval of the board, except as is provided in Policy 11.310.

11.200 Professional Liability Fund Legislation

The Professional Liability Fund shall not represent to the legislature, or any individual, committee or agency thereof, a position or proposal, or any bill or act, as the position of the Professional Liability Fund of the bar without the majority approval of the Board of Directors of the Professional Liability Fund and the prior approval of the board, except as is provided in Policy 11.310.

11.300 Submission of Legislation

Appropriate legislation submitted to the membership at a meeting of the House of Delegates of the bar, or by special ballot, shall, upon an affirmative vote of the majority of the voting members, be presented to the legislature under the sponsorship of the bar. Such bills or acts may be introduced under the heading, "At the request of the Oregon State bar," or otherwise, as determined by the board. The board or its public affairs committee, shall have the right to set priorities as to the enactment of such legislation, to propose amendments or consent to amendments to legislation, and to sponsor or take positions on appropriate legislation. The approval and submission of such legislation shall not extend beyond the legislative session which shall follow a meeting of the House of Delegates of the bar at which such approval was voted on, or the next session following the approval by special election. Legislation not enacted shall not be spon-

sored in the following session unless resubmitted to the membership by one of the methods set forth above, provided that the board may, at its discretion, resubmit any such legislation in the following legislative term.

11.310 Response to Legislation

(A) During regular legislative sessions a bar committee or the executive committee of any section may, by majority vote, tentatively approve a position on a bill within its general subject area. Rather than initiating legislation, sections and committees will have the ability with this process to object to or defend bills already introduced or coming to the attention of the section or committee with minimal notice.

(B) The proposed position shall be submitted to the bar's public affairs director or the chairperson of the public affairs committee. After personal receipt of the proposition, the chairperson of the committee shall have up to 72 hours to decide whether or not to refer the tentative position to the entire committee. If the chairperson or committee approves the position, it then becomes an official position of the section or committee and representatives of the section or committee may testify or make other appropriate statements. The public affairs director shall be kept informed about the status of such positions and related activities.

If the proposition is referred to the public affairs committee, it shall determine, on behalf of the Board of Governors, whether or not it is appropriate (1) for the bar to take an official position or (2) to allow the section or committee to take a position as requested. In considering its actions, the public affairs committee will be acting as a clearinghouse for legislative proposals and will determine whether such requests are consistent with the bar's legislative program, or in the best interests of the entire bar.

11.400 Legislation of Individual Members

Nothing contained herein shall prevent any individual member of the bar from presenting any legislation, bills or acts which that member shall deem appropriate, providing the same shall not be attrib-

uted to the bar or any subdivision, committee or section thereof. While such bills, acts or legislation shall be the responsibility of the individual lawyer, or group of lawyers that may propose them, the bar staff may, with the approval of the board, offer such assistance in preparing said bills and acts and in coordinating efforts as the board may deem advisable.

11.500 Procedures

Any committee or section wishing to sponsor legislation, or any bill or act, shall inform the executive director of the bar, and through that office, the board, of the exact nature of the legislation proposed. A copy of the bill or act to be presented for the consideration and approval of the board must also be submitted to the executive director.

11.600 Uniform State Laws Committee

The uniform state laws committee shall refer any of its proposed legislation to a substantive law section or committee before such legislation can be officially submitted by the Board of Governors for ratification by the House of Delegates.

11.700 Interim Policy Positions

When the state legislature is not in regular session, a bar committee or section executive committee may (by majority vote) tentatively approve a public policy position within its general subject area. The proposition shall be submitted to the bar's public affairs director or the chairperson of the board's public affairs committee and the same procedure for responding to legislation (Policy 11.310) shall be followed. Bar staff and the public affairs committee of the board will make every effort to accommodate committees and sections which wish to express positions on relevant issues.

11.800 Government Relations Guidelines

(A) Oregon State bar legislative or policy activities shall be limited to those reasonably related to any of the following subjects:

1. The regulation and discipline of attorneys
2. The improvement of the functioning of the courts, judicial efficacy and efficiency;
3. The availability of legal services to society;
4. The regulation of attorney trust accounts;
5. The education, ethics, competence, integrity and regulation as a body, of the legal profession; or

6. The provision of law improvement assistance to elected and appointed government officials;
7. Issues involving the structure and organization of federal, state and local courts in or affecting Oregon;
8. Issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or
9. Issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

(B) The bar will make every reasonable effort to inform members of legislative positions taken by it or its committees or sections and will encourage as wide a participation as possible in formulating positions on legislative issues.

(C) Members of the bar should be persuaded to participate in their association's representative process. The Board of Governors and its public affairs committee should endeavor to respect the divergent opinions of subgroups within the legal profession. Furthermore, providing more assistance to bar sections and committees should become a vital part of the bar's public affairs effort. Such staff support activities deserve a strong commitment of bar resources.

(D) Specific

(1) bar positions on major issues will be taken by majority vote at the annual meeting of the House of Delegates. The board and its public affairs committee has the authority between meetings of the House of Delegates to take necessary action on legislative matters pursuant to the guidelines established.

(2) After receiving input from many different points of view, the board, or at the direction of the board, its public affairs committee will establish priorities for positions taken on public policy proposals. Every reasonable effort will be made to avoid committing bar funds to issues which are divisive or result in creating factions within the profession.

(3) Public Affairs Committee

(a) The public affairs committee shall encompass a balance of interests within the bar and it must consult frequently with the Board of Governors.

(b) Members of the public affairs committee will be assigned liaison responsibilities for the primary

legal subgroups and a reasonable effort should be made to keep interested parties informed about the status of particular issues.

(4) Although the board retains the authority to contract for independent lobbying services, any outside lobbyist utilized by the bar should have the skills and the mandate to provide a range of technical support. Furthermore, board members and bar staff shall have primary responsibility for coordinating the public affairs program and formally presenting bar positions.

(5) The annual meeting of the House of Delegates shall be used when possible to determine major bar positions, but members should be discouraged from using the meeting to advance the cause of special interests within the bar.

(6) Communications

(a) Attention shall be given to informing bar members about how the bar takes public policy positions.

(b) When bar positions are taken, timely membership communications shall occur. General membership involvement in the political process will be stressed.

(c) The board may use the referendum mechanism or other techniques to determine the opinion of the membership to find whether a significant membership consensus exists on major public policy questions when possible and practical.

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(a) bar staff services to committees and sections shall be expanded and integrated with the public affairs program. Committees and sections are encouraged to be more active in the legislative process.

(b) Within their areas of jurisdiction, committees and sections should provide substantial volunteer assistance to policy makers. Whenever possible these bar groups, with board or public affairs committee approval, should be allowed to present their own position on legislation.

(c) bar committees or the executive committees of sections may tentatively approve positions within their jurisdiction. The position of the bar committee or section becomes official only upon approval of the board or Public Affairs Committee.

(8) The expanded public affairs division of the bar

will further develop and utilize the key person network for grassroots contacts. Closer relations with local bars shall be fostered and their leaders asked to designate public affairs contacts. The bar shall pursue the goal of achieving closer cooperation between the members of the so-called legal and judicial lobbies.

11.900 Objections to Use of bar Dues

(A) A member of the Oregon State bar who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board of Governors to review the member's concerns to determine if the board agrees with the member's objections. Member objections shall be in writing and filed with the executive director of the state bar.

(B) The Board of Governors shall review each written objection received by the executive director at its next scheduled board meeting following receipt of such objection. The board shall respond through the executive director in writing to each objection. The board's response shall include an explanation of the board's reasoning in agreeing or disagreeing with each such objection.

(C) If the Board of Governors agrees with the member's objection it shall immediately refund the portion of the member's dues that are attributable to the activity with interest paid on that sum of money from the date of the receipt of the member's fees to the date of the bar's refund. If the board disagrees with the member's objection it shall immediately offer the member the opportunity to submit the matter to binding arbitration between the state bar and the objecting member. The executive director and the member shall sign an arbitration agreement approved as to form by the board.

(D) If an objecting member agrees to binding arbitration, the matter shall be submitted to the Oregon Senior Judges Association for the designation of three active status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The bar and the objecting member shall have one preemptory challenge to the list of arbitrators. A preemptory challenge must be filed with the executive director within seven days of the date of the notification of the list of arbitrators. In the event of no challenges or only one challenge the OSJA shall designate the arbitrator.

(E) The arbitrator shall promptly arrange for an informal hearing on the objection which hearing may be held at the Oregon State bar Center or at another location in Oregon which is acceptable to the parties and the arbitrator. The hearing shall be limited to the presentation of written information and oral argument by the state bar and the objecting member. The arbitrator shall not be bound by rules of evidence. The presentation of witnesses shall not be a part of the hearing process though the arbitrator may ask the state bar representative and the objecting member (and his or her lawyer, if any) questions. The hearing may be reported, but the expense of reporting shall be borne by the party requesting it. The state bar and the objecting member may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties.

(F) The arbitrator shall promptly decide the matter applying the standard set forth in *Keller v. State bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed.

2d 1 (1990), to the expenditures objected to by the member. The scope of the arbitrator's review shall solely be to determine whether the matters at issue are within those acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator shall apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator shall file a written decision with the executive director within fourteen days of the conclusion of the hearing. The decision of the arbitrator shall be final and binding on the parties. If the arbitrator agrees with the member's objection, the state bar shall immediately refund the portion of the member's dues that are reasonably attributable to the activity with interest paid on the amount from the date of the receipt of the member's fees to the date of the state bar's refund. If the arbitrator agrees with the state bar, the member's objection shall be denied and the file in the matter closed.

(G) Similar or related objections may by agreement of the parties be consolidated for hearing before one arbitrator.