

2003 Oregon State Bar Priorities and Legislative Proposals

Oregon State Bar Priorities

1. Access to Justice
 - Civil Legal Services
 - Indigent Defense Services
2. Justice System Issues
 - Funding for judges and judicial system
 - Court facilities
3. Law Improvement Program issues

2003 Oregon State Bar Proposals

HB 2057 (LC 434)

- Omnibus Bar Act Bill
- Uncontested bar elections
- Waiver of CSF assessment for 50-year members
- 60 day automatic review-ORS 9.536(2)

HB 2088 (LC 1278)

- Legal aid filing fees

Sections

Administrative Law

HB 2058 (LC 435)

- Omnibus bill re: Centralized Hearings Panel
- Repeal Sunset Procedural rules for contested cases *Ex parte* communication

Alternative Dispute Resolution

LC 436

- Revisions to the Uniform Arbitration Act

Business Law

LC 437

- Amendments to the Oregon Business Corporations Act

Consumer Law

SB 25 (LC 439)

- Increase Automobile exemption

SB 26 (LC 440)

- Anti-deficiency judgment statute

SB 27 (LC 441)

- UTPA amendments (Section 1 of HB 2362 – 2001 Session)
- Increase statutory damages \$200-\$500
- Modify loser pay attorney fee provision

Debtor/Creditor

HB 2059 (LC 442)

- Procedure to post bond on possessory chattel liens (storage fees)

HB 2060 (LC 443)

- Trustee notice prior to foreclosure sale

HB 2061 (LC 444)

- Modify personal injury exemption for injured party's spouse/co-debtor

Elder Law

SB 32 (LC 455)

- Guardianship modification re sunset provisions to court visitor pilot project

SB 33 (LC 456)

- Amend ORS 708A.470 to allow court to consider third party evidence re: joint ownership on bank accounts

SB 34 (LC 459)

- Impact of real estate licensing laws (SB 446) on durable power of attorney

SB 35 (LC 460)

- Amends professional fiduciary statute to require court supervision of fees

SB 36 (LC 461)

- Protective proceedings – professional fiduciaries

SB 37 (LC 462)

- Restraining orders under Elder Abuse Prevention Act

Estate Planning

LC 464

- Will/Trust harmonization

HB 2063 (LC 465)

- Uniform Principal and Income Act (UPIA)

LC 466

- Termination of beneficiary designation upon divorce

LC 467

- Uniform Durable Power of Attorney Act

Family Law Subcommittee on Adoption

SB 38 (LC 468)

- Modify UCCJEA jurisdictional provisions re: adoption

Government

SB 39 (LC 469)

- Clarify "voluntary disclosure" under evidence code

Taxation

SB 40 (LC 470)

Clarification of independent contractor statute

Workers Compensation

LC 471

Amends multiple employer hearing statute timelines and process

Committees

Procedure and Practice

SB 41 (LC 472)

Contractual attorney fee awards under void/unenforceable contract

SB 42 (LC 473)

Statute of limitations in leap year

HB 2064 (LC 474)

Use of declarations as alternatives to affidavits

HB 2087 (LC 1266)

2001 bill modifying procedures for Council on Court Procedures (HB 3251 – 2001 Session)

Unlawful Practice of Law

SB 43 (LC 475)

Modifies UPL definition to exclude certain title company activities

Public Affairs Committee General Guidelines

The bar is committed to promoting legislation that serves one or more of the following goals:

1. To provide access to justice for all Oregonians, including insuring adequate support for low income legal services and adequately funding indigent defense services.
2. To improve the efficiency and effectiveness of the judicial system, including adequate funding and facilities for the courts.
3. To increase the consistency and uniformity of laws, including statutes of limitation.
4. To support and improve the ability of attorneys to competently serve the interests of the citizens of the state, and to advise the legislature of problems proposed legislation might present to competent representation.
5. To ensure a fair and effective system of crime and punishment.
6. To oppose major new limitations on liability and other so-called “tort reforms”—especially when there is weak justification or demonstrated need.
7. To promote access and educate decision makers regarding public records and licensing discipline records.
8. To provide appropriate information and assistance regarding ethical issues to legislators, especially lawyer-legislators.
9. To improve the juvenile justice system and encourage better coordination between the different components of the system.

OSB Legislative Contacts - 2003

Below is a list of bar legislative contacts (current as of January 2003). If you have particular questions or comments regarding legislation we encourage you to contact the appropriate person. Please let us know when a contact assignment changes. (* indicates section/committee chair)

Administrative Law	Lane Shetterly*, Janice Krem	Government Law	Robert Shields*, Dan Olsen
Admiralty	John Kimmerlein	Guardianship & Conservatorship	Rita Cobb
Affirmative Action	Linda S. Law*, Stella Manabe (OSB)	Health Law	Margaret Maguire*, Steve Conklin, Kelly Hagan
Agriculture	Lawrence Rew*, Walt Gowell	Indian Law	Jennifer K. DeWald*
Alternative Dispute Resolution	William Gross*, Jim Knoll, Bill Boyd	Intellectual Properties	Charles F. Moore*, Paula Holm Jensen
Anti-Trust	Glenn Brown*, Mark A. Anderson	International Law	Christopher Ambrose*, Gregory W. Engrav
Appellate Law	David Hittle *, Jim Nass	Judicial Administration and Funding	Tom Kranovich*, Paul Petterson
Aviation	Rich Vial*	Juvenile Law	Kristine Marie Kaufman*, Ellen Jones
Bar Act and Bar Priorities	William Carter*, Bob Oleson, Susan Grabe (OSB)	Labor & Employment	Kathryn Whalen*, Lynn-Marie Crider, Henry Drummonds, Jeff Chicoine
Business Law	Catherine Shaw*, Andy Morrow, Dave Culpepper, Bob Art	Law Practice Management	John Cummins*, Stephen A. Hutchinson
Business Litigation	Loren Podwill*, Steve Werts	Lawyer Referral	Kevin Myles*
Civil Rights	Carl Kiss*, Dana Sullivan, Heidi Robinson	Legal Ethics	Richard Braun*, Sylvia Stevens (OSB)
Computer and Internet Law	Stephen Leasia*, Marc Visnick	Legal Services	Kent Thurber*, Tom Matsuda, Judith Baker (OSB)
Constitutional Law	Katherine G. Georges*, Jim Nass	Litigation	Theresa Wright*, Rich A. Lane
Construction Law	Nancy Cary *, Christopher T. Carson	Pro Bono	Joshua L. Arnold*, Michael Keeney
Consumer Law	Ronald J. Rubino*, Dick Slottee, Justin Baxter	Procedure and Practice	Mark Morrell *, Stuart Brown
Corporate Counsel	Richard W. Olsen*, Andrea Bushnell	Product Liability	Anne Marie Talcott*, Michael Banks
Criminal Law	Cynthia Easterday*, Tim Sylwester	Professional Liability	Barbara Fishleder, Ira Zarov
Debtor/Creditor	Ronald Becker*, Gary Blackledge	Public Service & Information	Holly Robinson*, Kay Pulju (OSB)
Disability Law	Paul Alig*, Bob Joondeph	Quality of Life	Michael D. O'Brien*, Kathryn Beaumont, Ann Postlewait
Elder Law	Jennifer L. Wright*, Ruth Simonis, Dady Blake, Steven Heinrich	Real Estate and Land Use	Christopher Walters*
Energy, Telecom & Utility	Ann Fisher*	Real Estate	Greg Nelson
Environmental Law	Donald Pyle*, Brian Chenoweth	Land Use	Chris Crean
Estate Planning	Bernie Vail *, Chris Cline	Securities Regulation	Steve Larson*, Michael Zusman, David Post
Family Law	Jacqueline Koch*, John H. Case, Bill Allen		
Adoption Law Subcommittee	Robin Pope, Sandra Hodgson		

Sole and Small Firm Practitioners	Russell Bevand*
Taxation	William Manne*, Karey Schoenfeld, Jeff Abbott
Unlawful Practice of Law	Theresa Wright*, Amber Bevacqua-Lynott (OSB)
Workers' Compensation	Philip Harry Garrow*, David Bussman, David E. Wilson

LAW IMPROVEMENT QUESTIONS

.	Susan Evans Grabe (OSB)
.	Joyce Patton (OSB)

OTHER INTEREST GROUPS

Access to Justice	Judith Baker (OSB)
Bar, Press and Broadcasters	Willard Chi*, Judson Randall

Computer and Electronic Information	Mardi Lyn Saathoff*, Tom E. Bahrman
Defense of Indigent Accused	Tom Kranovich*, Diana Stuart
Election Law	Doug Blomgren, Rich Botteri
Judgeships and Judicial Efficiency	Vern Gleaves
Legal Assistants Council	Roger J. Leo
Medical Profession	James Sutherland*, Robert Bonaparte
New Lawyers Division	David L. Carlson*
Uniform State Laws	Oglesby Young, Martha Walters, Joe Willis

The Political Process: Roles and Responsibilities

1.0 Introduction

In the public policy arena, the bar plays a significant role in the evaluation and consideration of administration of justice issues in the legislative and political processes. The board encourages bar groups to be involved in legislative activities within their jurisdiction subject to the bar's legislative guidelines and relevant election laws. There is a long tradition of lawyers working through the bar process to improve the quality of laws in the state of Oregon and the bar's law improvement program has served to raise the credibility of lawyers as an resource for expertise in a wide variety of areas.

The Oregon State Bar Board of Governors guidelines for legislative and political activity are set forth in BOG Policy 11.800 (attached). The guidelines are drawn from the bar's statutory purposes, constitutional limits on the use of mandatory membership fees, and election law limits on the activities of public employees. They also reflect the recognition that the Oregon State Bar has a diverse membership with differing views on many subjects.

1.1 Statutory Authority

By way of background, the Oregon State Bar is a "public corporation and an instrumentality of the Judicial Department of the government of the State

of Oregon..." ORS 9.010(1). Although the board has statutory authority to "at all times direct its power to the administration of the science of jurisprudence and the improvement of the administration of justice" (see ORS 9.080(1)), its actions are still constrained by other applicable law, including *Keller v. State Bar of California*, 496 U.S. 1 (1990). As a state entity, the bar's funds are subject to audit by the Secretary of State pursuant to ORS 297.210 and, for purposes of the expenditure of bar resources, bar "funds" are considered "public funds" and board members are subject to the restrictions on the expenditure of public funds under ORS 294.100 as public officials.

As a mandatory membership organization, the Oregon State Bar cannot engage in the wide-range of activities allowed voluntary organizations. Even though the bar is partially funded by membership fees as opposed to state general fund revenues, its unique statutory composition makes it subject to various laws. Thus, in pursuing any activity, the expenditure of public funds by the board must be related to the purposes for which the bar exists. If it is not, the public officials who permit the unauthorized expenditure may be subject to personal liability under ORS 294.100.

1.2 Keller Standard

The U.S. Supreme Court's decision in *Keller v. State Bar of California* set the parameters for what a mandatory state bar can do under the First Amendment. In *Keller*, a member of the California bar contested the bar's use of compulsory dues to support and/or advocate "political or ideological" views in violation of his First Amendment rights. The U.S. Supreme Court held that a mandatory state bar's use of compulsory dues to finance political and ideological activities violates the First Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

The court did not establish a particularly clear standard 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 which were prohibited on the one hand and disciplining bar members or adopting changes to the profession's ethics code as acceptable on the other hand. We believe the broad middle area of law improvement is appropriate if it is germane to the bar'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. The Board of Governors has set the scope of OSB permitted activities under *Keller* in BOG Policy 11.800(A).

Additionally, the bar's guidelines for legislative and policy activities require that the Board of Governors "endeavor to respect the divergent opinions of subgroups within the profession" and make reasonable efforts to "avoid committing bar funds to issues which are divisive or result in creating factions within the profession." See BOG Policy 11.800.

1.3 Oregon Election Law

Oregon election law sets the parameters for permissible bar activity relating to initiatives and elections. Members of the Board of Governors are public officials for the purpose of ORS 294.100(1). ORS 294.100(1) provides that "It is unlawful for any public official to expend money in excess of the amounts, or for any other or different purposes than provided by law."

While bar employees may not be public employees for the purposes of ORS 260.432, the Board of

Governors has taken a cautious approach on this subject in light of the lack of judicial precedent on this question. According to ORS 260.432(1) "No person shall attempt to, or actually, coerce, command or require a public employee to influence or give money, service or other thing of value to promote or oppose...the adoption of a measure...." Further, ORS 260.432(2) prohibits public employees from promoting or opposing the adoption of a measure "while on working hours." This prohibition, does not, however, restrict the right of a public employee to express personal political views.

1.4 OSB Board Member ("Elected Official") Roles and Responsibilities

ORS 260.432 could well prohibit board members from asking bar staff to assist them in supporting or opposing initiative measures. However, the board may do the following:

- 1) Advocate support or opposition to a measure or candidate so long as the board member, as a public official, does not use public resources. A board member may, however, use staff-prepared informational materials for reference purposes.
- 2) Use public resources and staff to develop and distribute objective material on the effects of an initiative measure. The material must be informational and must provide a fair presentation of the facts. It cannot advocate a particular position, but it can explain the effects the measure would have on the state bar if approved.
- 3) Take a position on an initiative measure provided public resources are not used to advocate the position taken or to have it distributed. Public announcement of the board's position by way of a press release is permissible.
- 4) Provide, at bar expense, a content neutral forum at which proponents and opponents of an initiative measure may present their views so long as the information is not used to lead voters to support or oppose a particular position in the election.
- 5) Personally campaign for or against a measure so long as they do not use public resources. However, bar employees must campaign on initiative measures in their individual capacities outside of working hours or employment and without expending any public funds.

Board members may not do the following:

- 1) In the role of a supervisor, request bar staff to perform any political activity
- 2) Have an opinion piece or letter advocating a political position published in a publication produced or distributed by bar staff.

1.5 Recent bar activities

The state bar has over the last several years become involved in challenging initiative measures that affect the bar and the judicial system. The board and House of Delegates have taken positions opposing certain measures. However, due to the foregoing election law constraints, the bar has limited its activities to taking a position on an issue and then providing content neutral public forums and information sharing on the pros and cons of an issue. Our activities have also involved general public education on issues important to the justice system.

This year, in response to Ballot Measures 21 and 22, the board sent resolutions in opposition to the two measures to the HOD which were adopted at its October 5 meeting. It even went so far as to allow the Constitutional Law Section and the Oregon State Bar to be listed in the Voters' Pamphlet as opponents of the measures. We felt that action was permissible and appropriate.

1.7 OSB Section/Committee Roles and Responsibilities

Sections and committees of the bar operate under the umbrella of the bar and thus are subject to the same legal constraints as the board. In light of the political restrictions outlined above, here are some examples of activities that are permitted and some

that are restricted:

- 1) Bar groups may propose legislation within their area of jurisdiction subject to BOG approval.
- 2) Bar groups may take positions or respond to public policy activities on legislation. OSB Section/Committee leaders cannot use bar funds to advocate a position on a ballot measure. This means money, staff time during working hours, travel allowances, facilities or equipment. Section/committee members or officers cannot ask staff to research or write a speech designed to support or oppose a ballot measure or charge travel expenses for attending a meeting at which such a position is advocated.
- 3) Bar groups may coordinate or liaison with any group to engage in information gathering on issues involving the bar, the judicial system, the judicial department budget and issues relating to the administration of justice. Meetings to develop strategies to pass or defeat any measure or candidate are not permitted.
- 4) Bar groups can develop legislation for sponsorship to be included in the bar's legislative package or take positions on legislation that fall within Keller and legislative guidelines subject to OSB Public Affairs Committee approval.
- 5) Bar groups may not advocate a political position for or against an initiative or referendum or candidate.
- 7) No bar staff time, money or resources may be spent on political advocacy in support or opposition of a measure or candidate.