

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 18, 2017  
**Open Session Minutes**

President Michael Levelle called the meeting to order at 12:30 p.m. on November 18, 2017. The meeting adjourned at 4:25 p.m. Members present from the Board of Governors were John Bachofner, Whitney Boise, Jim Chaney, Chris Costantino, Eric Foster, John Mansfield, Eddie Medina, Vanessa Nordyke, Tom Peachey, Per Ramfjord, Kathleen Rastetter, Liani Reeves, Julia Rice, Traci Rossi, Kerry Sharp and Elisabeth Zinser. Not present were Rob Gratchner, Guy Greco, and Ray Heysell. Staff present were Helen Hirschbiel, Amber Hollister, Rod Wegener, Dawn Evans, Susan Grabe, Dani Edwards, Jonathan Puente, and Camille Greene. Also present: Kaori Eder, ONLD Chair, Jennifer Nicholls, ONLD Chair-elect; Carol Bernick, PLF CEO; Tim Martinez, PLF Board of Directors; Kelly Harpster, Futures Task Force Paraprofessional Workgroup Chair; and 2018 BOG-elect members: Colin Andries, John Grant, Michael Rondeau, and David Wade.

**1. Call to Order/Finalization of Agenda**

The board accepted the agenda, as re-ordered, by consensus.

**2. 2018 President & President-elect Elections**

Ms. Nordyke confirmed Ms. Costantino as 2018 President-elect. Mr. Levelle confirmed Ms. Nordyke as 2018 President.

**3. Strategic Areas of Focus for 2017**

**A.1. Paraprofessional Licensing**

Ms. Hirschbiel recounted the Futures Task Force Recommendation to establish a Paraprofessional Licensing Implementation Committee and the BOG's decision at its September 2017 meeting to instead establish an "Exploration Committee." Ms. Hirschbiel reported that in recruiting members to serve on the exploration committee, she has encountered issues of concern as outlined in her memo. **[Exhibit A]** Ms. Hirschbiel then introduced Ms. Harpster who served as the Futures Task Force Paraprofessional Licensing Workgroup Chair and invited her to share some of her concerns.

Ms. Harpster noted the difficulty in getting people to serve on another committee charged with studying the proposal without the Board's commitment to the concept. She noted that bar task forces have studied and reported on the paraprofessional licensing concept in 1992, 2015 and most recently in 2017. Because of this, it was difficult to convince individuals to revisit the issue as part of the Futures Task Force Paraprofessional Licensing Workgroup. Fleshing out the details of the proposal set forth in the Futures Task Force Report will require considerable volunteer time and effort. It will involve soliciting input from stakeholders and shaping that input into a detailed, viable program. Volunteers are likely to be reluctant to commit to that work, knowing that the work is likely to be shelved down the road. Further, some individuals may not be committed to building consensus, knowing there is a possibility of killing the proposal entirely. Ms. Harpster encouraged the Board to make a decision about whether it wants to proceed with paraprofessional licensing, or not. If it does, then the Board should clearly say so, by establishing an implementation committee as recommended by the Task Force. If it does not, then it would be better to take a step back from the idea for the time being.

Ms. Hirschbiel noted four options for the Board to consider as outlined in her memo. Mr. Levelle asked the board to consider these four options and opened the floor for discussion.

Ms. Costantino said that she sees potential problems with assumptions made in the proposal, but generally supports the concept, especially as a tool for serving unmet needs in routine family law matters, and would like to take the steps necessary to flesh out the details. She volunteered to be on the committee to work out these details and see how paraprofessional licensing might be accomplished.

**Motion:**

Mr. Mansfield moved, Ms. Rastetter seconded that the board adopt the recommendation of the Futures Task Force to create a paraprofessional licensing implementation committee charged with engaging stakeholders to develop a plan for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force Report. Mr. Levelle opened the floor for discussion.

Ms. Rice would like to know additional details about the program before agreeing to pursue implementation as it is difficult to support a program without knowing its details. Mr. Foster agreed. Mr. Levelle supports an "Implementation" rather than "Exploration" committee. Ms. Reeves suggested they change "consistent with" to "considering" in order to give the committee some flexibility in establishing details of the program, because the committee may wish to propose a program that diverges from the task force recommendations after hearing stakeholder input. Mr. Sharp understands how the proposal may cause concern for attorneys, but he believes licensing paraprofessionals helpful for the public of Oregon who need legal services, and he prefers we move forward. Mr. Ramfjord suggested the board vote on the motion. Mr. Peachey agreed and added there should be a law school representative on the committee.

The board voted in favor of the motion. Ms. Rice, Mr. Foster and Ms. Reeves were opposed.

**A.2. Futures Task Force Recommendation Status Update**

Ms. Hirschbiel gave an update on the current status of task force recommendations. **[Exhibit B]** In the future these will be included in her CEO report to the board. She encouraged the board to give input and not lose sight of the work the task force has done.

**2017 HOD Summary of Actions**

Mr. Levelle gave a summary of the 2017 HOD meeting and noted a need for action regarding next steps with respect to the proposed amendment to RPC 5.4 that was referred back to the BOG for further study. Mr. Levelle invited discussion from board members and staff about how to proceed. Mr. Bachofner said, in reference to the resolution to amend RPC 5.4, it is an issue of the board narrowing the focus of the proposal to the areas of most need. Mr. Grant suggested the board communicate more with the membership so they do not feel they were caught off guard. Ms. Costantino asked if we could publish the agenda earlier to give the membership more time to consider the resolutions. Ms. Hirschbiel reminded the board that they could put a resolution on the agenda at any time during the year. She suggested the board consider expanding the scope of the study of the amendment to RPC 5.4 to allow for consideration of alternative business structures. Ms. Nordyke said the board will develop a timeline for further study.

**Motion:**

Mr. Peachey moved, Mr. Ramfjord seconded, that a committee be established to continue study of possible amendments to RPC 5.4, including the possibility of allowing for alternative business structures. The motion passed unanimously.

**3B. Review of New Lawyer Programs Update**

Ms. Nordyke encouraged the board to evaluate and share the survey data re: the review of the new lawyer program that was presented at the board's retreat on November 17, 2017.

Ms. Reeves asked why we are hosting a Rural Summit at the OSB Center. Ms. Nicholls said it was because the cost of an alternative location was prohibitive and that webcasting would be available at the OSB Center.

**3C. Diversity Action Plan**

Ms. Hirschbiel asked Mr. Puente to present the draft Diversity Action Plan for BOG review. **[Exhibit C]** The Diversity Advisory Committee's (DAC) first area of focus was the operational side of the OSB. The second focus was the bar membership, and the third was the public. The DAC focused on creating systemic change

and accountability. This strategic plan included goal ownership by DAC members and is focused on being proactive rather than reactive – be leaders.

Ms. Reeves outlined the ways the board be involved: active engagement with specialty bars, apply the diversity & inclusion lens to all decisions they make, and cultivate diverse leadership through recruitment and appointments.

Mr. Grant asked for clarification on the data sources for these goals and the measurement tools involved. Ms. Hirschbiel said that data driven goals were a big part of developing the plan and determining the definition of diversity. The DAC recommends that the bar concentrate on collecting data and promoting inclusion, and in hopes that increased diversity will follow.

**Motion:** Ms. Rice moved, Mr. Foster seconded, that the board accept the draft Diversity Action Plan. The motion passed unanimously. The final draft will be presented to the board at a special open session on January 5, 2018.

Mr. Levelle wanted to be certain the Diversity & Inclusion budget is on the board's radar in 2018. Ms. Hirschbiel assured him she will make sure it is on the Budget & Finance Committee agenda in early 2018.

#### **4. BOG Committees, Special Committees, Task Forces and Study Groups**

##### **Board Development Committee**

Mr. Ramfjord gave a summary of the appointment process and asked the board to approve the Board Development Committee's various recommended appointments. **[Exhibit D]**

**Motion:** The board voted unanimously in favor of accepting the committee recommendations. The motion passed unanimously.

##### **Budget & Finance Committee**

Mr. Chaney gave a financial update and presented the 2018 budget for approval. **[Exhibit E]**

**Motion:** The board voted unanimously in favor of approving the 2018 budget. The motion passed unanimously.

##### **Policy & Governance Committee**

Ms. Nordyke asked Ms. Hollister to present the Committee recommendation that the Board of Governors adopt the amendments to the OSB Bylaws to reconcile the Bylaws with recent amendments to the Bar Act and the Bar Rules of Procedure. **[Exhibit F]**

**Motion:** The board voted unanimously in favor of amending the OSB Bylaws as presented in the committee motion. The motion passed unanimously.

Ms. Nordyke said the committee will ask the board to approve the committee recommendation to add the President's Technology & Innovation Award at a future meeting.

##### **Public Affairs Committee**

Ms. Rastetter gave a general update on legislative activity. The committee is working on section input for legislative proposals which are due April 1, 2018 for the 2019 long session.

Ms. Grabe updated the board on the public affairs department's coordination with the attorney general's office on consumer protection legislation. She gave an update on the proposed self-help centers legislation that is active in the 2018 short session. The first center would be placed in the Multnomah County Courthouse as a pilot project.

## 5. Professional Liability Fund

Ms. Bernick gave a general update and presented the 2018 Primary, Excess and ProBono Plans for approval. Ms. Campbell will be taking Bruce Schafer's position as Director of Claims when he retires. Mr. Martinez reported on the PLF financial status. The PLF portfolio is very balanced and has been helped by the market rise. Claims are down over the past four years. The incoming Chair, Dennis Black, will focus on the budget to eliminate drastic changes in the future. Mr. Martinez reported that several states are inquiring about the PLF with an interest in implementing a program in their state.

**Motion:** Ms. Zinser moved, Mr. Mansfield seconded, and the board voted in favor of approving the plans. Mr. Bachofner, Mr. Chaney, and Mr. Peachey abstained. The motion passed.

## 6. OSB Committees, Sections, Councils and Divisions

### Oregon New Lawyers Division

Ms. Eder gave an update on the current activities of the ONLD which included reaching out to the PLF to coordinate the Learning the Ropes seminar, members attending the ABA conference in Colorado, a Pro Bono Celebration afternoon of three hours of CLEs which was also simulcast in four locations, and various other past and future activities covered in the written report. She introduced the 2018 ONLD Chair, Jennifer Nicholls, who gave a brief update on the Regional Rural Summit scheduled for September 21, 2018.

### Legal Ethics Committee

Proposed OSB Formal Ethics Opinion 2017-XXX: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share.

Ms. Hirschbiel presented the Legal Ethics Committee (LEC) request for the Board of Governors to decide whether to adopt the attached proposed formal ethics opinion. **[Exhibit G]**

**Motion:** Ms. Rice moved, Mr. Foster seconded, to table the adoption of the formal ethics opinion until the next board meeting when more information will be provided. The motion passed unanimously.

Ms. Hirschbiel will return the opinion to the LEC for more information at their December 16, 2017 meeting.

### MCLE Committee Rule Amendment

Ms. Hollister presented the MCLE Committee request that the board approve the MCLE Committee's recommendation to amend the MCLE Rules and Regulations to allow members to claim Category II credit for service on certain committees and councils that are responsible for drafting court legal rules or jury instructions. **[Exhibit H]**

**Motion:** Mr. Bachofner moved, Ms. Nordyke seconded, to approve the recommended amendment as presented. The motion passed unanimously. The rule will go to the Supreme Court for approval.

### Report of the President

Mr. Levelle called the board's attention to the statement on the Washington State Bar Association's (WSBA) website re: white nationalism. He has a Farewell Remarks article in the December 2017 *Bulletin* asking what can the membership do within the Keller limitations. He asked the board to become vocal going forward, issuing statements, to raise awareness. Mr. Chaney opined that the WSBA statement did not go far enough and that the Board of Governors consider making a bolder statement. Mr. Puente said local attorneys have

asked what the bar's role is in this issue. Staff will present a draft statement for the Board to consider adopting at its special meeting in January 2018.

Mr. Levelle asked the board to discuss Lawrence K. Peterson's letter to the editor in the August/September 2017 *Bulletin* re: Disregarding Local Input in Selecting Judges. Ms. Rastetter noted that Mr. Peterson approached her and asked that the board consider the issue.

**Motion:** Mr. Bachofner moved, Mr. Boise seconded, to take no action. After discussion, the motion was withdrawn by Mr. Bachofner, Mr. Boise agreed.

Mr. Levelle will send a letter of response to Mr. Peterson.

#### **Report of the President-elect**

Ms. Nordyke reported on the Diversity Action Plan with the goal of looking for big and small solutions that are revenue neutral. She encouraged the board to think about these issues, talk with other lawyers, and study the statistics.

#### **Report of the Chief Executive Officer**

Ms. Hirschbiel highlighted some information contained in her written report to the Board.

#### **Director of Regulatory Services**

As written.

#### **Director of Diversity & Inclusion**

As written.

#### **MBA Liaison Report**

Ms. Reeves reported on the November 7 MBA board meeting. There was a robust discussion on fee sharing and they recently changed banks.

### **7. Consent Agenda**

Mr. Levelle asked if any board members would like to remove any items from the consent agenda for discussion and a separate vote. There was no request to do so.

**Motion:** Mr. Chaney moved, Ms. Nordyke seconded, and the board voted unanimously to approve all items on the consent agenda.

### **8. Closed Sessions – see CLOSED Minutes**

#### **A. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel/UPL Report**

The board went into closed session.

The board reconvened in open session to vote on the action item on the closed agenda.

**Motion:** Ms. Reeves moved, Mr. Mansfield seconded, to table the vote until the special board meeting in January.

The board went back into closed session to discuss the motion.

The board reconvened in open session to continue their vote on the action item on the closed agenda. The motion passed unanimously.

### **9. Good of the Order**

**Oregon State Bar  
Board of Governors Meeting  
November 18, 2017  
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Unlawful Practice of Law Litigation

Lara Dubuque and A-1 Quality Paralegal  
(UPL Case No. 2016-27)

The UPL Committee seeks authority to seek an injunction against Josephine County paralegal Lara Dubuque, whose business, A-1 Quality Paralegal, has been the subject of seven prior UPL investigations. The committee has located two injured customers who are willing to cooperate. The case is also being referred to DOJ and the Secretary of State.

Ms. Hollister informed the board of the non-action items.

B. Pending Non-Disciplinary Litigation

Ms. Hollister informed the board of non-action items.

C. Tort Claims Notices

Ms. Hollister informed the board of non-action items.

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# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 19, 2017  
**From:** Helen M. Hirschbiel, CEO  
**Re:** Futures Task Force Recommendation re: Paraprofessional Licensing

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### Action Recommended

Reconsider the BOG decision to establish a Paraprofessional Licensing Exploration Committee.

### Background

At its September 8, 2017 meeting, the Board of Governors decided to establish a Paraprofessional Licensing Exploration Committee as set forth in the attached memo.

In recruiting members for the committee, staff has encountered issues of concern. Some stakeholders see service on the committee as an opportunity to kill the proposal. Others are reluctant to volunteer their time to develop the proposal further, with the possibility that no action will be taken in the end.

In order to address these issues, staff recommends that the Board reconsider its decision to establish an Exploration Committee. Other options for action include:

1. Adopt the recommendation of the Futures Task Force Regulatory Committee to create a Paraprofessional Licensing Implementation Committee, charged with engaging stakeholders to develop a plan for licensing paraprofessionals consistent with the recommendations set forth in the Futures Task Force Report. Recommend committee members for BOG appointment.
2. Continue to seek feedback from members and reconsider at a set date in the future.
3. Continue efforts to establish Exploration Committee.
4. Do nothing.

Attachment: September 8, 2017 BOG Memo



# Status of OSB Futures Task Force Recommendations

<b>I. Changes to Rules of Professional Conduct</b>				
<b>Task Force Recommendation</b>	<b>Rec. No. and Full Report Reference</b>	<b>Current Status</b>	<b>Next Steps</b>	<b>Timeline</b>
<b>A.</b> Adopt Recommendation to Amend Oregon RPC 7.3, which has already been adopted by the Board in substance, with (very slightly) modified wording.	2.1 Pages 36-38	Approved by HOD.	Submit to OR Supreme Court for adoption.	December 2017
<b>B.</b> Adopt Recommendation to Amend Oregon RPC 5.4 to permit fee-sharing with lawyer referral services, with adequate disclosure to consumers.	2.2 Pages 38-40	Referred back to BOG for further study.	Establish committee for further review and scope of charge.  Send to LEC for further review of ethics issue.	
<b>C.</b> Direct the Legal Ethics Committee to consider whether to amend Oregon RPCs to allow fee-sharing or law firm partnership with paraprofessionals and other professionals.	2.3 Pages 40-43	Waiting for BOG decision on whether to license paraprofessionals.		

## II. Regulation/Development of Alternative Legal Service Delivery Models

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
<p><b>A.</b> Convene a paraprofessional licensing implementation committee to prepare a detailed proposal for Board and Supreme Court.</p>	<p>1.1 to 1.11 Pages 3-26</p>	<p>Developing exploration committee.</p>	<p>Bring to BOG for discussion and approval.</p>	
<p><b>B.</b> Direct Public Affairs Committee to craft legislative approach related to online document review and consumer protections generally consistent with the approach outlined by Report.</p>	<p>2.4 Pages 43-45</p>	<p>BOG sent to PAC.  PA Director working with stakeholders.</p>	<p>Continue work with stakeholders.</p>	
<p><b>C.</b> Direct Public Affairs Committee to craft legislative approach related to Self-Help Centers and Court facilitation that is generally consistent with the approach outlined by Report.</p>	<p>3.2 Pages 48-51</p>	<p>BOG sent to PAC.  PA Director working with stakeholders.</p>	<p>Continue work with stakeholders.</p>	

### III. Support Court and Legal Aid Efforts to Increase Access and Explore Innovation

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
<p><b>A.</b> Establish an Ad Hoc committee of stakeholder representatives from OJD/LASO/OSB tasked with streamlining self-navigation resources</p>	<p>3.1 Pages 47-48</p>	<p>BOG sent to CEO.  Committee established. First meeting held.</p>	<p>Continue meetings.  Coordinate with OSCIF and OSC CJI re topic areas</p>	
<p><b>B.</b> Direct Staff to Explore Ways to Support Stakeholder Efforts to Improve Family Law and Small Claims Court Processes</p>	<p>3.3-3.4 Pages 51-54</p>	<p>BOG sent to CEO.  CEO attending OSC Civil Justice Initiative Task Force meetings.</p>	<p>Continue to attend OSC CJI meetings and report to BOG</p>	
<p><b>C.</b> Develop Blueprint for Nonfamily Law Facilitation Office</p>	<p>5.2 Page 65</p>	<p>BOG sent to CEO.  CEO attending OSC Civil Justice Initiative Task Force meetings</p>	<p>Do not pursue as separate initiative.  Continue to attend OSC CJI meetings and report to BOG  Continue to support court funding for self-navigator resources.</p>	
<p><b>D.</b> Promote use of technology to increase A2J in Lower Income &amp; Rural Communities</p>	<p>7.2 Page 70</p>	<p>BOG sent to CEO.  LSP including technology in accountability review process.  CEO attending Civil Justice Initiative Task Force meetings</p>	<p>Continue to attend OSC CJI meetings and report to BOG.  Conduct accountability review process.</p>	
<p><b>E.</b> Take steps to make legal services more accessible in Rural Areas</p>	<p>7.3 Page 71</p>	<p>BOG sent to CEO.  LSP including rural service in accountability review process.</p>	<p>Conduct accountability review process.</p>	

		<p>Rural Opportunity Fellowship under review by D&amp;I Director.</p> <p>Completion of series in OSB Bulletin on rural law practice opportunities.</p> <p>ONLD planning Rural Summit at OSB Center to explore access to justice issues on September 21, 2018</p>	<p>Complete review. Make changes as appropriate.</p> <p>Hold Summit.</p>	
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#### IV. Enhancement of Existing Bar Programs and Resources

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Ask PSAC to explore ways to increase availability to unbundled services offered through LRS	3.5 Pages 54-55	PSAC/LRS exploring.		
B. Continue to Improve & Enhance Resources for Self-Navigators	3.6 Pages 56-57	BOG sent to CEO.  Participating in SFLAC pro se assistance subcommittee.  Supporting court funding of self-navigator resources.	Continue SFLAC participation.  Continue support of court funding for self-navigator resources.	
C. Work to improve the public perception of lawyers	7.4 Page 72	BOG sent to CEO.  Media/public relations manager working with media.	Continue work with media.	
D. Expand the Lawyer Referral Service and Modest Means Program		BOG sent to CEO.		
1. <b>Set Goal to increase LRS Inquiries by 11% by Next 4 Years</b>	5.1 Page 64			
E. Enhance Practice Management Resources				
1. <b>Develop Comprehensive Training Curriculum re Modern Law-Practice Management Methods</b>	6.1 Page 65-68	Sent to PLF.		
2. <b>Promote unbundled legal services</b>	7.1 Page 69	Sent to PLF.  Fee Agreement Compendium being updated to include broader sampling of alternative fee agreements.  GCO continues to provide CLEs on ethics of unbundling.		

## V. BOG Policy Development

<b>Task Force Recommendation</b>	<b>Rec. No. and Full Report Reference</b>	<b>Current Status</b>	<b>Next Steps</b>	<b>Timeline</b>
<b>A. Embrace Data-Driven Decision-Making</b>	4 Page 61		Send to PGC	2018
<b>1. Adopt Data-Driven Decision Making Policy</b>	4.1 Page 61		Send to PGC	
<b>2. Adopt formal Set of Key Performance Indicators to Monitor State of Values</b>	4.2 Page 62		Send to PGC	
<b>3. Adopt Open-Data Policy</b>	4.3 Page 62		Send to PGC	
<b>4. Dedicate OSB Resources to Data collection, design and dissemination</b>	4.4 Page 63	BOG sent to CEO.  New Association Management Software (AMS) implementation in process.  Legal Needs Study in process.  Data collection for OSB Economic Survey complete.  Data collection for survey of new lawyers complete.	Continue AMS implementation.  Finish Legal Needs Study.  Publish results of Economic Survey  Discuss results of New Lawyer Survey and determine next steps.	2018

## VI. Development of New Bar Programs

Task Force Recommendation	Rec. No. and Full Report Reference	Current Status	Next Steps	Timeline
A. Create Incubator/Accelerator Program	8 Page 86-93	Question included in new lawyer survey  Under consideration as part of new lawyer program review		
1. Dedicate staff as project manager				
2. Form a Program Development Committee to help design and implement the program				

Questions for discussion:

- Are there questions regarding the proposal?
- Do we need more information?
- What are the risks of action/no action?
- Is feedback needed before adopting the recommendation? If so, from whom and by when?
- What is the timeline for making a decision?
- What is the timeline for implementation?
- Are there alternatives to this recommendation?
- Other?

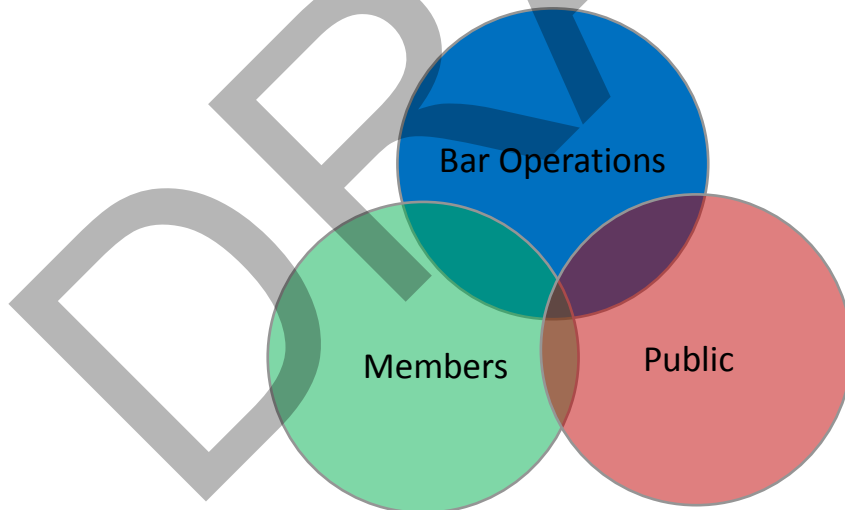
## Diversity Action Plan Mission Statement

The Oregon State Bar practices and reflects the values of diversity, inclusion and equity in its service to the public and its members as well as in its internal operations.

**Membership** We strive to build and retain a diverse and inclusive bench and bar. We support members reaching their full professional potential by eliminating barriers and creating opportunities in the law.

**Public Outreach** We strive to achieve equitable access to legal services and to generate public awareness about the legal system and bar services among all Oregon communities.

**Bar Operations** We strive to create a welcoming environment where staff feel a sense of community and are fully engaged to achieve the bar's mission.





# Membership Sphere

## GOAL 1 Increase and sustain a diverse Oregon State Bar and bench.

### STRATEGY 1 Identify and gather information on experiences of diverse lawyers.

#### ACTION 1 Conduct climate surveys.

**2018** Create climate surveys to identify the barriers and opportunities faced by diverse lawyers in Oregon. COMMUNICATIONS

**2018** Conduct climate surveys. COMMUNICATIONS

**2018** Conduct exit surveys for diverse lawyers who leave the state or withdraw from active practice. COMMUNICATIONS

#### ACTION 2 Facilitate focus groups to gather feedback on member experiences.

**2019** Create and conduct focus groups utilizing the information gleaned from the climate surveys. COMMUNICATIONS

**2020** Report to bar leadership on the focus group findings. COMMUNICATIONS

#### ACTION 3 Analyze attorney fee rates and economic survey data to identify disparities for lawyers from non-dominant cultures.

**2018** Correlate information gleaned from A1 and A2. COMMUNICATIONS

**2019** Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

### STRATEGY 2 Ensure the effective retention of diverse bar members.

#### ACTION 1 Develop D&I programs and other bar resources targeted to support diverse lawyers new to Oregon.

**2019** Use the results from the DAP surveys and focus groups to identify new program needs. DIVERSITY & INCLUSION

**2020** Expand D&I programming to address lateral hire retention. DIVERSITY & INCLUSION

**2020** Expand D&I programming to address new member retention. DIVERSITY & INCLUSION

#### ACTION 2 Conduct outreach with legal employers to determine best practices for retaining diverse lawyer employees.

**2018** Collect information from legal employers. DIVERSITY & INCLUSION

**2019** Provide revised best practices toolkit to legal employers. DIVERSITY & INCLUSION

**2020** Evaluate toolkit and outreach efforts. DIVERSITY & INCLUSION

#### ACTION 3 Develop resources to assist legal employers in creating a diverse workforce.

**2018** Create a business case identifying the benefits of employing diverse lawyers. DIVERSITY & INCLUSION

**2019** Create resources to assist employers with lateral hire retention programs. DIVERSITY & INCLUSION

**2020** Begin to assess impact and reach of resources. DIVERSITY & INCLUSION

**STRATEGY 3** Encourage, support, and promote diverse bar members in seeking judicial positions.

**ACTION 1** Review the bar's process for obtaining feedback on judicial candidates to ensure it is qualitative in nature and supports the DAC's mission.

*2018* Modify bar bylaws to eliminate bar polls for judicial selection process. PUBLIC AFFAIRS

*2018* Survey specialty bars regarding judicial screening process. PUBLIC AFFAIRS

**ACTION 2** Increase outreach to diverse bar members regarding judicial positions.

*2018* Assess notice of judicial vacancy recipient list and webpage placement of notices. PUBLIC AFFAIRS

*2018* Assess placement of judicial vacancy notice to specialty bars and publications. PUBLIC AFFAIRS

*2018* Modify judicial appointment recommendations process to assess cultural competency. PUBLIC AFFAIRS

**STRATEGY 4** Collaborate with and support specialty bars and other organizations that are composed of diverse memberships (hereinafter "specialty bars").

**ACTION 1** Participate in meetings between specialty bars and OSB leadership to learn about specialty bars' experiences and perceptions of the OSB as an institution and of the OSB leadership. ("OSB leadership" to be defined through the development of the agenda with the specialty bars and the facilitator.)

*2018* Work with specialty bars as requested in order to choose a facilitator and develop agendas. EXECUTIVE SERVICES

*2018* Provide OSB financial support for facilitating dialogue. DIVERSITY & INCLUSION

*2018* Attend the meetings and ensure OSB leadership participation, and follow up as appropriate. EXECUTIVE SERVICES

**ACTION 2** Increase Board of Governors' awareness and support of the work engaged in by specialty bars.

*2018* Organize a reception in conjunction with a BOG meeting, and invite specialty bars to attend and network with the BOG. EXECUTIVE SERVICES

*2018* Invite specialty bars to attend and/or submit reports to BOG meetings, to report on their activities and events. EXECUTIVE SERVICES

*2018* Ensure BOG representation at specialty bar events. EXECUTIVE SERVICES

*2019* Implement changes to the BOG's participation in specialty bar work as agreed upon during the facilitated joint leadership meetings.

**ACTION 3** Assist specialty bars in promoting their activities and events to OSB leadership and to OSB membership.

*2018* Conduct outreach with specialty bars on the services OSB can provide. MEMBER SERVICES

*2018* Improve placement and accessibility of specialty bar information on the OSB website. MEMBER SERVICES

*2019* Include specialty bar events on the OSB website calendar in accordance with OSB communication guidelines. MEMBER SERVICES

*2018* Invite specialty bars to have a table and to include promotional materials at OSB events in order to showcase their organizations and recruit members. MEMBER SERVICES

**ACTION 4** Increase OSB technical support of specialty bars.

**2018** Explore possibilities for adding information about joining specialty bars to membership fee statement (at dues payment/renewal). ACCOUNTING

**2018** Enhance administrative support provided to specialty bars, such as managing event RSVPs, maintaining membership lists, and distributing event notices. MEMBER SERVICES

**2018** Provide specialty bars free access to OSB membership lists through the public records process. MEMBER SERVICES

**2018** Update and enhance resource list of OSB services to support specialty bars. MEMBER SERVICES

**STRATEGY 5** Support an effective pipeline of diverse law students who feel sustained, welcomed, and encouraged to practice law in Oregon.

**ACTION 1** Increase D&I program effectiveness.

**2018** Analyze current effectiveness based on data, current trends, and known issues. DIVERSITY & INCLUSION

**2019** Implement changes to D&I programming based on findings of analysis, to provide opportunities for law and pre-law students, including professional connections, legal experience, and financial support. DIVERSITY & INCLUSION

**2019** Formalize D&I program applicant criteria and review the application process to ensure fairness, transparency, and applicant pool reach. DIVERSITY & INCLUSION

**2020** Review progress based on implemented changes. DIVERSITY & INCLUSION

**ACTION 2** Support diverse law students in Oregon through mentorship and community building, to encourage them to practice in Oregon upon graduation.

**2018** Collaborate with Oregon law schools and other partners to create a robust and effective OLIO orientation program. DIVERSITY & INCLUSION

**2019** Implement Oregon Council on Legal Education and Admissions to the Bar (OCLEAB) agenda item asking Oregon law schools to report on their diversity trends. ADMISSIONS

**2020** Review progress based on implemented changes. DIVERSITY & INCLUSION

**STRATEGY 6** Increase lawyer engagement in community organizations that encourage diverse individuals to pursue legal education.

**ACTION 1** Create awareness in the legal community about existing programs, to encourage diverse individuals to pursue legal education.

**2018** Create a list of schools with pre-law programs, high schools with mock trial programs, and other educational organizations with school engagement initiatives. DIVERSITY & INCLUSION

**2019** Work with specialty bars, sections, committees and other bar members to encourage member participation in the programs. DIVERSITY & INCLUSION

**2020** Obtain program feedback to evaluate effectiveness and reach. DIVERSITY & INCLUSION

## **GOAL 2** Identify and work to eliminate barriers for diverse members in the legal profession.

### **STRATEGY 1** Increase OSB efforts to educate members on the value of diversity, equity, and inclusion.

**ACTION 1** Review the applicable MCLE rules and regulations to determine whether programs approved for Access to Justice credit support the DAC's mission.

**2018** *Develop any needed changes to the MCLE rules and regulations.* DIVERSITY & INCLUSION

**2019** *Secure approval by MCLE Committee and Supreme Court of changes to MCLE rules and regulations.* MCLE

**ACTION 2** Sponsor, promote, and encourage elimination-of-bias CLE programming, including implicit bias, equity, systemic racism, institutional racism, etc.

**2018** *Deliver programming regarding ORPC 8.4.* CLE SEMINARS

**ACTION 3** Promote Legal Employers Toolkit to legal employers.

**2018** *Work with the Diversity Section to complete toolkit.* DIVERSITY & INCLUSION

**2019** *Distribute toolkit.* DIVERSITY & INCLUSION

**2020** *Obtain feedback from toolkit recipients.* DIVERSITY & INCLUSION

**ACTION 4** Publish articles in the Bulletin related to diversity, equity, and inclusion.

**2018** *Develop a pool of potential authors and publication schedule.* COMMUNICATIONS

**2018** *Develop process for inviting specialty bars to submit article ideas or written submissions for publication in the Bulletin.* COMMUNICATIONS

**2018** *Consider developing a regular column on diversity, equity and inclusion.* COMMUNICATIONS

**2019** *Publish articles using the pool and according to the schedule.* COMMUNICATIONS

### **STRATEGY 2** The BOG functions in a way that is open and inclusive of different perspectives and experiences.

**ACTION 1** Task the Board Development Committee with assessing needs and with using the assessment to provide programming for the BOG on diversity, equity and inclusion.

**2018** *BOG members conduct a self-assessment on bias (e.g. implicit bias test from the Harvard Project Implicit [<https://implicit.harvard.edu/implicit/takeatest.html>]).* CEO

**2018** *Include at least one session on implicit bias, institutional racism, or equity principles for BOG members each year.* CEO

**ACTION 2** Adopt a BOG policy to review all bar programs, services, and activities with impact on lawyers from diverse backgrounds as a factor for evaluation.

**2018** *Policy reviewed by BOG Policy & Governance Committee and BOG.* CEO

**2018** *Implement policy and incorporate into BOG orientation materials and online resources.*

CEO

**STRATEGY 3** Support an open and inclusive award selection process for all OSB groups.

**ACTION 1** Encourage transparency in award nomination and selection process.

*2018* Develop a policy and nomination form template for section awards. MEMBER SERVICES

*2019* Encourage and assist sections and the ONLD with promoting their award nomination process with specialty bars. MEMBER SERVICES

**STRATEGY 4** Review the admissions process to determine whether diverse candidates are disparately impacted.

**ACTION 1** Create policies and procedures establishing the lawful collection and use of demographic data from applicants.

*2018* Review current rules, policies and procedures to determine the legalities of collecting and using demographic data. ADMISSIONS

*2019* Make changes to policies and procedures as needed in order to safeguard data collected from being used or made available for an admission decision related to any particular applicant. ADMISSIONS

*2020* Make changes to policies and procedures, where necessary, in order to lawfully collect and use demographic data for statistical analysis. ADMISSIONS

**ACTION 2** Collect data from the OSB Admissions Department, Oregon law schools, and applicants, to identify admissions trends of demographic groups.

*2020* Ask OSB applicants to self-identify as part of the application process. ADMISSIONS

*2020* Begin to review data in respect to identifying admissions trends by demographic. ADMISSIONS

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**GOAL 3** Enrich the OSB by increasing representation of diverse members in volunteer and leadership roles.

**STRATEGY 1** Educate OSB member groups on the value of diversity, equity, and inclusion.

**ACTION 1** Create a benefit statement supporting the value of diversity.

*2018* Seek input from specialty bars and other stakeholders in creating the benefit statement.

MEMBER SERVICES

*2018* Gather baseline data to determine current member involvement in OSB volunteer and leadership roles. MEMBER SERVICES

*2019* Distribute benefit statement to bar groups. MEMBER SERVICES

*2020* Evaluate effectiveness based on change in overall volunteer participation. MEMBER SERVICES

**STRATEGY 2** Increase diversity on all OSB self-electing boards and in membership elected positions.

**ACTION 1** Encourage a diverse pool of candidates for Board of Governors and House of Delegates elections.

*2018 - 2020* BOG members actively encourage diverse members to run for vacant positions on the BOG and HOD (annually). MEMBER SERVICES

*2018* Encourage specialty and local bars to inform their members of BOG and HOD vacancies, including list serve and website postings. MEMBER SERVICES

*2018* Encourage specialty and local bars to promote the importance of voting in HOD/BOG elections to their membership. MEMBER SERVICES

**ACTION 2** Increase representation of diverse members serving on self-electing boards to reflect the diversity of the OSB membership.

*2018* BOG review of ONLD and section bylaws and policies to ensure the election process is transparent and supports equity and inclusion. CEO

*2018* Meet with sections during the annual meeting process to share the benefit statement (S1, A1) MEMBER SERVICES

*2019* Include demographic data on membership lists and rosters. MEMBER SERVICES

**STRATEGY 3** Encourage diversity of volunteer speakers and planners for CLE events.

**ACTION 1** Provide a resource list of specialty bar associations to bar groups planning CLE events.

**2018** *Develop a list of specialty bars and include a description of the specialty bar's mission statement.* CLE SEMINARS

**2019** *Incorporate the DAC's mission and specialty bars list in CLE co-sponsorship guidelines.* CLE SEMINARS

**ACTION 2** Look for opportunities to collaborate with specialty bars for CLE events.

**2018** *Conduct an inventory of existing bar CLE events that would be suitable for collaboration with specialty bars; evaluate available bar resources that could be utilized by specialty bars for their events.* CLE SEMINARS

**2019** *Create a bar CLE resource guide for specialty bars.* CLE SEMINARS

**2020** *Distribute the guide and begin CLE event collaboration with specialty bars.* CLE SEMINARS

**ACTION 3** Look for opportunities to diversify the pool of CLE speakers.

**2018** *Distribute the Leadership and Volunteer Opportunities CLE Speaker reports to Section Executive Committees annually with a reminder that the CLE planning committees have this resource and should consider diversity when selecting CLE subject matter experts.* MEMBER SERVICES

**STRATEGY 4** Collaborate with the Board of Governors and Board Development Committee to increase the diversity of lawyer and public member volunteers appointed by the Board of Governors.

**ACTION 1** Increase the pool of diverse lawyers and non-lawyers for OSB volunteer positions.

**2018** *Organize an event co-sponsored by OSB's D&I Department, the BOG, and specialty bars to explain OSB leadership opportunities, selection processes for OSB volunteer appointments, and application processes for BOG and HOD.* DIVERSITY & INCLUSION

**2018** *Provide notices of volunteer and leadership opportunities to specialty and local bar organizations for distribution to their members and through their respective newsletters and to community organizations that support diverse individuals.* MEMBER SERVICES

**2018** *Request that specialty and local bars include a link to the OSB Volunteer Survey on their websites.* MEMBER SERVICES

**ACTION 2** Educate the Board Development Committee members on the need to review appointment recommendations and decisions through an equity lens.

**2018** *Conduct an annual review of appointments with focus on demographic and geographic factors.* MEMBER SERVICES

**ACTION 3** Ensure the appointment process is efficient and effective and that BOG has enough member information.

**2018** *Board Development Committee reviews and refines internal processes.* MEMBER SERVICES

**STRATEGY 5** Develop a leadership institute for diverse attorneys.

**ACTION 1** Address gaps and barriers to leadership positions within the BOG and specialty bars for underrepresented members of the bar.

**2018** Identify gaps and barriers. DIVERSITY & INCLUSION

**2019** Craft proposed course curriculum. DIVERSITY & INCLUSION

**2020** Course implementation. DIVERSITY & INCLUSION

**STRATEGY 6** Encourage diversity of volunteer editorial review boards and authors for Legal Publications books.

**ACTION 1** Increase representation of diverse members on Legal Publications editorial review boards and as authors.

**2018** Contact local and specialty bars when recruiting new editorial board members and authors.

LEGAL PUBLICATIONS

**2019** Revise Editorial Review Board Guidelines to strongly encourage editorial review boards to consider diversity in identifying potential authors. LEGAL PUBLICATIONS

**2020** Evaluate effectiveness of efforts to increase diversity of editorial boards and author pool. LEGAL PUBLICATIONS

**ACTION 2** Include more detailed biographical information and pictures of authors in front matter of books, to showcase diversity involvement.

**2018** Select two publications to include more detailed biographical information. LEGAL PUBLICATIONS

**2019** Increase number of publications that include detailed biographical information. LEGAL PUBLICATIONS

**STRATEGY 7** Evaluate the effectiveness of the New Lawyer Mentoring Program (NLMP) in respect to diverse attorneys.

**ACTION 1** Survey new lawyer participants to determine level of satisfaction with NLMP.

**2018** Review existing new lawyer survey and determine whether additional information needs to be gathered. MEMBER SERVICES

**2018** Modify survey as necessary and implement for all new lawyers upon program completion. MEMBER SERVICES

**2019** Use the information gathered to identify issues that warrant addressing. MEMBER SERVICES

**ACTION 2** Increase the pool of diverse mentors participating in the NLMP.

**2018** Evaluate mentor availability and areas of underrepresentation. MEMBER SERVICES

**2018** Conduct targeted outreach to ensure adequate availability of mentors from diverse member groups. MEMBER SERVICES

**ACTION 3** Review NLMP database fields to ensure adequate information is available when matches are made.

**2018** Revise NLMP forms as needed. MEMBER SERVICES



## Public Outreach Sphere

**GOAL 1** Increase representation and legal services to underserved and hard to reach communities in Oregon.

**STRATEGY 1** Assess the civil legal needs of low income Oregonians statewide, including hard to reach populations.

**ACTION 1** Conduct planned civil legal needs study (CLNS) that provides comprehensive information about the legal needs of low income Oregonians, including hard to reach populations.

*2018 CLNS data has been gathered and analyzed. OLF*

*2018 CLNS has been published and shared with a wide range of stakeholders. OLF*

*2018 Conduct media campaign to share the results of the CLNS. COMMUNICATIONS*

**ACTION 2** Use the results of the CLNS to inform the legal services provided by the integrated statewide legal aid programs pursuant to the OSB Legal Services Standards and Guidelines.

*2019 Legal aid providers have reviewed the results, and used these results to set priorities for legal services and to develop access strategies for low income Oregonians, including hard to reach populations. LSP*

*2020 A plan with goals to implement access strategies has been developed. LSP*

**ACTION 3** Use the results of the CLNS to inform the access strategies for low income and hard to reach populations by the Oregon State Bar.

*2019 The OSB has reviewed the results of the CLNS for possible OSB program changes. LSP*

*2020 The OSB has developed a plan for implementing access strategies. LSP*

**STRATEGY 2** Ensure that the integrated statewide legal aid programs are targeting their services based on the most compelling needs of the client community, including hard to reach and diverse populations pursuant to the OSB Legal Services Standards and Guidelines.

**ACTION 1** LSP staff conduct the accountability process outlined in the Standards and Guidelines.

*2018 Staff, legal aid providers, and the LSP Committee have reviewed the current accountability process and have made changes as necessary, including incorporating review of effective technology. LSP*

*2018 The accountability process has been completed, and a report has been submitted to the BOG. LSP*

*2019 Legal aid providers implement recommendations from the 2018 review process. LSP*

**STRATEGY 3** Increase pro bono representation of low income Oregonians and hard to reach populations.

**ACTION 1** Establish a baseline of current pro bono hours.

*2018* Using ABA survey results and hours reported by OSB Certified Pro Bono Programs, establish a baseline of pro bono hours. LSP

**ACTION 2** Utilize the results of the ABA pro bono survey to develop strategies that are focused on diverse and hard to reach populations.

*2018* Identify barriers to lawyers doing pro bono work and develop a plan for addressing them. LSP

*2019* Implement the plan to address barriers to lawyers doing pro bono work. LSP

*2020* Survey membership on pro bono work. LSP

**ACTION 3** Continue to monitor the use of the ABA Free Legal Answers resource.

*2018* Determine whether ABA Free Legal Answers will work as a resource for the OSB (given Aptify and implementation concerns). LSP

*2019* Implement (if it makes sense for the OSB as a service to the public). LSP

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**STRATEGY 4** Increase representation through increased funding for the integrated statewide legal aid programs to increase access for low income Oregonians, including underserved and hard to reach communities in Oregon.

**ACTION 1** Use the CLNS to inform banks about the scope of the unmet legal needs of low income Oregonians to support increased legal aid funding in Oregon.

**2018** Increase Leadership Bank Program interest rate tiers to coincide with Federal Reserve Bank increases. OLF

**2018** Incorporate CLNS results into talking points to work with the Oregon Bankers Association and banking community to increase interest rates on IOLTA accounts held in Oregon. OLF

**2019** Continue to monitor interest rate increases and adjust Leadership Bank Program interest rates as needed. OLF

**ACTION 2** Use the CLNS to inform the legislature about the scope of the unmet legal needs of low income Oregonians to support increased legal aid funding in Oregon.

**2018** Establish diverse network of leaders to support relevant issues and trends. PUBLIC AFFAIRS

**2018** Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS

**2019** present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

**ACTION 3** Conduct media outreach campaign to support funding efforts.

**2018** Develop and execute CLNS media outreach campaign. COMMUNICATIONS

**ACTION 4** Explore partnering with the philanthropic community on the importance of funding legal aid to alleviate poverty.

**2018** Work with CEJ and the legal aid providers to develop a plan to partner with the philanthropic community. OLF

**2019** Implement the plan. OLF

**GOAL 2** Ensure all Oregonians are able to access the bar's public protection programs.

**STRATEGY 1** Engage in outreach to marginalized communities regarding the availability and purpose of the bar's public protection programs<sup>1</sup>.

**ACTION 1** Develop relationships with community organizations working in the public protection arena.

*2018 Identify and create a list of potential community partners. GENERAL COUNSEL*

*2019 Have a discussion with a representative from each identified group. GENERAL COUNSEL*

**ACTION 2** Design and utilize toolkit for member and public outreach on public protection programs.

*2018 Create program description for public protection programs and collect related application/complaint forms. GENERAL COUNSEL*

*2019 Discuss and review the toolkit with representatives from community organizations and member representatives. GENERAL COUNSEL*

*2020 Share the toolkit with targeted audiences. GENERAL COUNSEL*

**STRATEGY 2** Develop a comprehensive approach for providing English language learners access to the bar's public protection programs.

**ACTION 1** Develop policy to enable access to programs for persons who speak, read, or write languages other than English.

*2018 Evaluate staffing and other resources in relation to language needs. GENERAL COUNSEL*

*2019 Write and adopt a policy providing that individuals who file complaints in languages other than English are heard. GENERAL COUNSEL*

*2020 Develop multi-lingual complaint/application forms and informational materials for public protection programs. COMMUNICATIONS*

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<sup>1</sup> OSB Public Protection Programs include the lawyer disciplinary process, unlawful practice of law complaints, client security fund, and malpractice coverage.

**STRATEGY 3** Ensure that the operation of bar's public protection programs are fair, safe and welcoming to all.

**ACTION 1** Collect demographic data and feedback from users who access the bar's public protection programs.

**2018** Explore methods to collect data. COMMUNICATIONS

**2019** Collect user demographic data and seek feedback on user experience. COMMUNICATIONS

**ACTION 2** Analyze demographic data and feedback from users who access the bar's public protection programs.

**2018** Analyze the data collected. GENERAL COUNSEL

**2019-20** Meet with members, stakeholders, and possible community partners identified in Strategy 1 to discuss data and seek additional feedback. CEO

**2020** Identify approaches for creating a more safe and welcoming public protection program process. GENERAL COUNSEL

**2020** Develop plan to implement approaches. GENERAL COUNSEL

**ACTION 3** Coordinate with the work of the Oregon Supreme Court Council on Inclusion and Fairness (OSCCIF).

**2018 - 2020** Participate in and support the work of OSCCIF. CEO

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**GOAL 3** Expand availability of public education, outreach and self-navigation materials for underserved Oregon communities.

**STRATEGY 1** Develop public legal informational materials that are accessible to all Oregonians.

**ACTION 1** Improve the readability of all OSB public legal information materials.

**2018** *The readability/grade level of existing content has been determined, and a target standard has been set – e.g., “Plain English” (8<sup>th</sup> grade reading level).* COMMUNICATIONS

**2019** *The 30 most-accessed topics have been edited to meet the new standard.* COMMUNICATIONS

**2020** *The next 30 most-accessed topics have been edited to meet the new standard.* COMMUNICATIONS

**ACTION 2** Improve access to legal information materials for English-language-learners.

**2018** *All public information materials have been presented online in formats that are compatible with the Google Translate app; professionally translated materials available to the OSB have been posted online.* COMMUNICATIONS

**2019** *Professional translation of the 20 most-accessed topics have been produced in high-frequency languages.* COMMUNICATIONS

**2020** *Professional translation of the next 20 most-accessed topics have been produced in high-frequency languages.* COMMUNICATIONS

**ACTION 3** Increase availability of legal information provided in video and other non-text formats, featuring diverse presenters.

**2018** *The production of Legal Q&A videos in English, Spanish and other high-frequency [define in DAP] languages has continued; video introductions for OSB public protection services in English and Spanish have been produced.* COMMUNICATIONS

**2019** *An instructional video for new statewide dissolution forms (petitioner) in English and Spanish has been produced and/or promoted (in collaboration with justice system partners).* COMMUNICATIONS

**2020** *Instructional videos for other statewide family law firms have been produced and/or promoted.* COMMUNICATIONS

**ACTION 4** Increase the availability of legal information materials to people with disabilities and special needs.

**2018** *Online materials have been reviewed for compatibility with screen readers; captioning for public information videos has been added.* COMMUNICATIONS

**2019** *Updating and monitoring of materials has continued.* COMMUNICATIONS

**2020** *Updating and monitoring of materials has continued.* COMMUNICATIONS

**STRATEGY 2** Enhance outreach to underserved communities regarding the modest means and lawyer referral programs.

**ACTION 1** Assess current service levels and legal needs of underserved communities.

*2018* Compile internal statistics on the Lawyer Referral Service and Modest Means Program, including calls from English language learners, languages offered by panelists, and website translations. COMMUNICATIONS

*2019* Compare services provided with results of the Civil Legal Needs Study (CLNS) to identify underserved communities and prioritize how the Lawyer Referral service is meeting their legal needs. LSP

**ACTION 2** Implement outreach plan to underserved communities, including marketing and coordination with community partners.

*2018* Begin outreach to already identified underserved communities. COMMUNICATIONS

*2019 - 2020* Continue outreach methods and monitor effectiveness. COMMUNICATIONS

**STRATEGY 3** Increase issue-based public education, targeting media outlets with legal trends and issues that affect underserved communities.

**ACTION 1** Establish a diverse network of lawyers and bar groups who are leaders in relevant areas of practice.

*2018* Work with select committees, sections and specialty bars to support justice system issues. PUBLIC AFFAIRS

*2019* Develop a framework to continue the discussion and coordinate ongoing efforts. PUBLIC AFFAIRS

**ACTION 2** Adopt a plan for responding to breaking legal news when it offers opportunity to educate and/or enhance awareness of issues affecting underserved communities.

*2018* Work with bar leaders on a media response policy. COMMUNICATIONS

*2019* Develop and implement the policy. COMMUNICATIONS

**GOAL 4** Improve the Administration of Justice to better serve under-represented and marginalized communities.

**STRATEGY 1** Support OSB justice system funding priorities.

**ACTION 1** Develop coalitions and collaborate with justice system partners and bar members to achieve OSB legislative priorities.

**2018** Meet with justice system partners during the interim to discuss legislative concepts and funding priorities. PUBLIC AFFAIRS

**2019** Host “Day at the Capitol” to activate members and educate legislative leadership. PUBLIC AFFAIRS

**2019** Present information on access to justice to lawyer-legislators and bar members to ensure message consistency. PUBLIC AFFAIRS

**STRATEGY 2** Collaborate with the courts and support the Procedural Fairness in Courts Initiative.

**ACTION 1** Develop lunchtime CLE series (Lunch and Learn) at the Capitol for staff and public on implicit bias and procedural justice.

**2018** Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

**2019** Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

**2020** Lunchtime CLE on procedural justice. PUBLIC AFFAIRS

**ACTION 2** Determine goals of Oregon State Council on Gender Inclusion and Fairness (OSCGIF) regarding data identification and collection.

**2018** Develop plan on how to best assist. PUBLIC AFFAIRS



**STRATEGY 3** Support access to justice in the legislative arena.

**ACTION 1** Collaborate with other organizations to support procedural fairness and justice system reinvestment.

**2019** *Day at the Capitol: Invite representatives from legal aid, indigent defense services, and coalition partners to participate in events.* PUBLIC AFFAIRS

**ACTION 2** Develop coalitions to support access to justice initiatives.

**2018** *Meet with coalition partners during the interim to discuss legislative concepts and funding priorities.* PUBLIC AFFAIRS

**ACTION 3** Educate lawyer-legislators, bar members, and coalition partners about the need for legal aid services and indigent defense.

**2018** *Host an access to justice event with coalition partners.* PUBLIC AFFAIRS

**2019** *Host an access to justice event with coalition partners.* PUBLIC AFFAIRS

**2020** *Host an access to justice event with coalition partners.* PUBLIC AFFAIRS

**ACTION 4** Pursue Consumer Protection Initiatives

**2018** *Pursue Consumer Protection Initiatives related to Futures Task Force.* PUBLIC AFFAIRS

**2019** *Achieve progress in Consumer Protection Initiatives in 2019 legislative session* PUBLIC AFFAIRS

**ACTION 5** Improve resources for self-navigators.

**2018 - 2019** *(Re. self-navigators) Support Court Initiatives of the Futures Task Force.* GENERAL COUNSEL

**2019** *Successful legislative session.* PUBLIC AFFAIRS

**ACTION 6** Use the Civil Legal Needs Study to update legislators about the unmet legal needs of low income Oregonians to support increased legal aid funding.

**2018** *Establish diverse network of leaders to support relevant issues and trends.* PUBLIC AFFAIRS

**2019** *Successful legislative session.* PUBLIC AFFAIRS

## Bar Operations Sphere

**GOAL 1** Bar employees have a high level of diversity and inclusion competence and ownership.

**STRATEGY 1** Provide educational opportunities for OSB employees.

**ACTION 1** Provide one annual mandatory session focused on inclusion, equity or cultural competence for all staff.

**2018** Topic and presenter identified and scheduled. HUMAN RESOURCES

**2019** Topic and presenter identified and scheduled. HUMAN RESOURCES

**2020** Topic and presenter identified and scheduled. HUMAN RESOURCES

**ACTION 2** Provide one annual mandatory session focused on diversity, inclusion, equity, or cultural competence for managers and directors (in addition to the annual all-staff training).

**2018** Topic and presenter identified and scheduled. HUMAN RESOURCES

**2019** Topic and presenter identified and scheduled. HUMAN RESOURCES

**2020** Topic and presenter identified and scheduled. HUMAN RESOURCES

**ACTION 3** Provide at least one annual cultural awareness day for all employees.

**2018** Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

**2019** Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

**2020** Culture to highlight identified; Activity held. DIVERSITY & INCLUSION

**ACTION 4** Develop a “tip of the month” feature on the intranet that focuses on information and topics relating to diversity, inclusion, equity, or cultural competence.

**2018** Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION

**2019** Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION

**2020** Information sourced and posted monthly on intranet. DIVERSITY & INCLUSION

**STRATEGY 2** Ensure managers and directors are held accountable for professional development in relation to diversity, inclusion, equity and cultural competence.

**ACTION 1** Update managers' and directors' performance evaluation templates to ensure that diversity and inclusion ownership and competence are included as leadership attributes to be evaluated.

**2018** *Templates reviewed, changed as necessary and implemented for year.* HUMAN RESOURCES

**2019** *Templates reviewed, changed as necessary and implemented for year.* HUMAN RESOURCES

**2020** *Templates reviewed, changed as necessary and implemented for year.* HUMAN RESOURCES

**ACTION 2** Encourage managers and directors to identify and participate in external educational opportunities that focus on professional development around diversity and inclusion.

**2018** *D&I professional development discussed during performance evaluation.* CEO

**2019** *D&I professional development discussed during performance evaluation.* CEO

**2020** *D&I professional development discussed during performance evaluation.* CEO

**STRATEGY 3** Review current OSB language used in relation to diversity and inclusion, and make updates according to current best practices.

**ACTION 1** Research best practices around diversity and inclusion language.

**2018** *Collate findings into a best practices report.* DIVERSITY & INCLUSION

**ACTION 2** Conduct an assessment of OSB language (including pronouns) used on all internal and external materials.

**2018** *Identify language (and all language locations) for updating, using the best practices report.* DIVERSITY & INCLUSION

**2019** *Develop a language update implementation plan.* DIVERSITY & INCLUSION

**2019** *Implement consistent language updates per the implementation plan.* DIVERSITY & INCLUSION

**ACTION 3** Update OSB staff regarding changes to best practices terminology and language.

**2019** *Best practices language updates are included within the annual staff education session.* HUMAN RESOURCES

**STRATEGY 4** Ensure the OSB bylaws are consistent with the OSB and DAC mission and goals around diversity and inclusion.

**ACTION 1** Review bylaws and identify bylaws that need to be amended.

**2019** *Bylaws identified.* GENERAL COUNSEL

**2020** *Amendments drafted and presented to the BOG for approval.* GENERAL COUNSEL

**GOAL 2** Foster a welcoming and inclusive workplace and accessible programs, services and Bar Center.

**STRATEGY 1** Acquire an understanding of the bar's workplace culture.

**ACTION 1** Devise and conduct a workplace culture assessment.

**2018** Workplace culture assessment conducted and data analyzed. HUMAN RESOURCES

**ACTION 2** Evaluate employees' reasons for leaving the organization.

**2018** Exit interview process reviewed and changes implemented. HUMAN RESOURCES

**2019** Method for reviewing and analyzing data developed. HUMAN RESOURCES

**2020** Current and historic data analyzed and evaluated. HUMAN RESOURCES

**ACTION 3** Conduct an internal salary equity assessment.

**2019** Assessment conducted by third-party contractor and data analyzed. HUMAN RESOURCES

**STRATEGY 2** Use results of data collection to identify areas for improvement.

**ACTION 1** Develop a plan to address areas that need improvement.

**2020** Plan developed and implemented. HUMAN RESOURCES

**STRATEGY 3** Identify and resolve barriers to the OSB being a welcoming environment for all.

**ACTION 1** Develop and implement a plan to ensure inclusive restroom access for all employees and visitors.

**2018** Plan developed and needed resources identified. DIVERSITY & INCLUSION

**2019** Plan implemented. FINANCE AND OPERATIONS

**ACTION 2** Develop and implement a policy and procedure to create an inclusive environment for gender neutral and transitioning transgender employees.

**2019** Plan developed and needed resources identified. HUMAN RESOURCES

**2020** Plan implemented. HUMAN RESOURCES

**STRATEGY 4** Continue to identify and resolve barriers to accessibility for persons with disabilities to OSB programs, services and Bar Center. (BART)

**ACTION 1** Develop and implement a plan to identify and resolve barriers to OSB Center Facility.

**2018** Building user feedback reviewed to identify ways to improve building accessibility.

GENERAL COUNSEL

**2019** Plan created and needed resources identified to improve building accessibility. GENERAL

COUNSEL

**2020** Accessibility plan implemented. GENERAL COUNSEL

**ACTION 2** Ensure OSB websites are compatible with screen readers.

**2018** Plan created to continue identifying and updating portions of the website that are not accessible to persons utilizing screen readers. GENERAL COUNSEL

**2019** Website accessibility plan implemented. GENERAL COUNSEL

**ACTION 3** Continue to educate bar staff and bar leaders about accessibility.

**2018** Feedback gathered and areas identified where bar staff and bar leaders may require additional assistance or education on accessibility issues. GENERAL COUNSEL

**2019** Bar staff training on accessibility held. GENERAL COUNSEL

**2019** Accessibility guides and recommendations developed that respond to bar staff and bar leaders' needs. GENERAL COUNSEL

**2020** Accessibility guidelines and recommendations distributed to bar staff and bar leaders. GENERAL COUNSEL

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**GOAL 3** Build a workforce that is diverse and inclusive at every level.

**STRATEGY 1** Collect demographic data as one benchmark for measuring the diversity of applicants and the workforce.

**ACTION 1** Evaluate categories currently used by OSB for measuring staff diversity.

**2018** *Categories assessed and expanded as necessary. HUMAN RESOURCES*

**2019** *Revised data collection implemented. HUMAN RESOURCES*

**2020** *System developed and implemented for ongoing review and analysis of data. HUMAN RESOURCES*

**ACTION 2** Investigate options for assessing the diversity of applicants.

**2019** *Electronic application systems evaluated. HUMAN RESOURCES*

**2020** *Application process updated. HUMAN RESOURCES*

**STRATEGY 2** Ensure that the OSB recruitment process is inclusive and equitable.

**ACTION 1** Assess the current OSB recruitment process.

**2018** *Method for assessment is developed. DIVERSITY & INCLUSION*

**2019** *Assessment conducted and data analyzed. DIVERSITY & INCLUSION*

**ACTION 2** Identify areas for improvement and develop plan for improvement.

**2019** *Plan developed. HUMAN RESOURCES*

**2020** *Plan implemented. HUMAN RESOURCES*

**STRATEGY 3** Increase the diversity of applicants for vacant positions at the OSB.

**ACTION 1** Build relationships with external groups and organizations that are focused on diversity.

**2018** *External groups and organizations identified. DIVERSITY & INCLUSION*

**2018** *Plan developed for building relationship with identified organizations and appropriate to each organization. DIVERSITY & INCLUSION*

**2019** *Plan implemented. DIVERSITY & INCLUSION*

**ACTION 2** Expand outreach to a more diverse pool of potential applicants.

**2018** *Evaluate current outreach for job openings to identify gaps. HUMAN RESOURCES*

**2019** *Identify potential resources for additional outreach and their job posting requirements and needs. HUMAN RESOURCES*

**2019** *Incorporate new resources into current advertising plans. HUMAN RESOURCES*

**STRATEGY 4** Explore and utilize bias interrupters in the hiring process.

**ACTION 1** Incorporate hiring committees into the hiring process.

**2018** *Identify opportunities for use of hiring committees.* HUMAN RESOURCES

**2018** *Investigate and experiment with alternative hiring models that incorporate hiring committees.* HUMAN RESOURCES

**2019** *Develop training for hiring committee participants.* HUMAN RESOURCES

**2019** *Identify staff interested in participating on hiring committees and provide training.* HUMAN RESOURCES

**ACTION 2** Create accountability for hiring process decisions.

**2018** *Implement a step within the hiring process that requires decision makers to state a reason why they did not choose to take applicants to the next stage.* HUMAN RESOURCES

**2018** *Training provided for managers and directors on bias interrupters.* HUMAN RESOURCES

DRAFT

**GOAL 4** Engage a diverse and inclusive group of contractors, suppliers, vendors, and consultants.

**STRATEGY 1** Develop and implement a process for ensuring consideration of a diverse list of third-party vendors.

**ACTION 1** Review the current process(es) taking place organization-wide for selecting contractors, suppliers, vendors, and consultants.

**2018** *Process reviewed and documented. DIRECTOR OF FINANCE AND OPERATIONS*

**ACTION 2** Create and implement a policy or policies for contracting with third-party vendors that account for the various needs of the organization and consider a diverse vendor pool.

**2018** *A diverse list of third-party vendors developed. DIRECTOR OF FINANCE AND OPERATIONS*

**2019** *Policy developed. DIRECTOR OF FINANCE AND OPERATIONS*

**2020** *Policy implemented. DIRECTOR OF FINANCE AND OPERATIONS*

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**PLAN IMPERATIVES**

1. Throughout the Diversity Action Plan implementation process, the effectiveness of the strategies and action items for each goal should be reviewed and adjusted as necessary.
2. The process and criteria for appointment to the Diversity Action Council should be submitted to the BOG for review.

DRAFT

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 18, 2017  
**From:** Per Ramfjord, Board Development Committee Chair  
**Re:** Appointments to various bar committees, councils, and boards (2 of 2)

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### Action Recommended

On November 18 the Board Development Committee selected the following members for appointment:

#### Oregon Law Foundation Board of Directors

Ethan Knight, term expires 12/31/2021  
Traci Ray, term expires 12/31/2021

#### Legal Services Program Committee

Chair: Brent Hall  
Secretary: Sara Kobak  
Members with terms expiring 12/31/2020:  
Sarah Kobak  
Hon. Tim Gerking  
LaFreda Ceaser, public member

#### Loan Repayment Assistance Committee

Members with terms expiring 12/31/2020:  
Richard Wesenberg  
Justin Morton  
Mei Tsai

#### Pro Bono Committee

Chair: Stephen Galloway  
Secretary: Natalie Hedman  
Members with terms expiring 12/31/2020:  
Nicholas Reed  
Michael Shin  
Tiffany Hendrix Blackmon  
Kevin Kress  
Kelli Russell

#### Procedure & Practice Committee

Chair: Ben Cox  
Secretary: Melissa Bobadilla  
Members with terms expiring 12/31/2020:  
Kristian Roggendorf  
Karen Anerson  
Andrew Narus  
Faith Morse  
Willa Perlmutter  
Mathew Lysne

#### Public Service Advisory Committee

Chair: Diana Winther  
Secretary: Janay Haas  
Members with terms expiring 12/31/2020:  
Rachel Bertoni  
Tiffany Johnson  
Kimberlee Petrie Volm  
Andrew Kalloch  
Maxine Tuan  
Lisa Umscheid  
Steven Boender

#### Uniform Civil Jury Instructions Committee

Chair: Jeffrey Armistead  
Secretary: Jeffrey Young  
Members with terms expiring 12/31/2020:  
John Geil  
Blair Townsen  
Sheri Browning  
David Rosen  
Michael Hallinan

# 2018 BUDGET Final Report



November 18,  
2017

## Report to the Board of Governors

### Purpose of This Report

- This is intended to be the last report of the 2018 Budget and any changes from this report will be the final budget for 2018.
- The Budget & Finance Committee reviewed the 2018 Budget at its July 21, September 8 and 22, and November 3 meetings and prior to the November 18 board meeting. The July meeting included numerous scenarios for possible actions for the 2018 and future years' budgets.
- During the development of the budget a projected net operating expense declined from \$117,500 to a small net operating revenue, but a positive one nonetheless.
- At the November 3 meeting the Committee discussed at length the salary pool for 2018 (4% is included in this budget report). The Committee will make its final recommendation at this meeting.

### Quick Summary of the 2018 Budget

This report includes the revised budget and now reports a **Net Revenue of \$27,904.**

The **Active Membership Fee is reduced to \$552.00** from \$557.00. A reduction in the Client Security Fund assessment was approved at the September 22 meeting and reported at the November 3 HOD meeting.

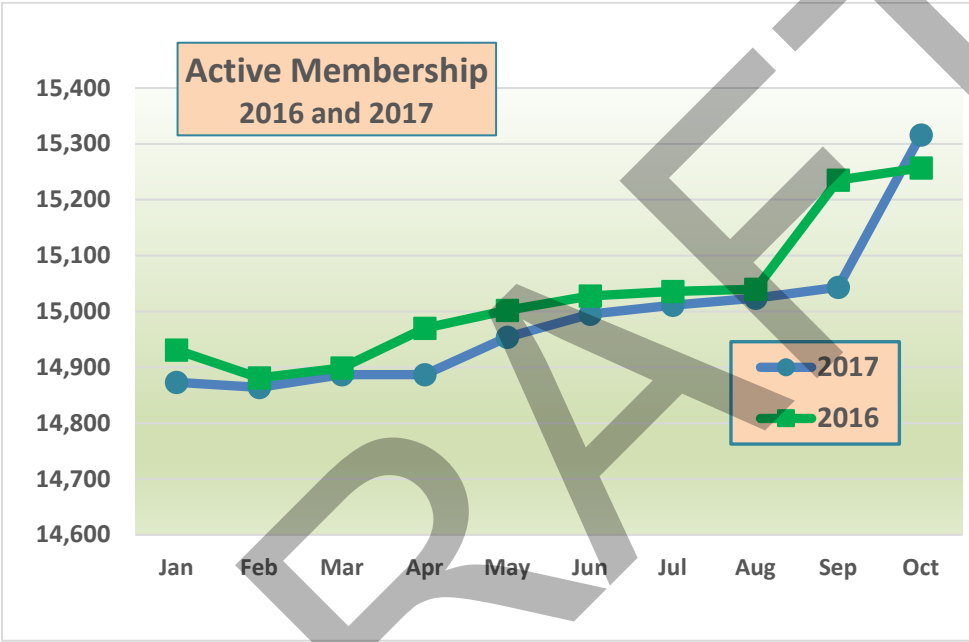
Changes from 2017 Budget to 2018 Budget:

- The 2017 Net Revenue is \$391,911 and the final Net Revenue will be higher.
- Revenue in 2018 declines \$18,400; Expenses increase \$344,300.

# 1. Membership Fees Revenue . . .

The chart below shows there were 59 more Active Members at October 2017 than October a year ago.

- However, using the same number of changes in membership status in the last two months of 2016 (which had 230 status changes), the Active Member count at the end of 2017 will be 18 less than the end of 2016.
- Since the Inactive Member count is projected to increase slightly in 2018 offsetting a projected slight decline in Active members, **the Member Fee revenue remains the same as the 2017 budget.**



**An Interesting Fact**

Will the Inactive Member count increase in 2018?

**Answer: The Inactive Member count has increased from the previous year EVERY YEAR SINCE 1979 (39 consecutive years).**

**CONCLUSION ON MEMBERSHIP FEE REVENUE**

*With Active Members transferring to Retired, Inactive, Active Pro Bono status, or deceased, these member categories most likely will cancel any growth in the Active Member category in 2018.*

*Thus, the 2018 Member Fee revenue remains the same as the 2017 budget.*

## 2. Non-dues (Program Fee) Revenue . . .

<i>Program</i>	Result Compared to 2017 Budget
<b>Admissions</b>	The BBX and Director project \$28,345 <b>more</b> revenue primarily due to the increase in <i>Investigation Fees</i> for California and Nevada lawyers entering by UBE scores
<b>CLE Seminars</b>	Due to when and the impact of the new Association Management software (AMS) and the change in Section co-sponsorship, revenue is hard to predict. In this phase revenue is <b>lower</b> by \$15,370.
<b>Disciplinary Counsel</b>	No increase in the <i>Reinstatement Fee</i> is included, but will be evaluated and seek Court approval in 2018 for 2019.
<b>Lawyer Referral</b>	<i>Percentage Fee</i> revenue is <b>down</b> \$70,000 which is closer to the expected revenue for 2017. Revenue is expected to average \$59,000 per month as it has for three years
<b>Legal Publications</b>	Revenue ( <i>book sales</i> ) is projected \$17,035 <b>less</b> than 2017. Sales of print books are expected to slowly decline year-over-year.
<b>MCLE</b>	Revenue is projected to be \$1,000 <b>less</b> in 2018 further affirming that this source of revenue is plateauing.

### **CONCLUSION OF NON-DUES REVENUE**

*Program Fee, or non-dues, revenue is \$47,260 less than the 2017 Budget as generally the major sources of Program Fee revenue decline from 2017.*

## 3. The Salary Pool, Taxes & Benefits . . .

- The PLF budget was approved on September 8 with a 4% salary pool. This was based on the PLF's recommendation on a July 2017 release from the Bureau of Labor Statistics that the Portland CPI-U had increased 4.4% from the previous year.
- The bar and PLF have always maintained the same salary pool, so a 4% pool is included in this phase of the budget.
- The chart compares the CPI-U and the amount of the salary pool since 2011:

<i>Rate/Year</i>	2017*	2016	2015	2014	2013	2012	2011
<b>Portland CPI-U</b>	4.4%	2.1	1.2%	2.4%	2.5%	2.3%	2.9%
<b>Pool</b>	3.0%	3.0%	2.0%	2.0%	2.0%	2.0%	3.0%
<b>Pool Over/(Under) CPI-U</b>	(1.4)	.9%	.8%	(.4%)	(.5%)	(.3%)	.1%

Notes:

- \* The 2017 CPI-U number is for the first half of 2017.
- The CPI-U is not known until after the end of the year, i.e. although the CPI-U for 2016 was 2.1%, the 2017 pool of 3% was approved before the end of 2016.

- d) A 1% salary pool change is \$72,300 in salaries and benefits.
- e) The benefit costs of PERS also are a reason for the personnel cost increase. The employer rates increased an average of 4.41% in mid-2017, so those increases are in effect for a full year in 2018. The rate increases added \$107,700 to the personnel budget.

This cost increase could have been higher except for the departure of several long-time employees. The amount of salary at the highest PERS rate declined from 38% to 29%, and will continue to decline in the years ahead as more senior staff leave.

**CONCLUSION FOR PERSONNEL COSTS**

*With the salary pool at 4%, the full year of the higher PERS rates, and the full year of new positions, the personnel budget will increase \$411,613 from the 2017 budget.*

**4. Direct Program & Administrative (non-Personnel) Expenses . . .**

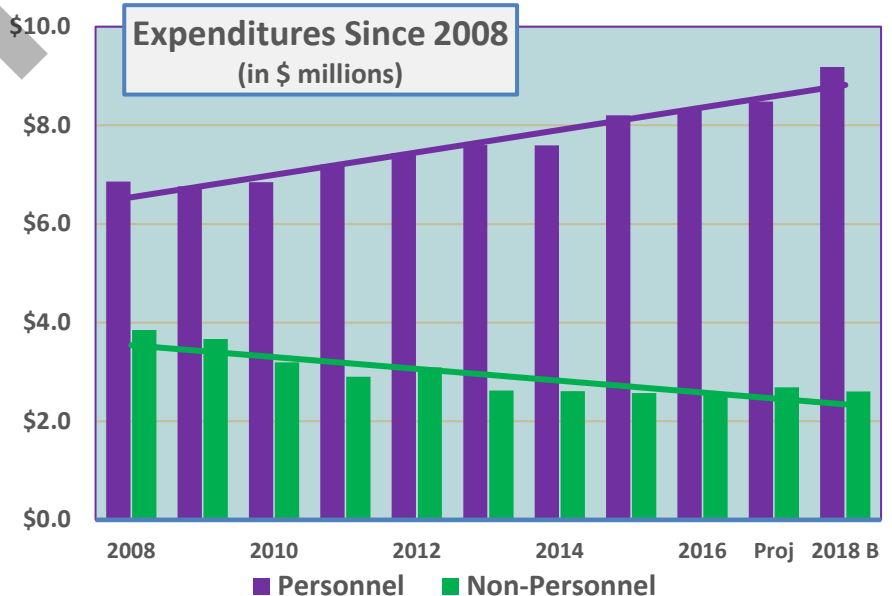
- Non-personnel costs are \$70,298 lower in 2018.
- Generally across the board most programs/departments cut or eliminated operating and administrative costs.
- The 2018 budget does not include costs for an economic survey (\$25,000 in 2017).

**CONCLUSION FOR NON-PERSONNEL COSTS**

*Non-personnel costs continue to decline or at least plateau year-over-year.*

The chart shows the challenge in future budgets. Personnel costs are increasing at a larger rate than non-personnel costs. This contradicts with limited or no increase in revenue.

**Personnel costs are expected to be 75.3% of all bar operating expenditures in 2018.**



## 5. Program Changes in the 2018 Budget . . .

After considerable discussion at the two previous meetings, there are few changes in the 2018 budget, and two apply to special assessments and not general bar operations

- A .75 FTE Adjudicator is included and assistant needs are absorbed by existing staff.
- The Client Security Fund assessment is reduced \$5.00.
- Diversity & Inclusion program expenses increase \$151,015.

## 6. What Stays the Same in 2018 . . .

<b>Member Fee Assessment</b>	The general member fee remains the same, but the fee becomes \$552.00 for active members with the reduction of the CSF assessment. The Inactive Member fee remains at \$125.00.
<b>PLF Grant</b>	\$200,000 grant for an undisclosed period
<b>Fastcase</b>	\$99,000 for the popular legal research library
<b>Classroom Law Project</b>	\$20,000 grant
<b>Campaign for Equal Justice</b>	\$45,000 grant
<b>Council on Court Procedures</b>	\$4,000 grant for council member travel expenses
<b>Contract Legal Fees</b>	\$40,000 for outside counsel
<b>Outreach Programs</b>	\$15,000 for legislative public policy
<b>Contingency</b>	\$25,000 for unusual or unexpected costs
<b>Client Security Fund claims</b>	\$200,000 as the annual placeholder amount

## 7. What the Five-Year Forecast Looks Like with a Net Revenue in 2018 . . .

<b>2019</b>	<ul style="list-style-type: none"> <li>• By creating a small net revenue in 2018, the net expense in 2019 becomes a more manageable \$216,300.</li> <li>• Reserves remain well above the required levels.</li> </ul>
<b>2020</b>	<ul style="list-style-type: none"> <li>• Expect a fee increase of at least \$50.00 per active member. This will create a net revenue that will last for at least three years – four to five if other revisions are made.</li> <li>• <u>With a fee increase</u> - reserves are well above the required amounts.</li> <li>• <u>Without a fee increase</u> - the net expense will be in excess of \$400,000 and the reserve levels are maintained, but there is no excess.</li> </ul>

<b>2021</b>	<ul style="list-style-type: none"> <li>• With a fee increase in 2020 a net revenue exists and an excess of the reserves remains.</li> </ul>
<b>2022</b>	
<b>2023</b>	<ul style="list-style-type: none"> <li>• A manageable net expense exists.</li> <li>• The amount of reserve funds available are slightly less than the reserve levels.</li> <li>• The mortgage on the bar center is subject to a balloon payment in February. The bar should have no difficulty refinancing the mortgage, and the key factor will be the interest rate.</li> </ul>

## 8. How to Maintain Fiscal Stability for Five Years Beginning in 2019 . . .

### 2019

---

1. **Charge the to the over 50-year members** the Active Member fee
2. **Increase the Reinstatement Fees** by \$250 (or another amount) to account for the time to process the reinstatements.
3. Maintaining the non-personnel cost adjustments of 2018 will cut the net expense to a more manageable amount, and possibly lead to a balanced budget.

### 2020

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1. **Increase the Active member Fee by \$50.00.**

### 2019 to 2023

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1. **Consider other sources of revenue** (reserves, service charge to sections, allow paralegals to become members, increase the lawyer referral percentage fee rate, etc.)
2. **The salary pool and another expected mid-year PERS rate increase** in 2019 and 2021 will have the greatest impact on operating costs.
3. **Evaluate programs or services for elimination or reduction** (New lawyers Division, New Lawyer mentoring Program, etc.)



## **9. Diversity & Inclusion . . .**

- The program's expenditures are \$189,516 greater than a year ago. The additional costs are the placeholder of \$100,000 for initiating programs on diversity for members, increased costs for OLIO, and filling positions that were vacant for an extended period.
- The program will begin 2018 with a fund balance of approximately \$500,000.

## **10. Client Security Fund . . .**

- At the September 22 Committee and board meetings, the assessment was reduced by \$5.00 to \$10.00. All active members pay this assessment.
- The lesser assessment generates \$77,800 less revenue. The 2018 net expense for the program is \$106,406.
- The budget includes a placeholder of \$200,000 for claims even though fortunately that amount has not been exceeded since 2013.
- The fund balance at the beginning of 2018 will approximate \$1.2 million. If claims remain at the average as this year and the previous three years (a little over \$100,000), the assessment can remain at \$10.00 for several more years.

## **11. Fanno Creek Place . . .**

- Two vacancies of 3,138 s.f. are possible beginning 2018 and one other tenant is expected to renew.
- If those vacancies are filled by April 2018, the net expense will improve by \$56,400 over 2017.

## **12. Recommendation of the Budget & Finance Committee to the Board of Governors**

- a. Decision on 2018 salary pool;
  - If a 4% salary pool, the Net Operating Revenue is \$27,904;
  - If a 3% salary pool, the Net Operating Revenue is \$100,200.
- b. Action on other budget related matters;
- c. Action on the 2018 budget as presented, or with Committee changes.

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## Article 1 Purpose of Bar and Definitions

### Section 1.1 Definition

In these Bylaws, unless the context or subject matter otherwise requires:

- (A) "State Bar" and "Bar" mean the Oregon State Bar, as described in ORS Chapter 9.
- (B) "State Bar Act" and "Bar Act" mean ORS Chapter 9.
- (C) "Board of Governors" and "Board" mean the Board of Governors of the Oregon State Bar.
- (D) "House of Delegates" and "House" mean the House of Delegates of the Oregon State Bar created by ORS 9.136.
- (E) "President" means the President of the Oregon State Bar.
- (F) "President-elect" means the President-elect of the Oregon State Bar.
- ~~(G) "Vice President(s)" means the Vice President(s) of the Oregon State Bar.~~
- (G H) "~~Chief Executive Officer~~Executive Director" means the **Chief Executive Officer**Executive Director of the Oregon State Bar.
- (H+) "Governor" means a member of the Board of Governors of the Oregon State Bar.
- (I J) "Member" means a member of the Oregon State Bar.

### Section 1.2 Purposes

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.

The Bar fulfills that mission through the following functions:

- (A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.
- (B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.
- (C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.



(D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.

(E) We are leaders helping lawyers serve a diverse community.

(F) We are advocates for access to justice.

## **Article 2 Board of Governors**

### **Section 2.1 Duties and Responsibilities**

#### ***Subsection 2.100 General***

(a) The Board of Governors governs the Bar, except as provided in ORS 9.139. In doing so, the Board determines the general policies of the Bar and approves its budget each year. The **Chief Executive Officer**~~Executive Director~~, appointed by and acting under the supervision of the Board, implements, administers and supervises the Bar's operation and program activities within these Bylaws and ORS Chapter 9.

(b) The Board operates as a review body, a supervisor of top management performance and a representative body of all members. As such, the Board must plan for the welfare of the total Bar ahead of other considerations.

(c) Each board member is unique and contributes special talents to the successful governance of the Bar. Expressing viewpoints and sharing opinions on issues before the Bar is important.

(d) Each lawyer-board member represents a geographic constituency. As a representative, a lawyer-board member is expected to communicate with constituents about board actions and issues and to represent constituent viewpoints to the Board.

(e) In addition to each lawyer-board member's individual responsibility for communication with his or her constituency as set out in subparagraph (D) above, lawyer members of the Board and staff will have the responsibility to meet with local associations and other lawyer groups. Each year the President and **Chief Executive Officer**~~Executive Director~~ will develop a plan to visit the groups mentioned above with substantial participation by both the President and the **Chief Executive Officer**~~Executive Director~~.

(f) Board members are committed to attend all board meetings and other functions in person except when, in a board member's judgment, an emergency or compelling circumstance arises that prevents participation. Board members should notify staff of the desire to participate in board meetings by telephone when personal attendance is precluded by an emergency or compelling circumstance. Staff will arrange the telephone link at bar expense based on those requests.

#### ***Subsection 2.101 Election***

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

(b) Candidate statements for the office of Governor from a region must be in writing. The **Chief Executive Officer**~~Executive Director~~ will prepare the forms for the candidate statements and supply the forms to the applicants. Applicants must

complete and file the form with the ~~Chief Executive Officer~~ Executive Director by the date set by the Board. The ~~Chief Executive Officer~~ Executive Director must conduct elections in accordance with the Bar Bylaws and the Bar Act.

***Subsection 2.102 Board Committee and Other Assignments***

At or shortly after the annual orientation and retreat, board members will be invited to indicate their preferences for board committee and other assignments. Members of the senior class will be invited to identify one or more board committees they would like to chair. The ~~Chief Executive Officer~~ Executive Director and president-elect will develop a slate of assignments based on the preferences. Senior class members shall have priority in the choice of assignments, but the preferences of all member will be honored to the extent possible and appropriate. The proposed slate will be circulated to the board and any board member may request a change of assignments. The president-elect will make reasonable effort to accommodate any change requests, but the president-elect's decision will be final.

***Subsection 2.103 Judicial Campaigns***

The members of the Board must refrain from public involvement in judicial campaigns and appointments that in any way identifies them as members of the Board, officers of the Bar, or otherwise representing the Oregon State Bar.

***Subsection 2.104 Separation of Powers***

The Board will not nominate or appoint persons who work in or for the state executive or legislative departments to the following bodies: State Professional Responsibility Board, Disciplinary Board, Minimum Continuing Legal Education Board and Commission on Judicial Fitness and Disability. In the case of a challenge to the candidacy of a member of the Board of Governors under ORS 9.042, the Board will follow the procedures outlined in the statute.

***Subsection 2.105 Amicus Curiae Briefs***

A section or committee that wishes to enter an *amicus curiae* appearance before any trial court or appellate court must obtain prior approval from the Board. The request must be in writing and must include a synopsis of the question involved, the posture of the case, the position to be taken in the *amicus* appearance, and the anticipated cost of appearing *amicus curiae* including lawyer fees, if any. The question involved must directly or substantially affect admission to the practice of law, the practice of law, discipline of members of the bench or bar, the method of selecting members of the judiciary or other questions of substantial interest to the Bar or a committee or section. The Board will determine whether the question involved can be adequately presented to the court without the *amicus* appearance of the committee or section. All costs for appearance by a section must be paid by the section; if the Board approves the filing of an *amicus* appearance by a committee, the Bar will pay any costs for the appearance.

***Subsection 2.106 Indemnification***

The Bar must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ORS Chapter 30 relating to indemnification by public bodies, especially the provisions of ORS 30.285. The term

"officers, board members, directors, employees and agents" of the Bar includes subordinate groups established by the Bar or the Supreme Court to perform one or more of the Bar's authorized functions, including the Board of Bar Examiners, the Professional Liability Fund, the State Professional Responsibility Board, the Disciplinary Board, ~~the Local Professional Responsibility Committees~~ and bar counsel and the State Lawyers Assistance Committee. The right to and method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.

***Subsection 2.107 Defense of Disciplinary Complaints and Proceedings***

(a) The bar will defend any of its current and former officers, employees and agents (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the performance of his or her official duties on behalf of the bar as provided in this bylaw.

(b) The duty to defend does not apply in the case of malfeasance, gross negligence or willful or wanton neglect of duty.

(c) If any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Accused or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Accused which on its face falls within the provisions of subsection (a) of this bylaw, or which the Accused asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the bar and not within the scope of subsection (b) of this bylaw, the Accused may file a written request for a defense with the General Counsel, or if the request is by the General Counsel, the President of the bar. The General Counsel or President, as the case may be, will thereupon present his or her recommendations to the Board of Governors regarding the approval of an agreement to pay for the defense of the Accused, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Governors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to select counsel to defend the Accused, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on behalf of the bar, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

(d) If the Board agrees to pay for the defense of a complaint or disciplinary proceeding, the Accused shall cooperate fully with the lawyer(s) hired by the bar to defend the Accused. If the Board determines that the Accused has not cooperated with defense counsel or has otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter for which a defense is provided, the Board may at any time terminate the continued defense of the matter and require the Accused to reimburse the bar for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has failed to cooperate with defense counsel or otherwise acted to prejudice defense counsel's good faith decisions regarding the proper defense of the matter.

(e) If the Board concludes, after undertaking to pay for the Accused's defense, that the conduct was malfeasance, grossly negligent, or the willful or wanton neglect of duty, the Board will terminate the continued defense of the matter and require the Accused to reimburse the bar for all funds it has paid on account of the defense. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has engaged in such conduct.

(f) If the Accused in a disciplinary proceeding is found to have violated the rules of professional duct, a disciplinary statute or disciplinary regulation, the Accused must reimburse the bar for all funds it has paid on account of the defense of the Accused. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the entry of a final judgment imposing discipline on the Accused. Discipline for purposes of this bylaw should be a reprimand or greater sanction imposed by the Disciplinary Board or the Oregon Supreme Court or other court or agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the board may waive the reimbursement requirement.

(g) If the Board denies an Accused a defense under this bylaw or terminates the provision of such a defense under the terms of this bylaw and the Accused is found in any disciplinary proceeding for which a defense was denied or terminated not to have violated any rule of professional conduct or disciplinary statute or regulation, the bar will reimburse the Accused for his or her reasonable attorney fees and costs in defense of such matter so long as the Accused's conduct occurred in the performance of official duties on behalf of the bar and did not separately constitute malfeasance, gross negligence or willful or wanton neglect of duty, as, in good faith, is determined by the Board. Pro se representation does not qualify for the reimbursement of reasonable attorney fees and costs under this subsection.

## **Section 2.2 Officers**

### ***Subsection 2.200 Duties***

#### **(a) President**

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

#### **(b) President-Elect**

The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

#### **(c) Immediate Past President**

The Immediate Past President is a non-voting *ex officio* member of the Board. **Upon completion of the term for which the President is elected, the President becomes the Immediate Past-President for one year.** The duties of the

Immediate Past President will be as agreed between the Immediate Past President and the Board from time to time. Expenses of the Immediate Past President will be reimbursed as approved by the Board.

***Subsection 2.201 Election***

(a) Time of Election

The President and President-elect are elected at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect.

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the **Chief Executive Officer**~~Executive Director~~ by September 1. Each candidate must submit with said notice a statement outlining the candidate's qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth-year class and the current President-elect, will interview each candidate and will meet with the remaining board members to discuss their view about each candidate's respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 30 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee's selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the **Chief Executive Officer** ~~Executive Director~~ not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

If there is only one candidate for an office, the candidate is deemed elected without a formal vote. When there are two nominees for President-elect, the candidate receiving the most votes will be elected. If there are three nominees for President-elect and no candidate receives more than 50 percent of the votes on the first vote, the candidate receiving the fewest votes is eliminated and another vote will be taken. Only board members present at the meeting may vote.

***Subsection 2.202 Removal***

Any officer of the Bar may be removed with or without cause on a three-fourths affirmative vote of all board members. That position is then filled by the Board, at the same or a subsequent meeting, using the above rules as far as applicable.

**Section 2.3 Public Members**

In addition to the resident active members of the Bar required by ORS 9.025, four public positions exist on the Board of the Bar.

***Subsection 2.300 Appointment***

Any person appointed to a public position on the Board must meet the qualifications set forth in ORS 9.025(1). Public members serve for a term of four years, beginning on January 1 of the year following appointment. Every attempt will be made to maintain geographic distribution; however, the priority will be to match the current needs of the Board with the areas of interest of the public members.

***Subsection 2.301 Powers and Duties***

Public members of the Board have the same voting rights as the lawyer members of the Board. They take the same oath of office and are charged with the same functions and duties as provided by statute and Board Policies. Public members cannot serve as officers of the Bar.

***Subsection 2.302 Removal***

Public members of the Board are subject to removal by the Board upon the following grounds and for the following reasons: A public member no longer meets the initial qualifications for appointment set forth in Subsection 2.300 of the Bar's Bylaws; or a public member commits an act substantially similar to the conduct proscribed by ORS 9.527 or fails to perform the duties of the office. If at least ten members of the Board propose that the public member be removed, the public member is given written notice of the proposed removal, together with the reasons therefore. The written notice must be given at least 15 days before the next regularly scheduled board meeting. Thereafter, on a vote of at least ten members of the Board, the public member is removed and the position is vacated.

***Subsection 2.303 Vacancies***

On the death, resignation or removal of a public member of the Board, the Board must appoint a replacement to serve the unexpired portion of the then vacant position. Any person so appointed must satisfy the qualifications for appointment set forth in Subsection 2.400 of the Bar's Bylaws and is subject to removal as set forth in Subsection 2.302 of the Bar's Bylaws.

**Section 2.4 Meetings**

***Subsection 2.400 Robert's Rules of Order***

Board meetings are governed by ORS Chapter 9, these bylaws, and the most recent edition of Robert's Rules of Order.

***Subsection 2.401 Regular Meetings***

Meetings of the Board are held at such times and places as the Board determines. The **Chief Executive Officer** ~~Executive Director~~ will provide notice of the time and place of all meetings in accordance with ORS 192.610 to 192.690.

***Subsection 2.402 Special Meetings***

A special meeting of the Board may be called by the President or by three Governors filing a written request with the **Chief Executive Officer** ~~Executive Director~~. If, within five days after a written request by three Governors, the President fails or refuses for any reason to set a time for and give notice of a special meeting, the **Chief Executive Officer** ~~Executive Director~~ must call the meeting and provide at least 24 hours' notice of the time and place of the special meeting in accordance with ORS 192.610 to 192.690.

***Subsection 2.403 Emergency Meetings***

When the President determines that a matter requires immediate attention of the Board, an emergency meeting may be called on less than 24 hours' notice. Notice must be given to members of the board, the media and other interested persons as

may be appropriate under the circumstances. The notice must indicate the subject matter to be considered. Only the matters for which the emergency meeting is called may be considered at the meeting.

***Subsection 2.404 Minutes***

Accurate minutes of all board meetings must be preserved in writing or in a sound, video or digital recording. The minutes must reflect at least the following information: members present, motions or proposals and their disposition, the substance of any discussion on any matter, and a reference to any document discussed at the meeting. The minutes must reflect the vote of each member of the Board by name if the vote is not unanimous. Draft minutes, identified as such, will be available to the public within a reasonable time after the meeting. Final minutes will be available to the public within a reasonable time after approval by the Board. The minutes of executive sessions will be available to the public except where disclosure would be inconsistent with the purpose of the executive session.

***Subsection 2.405 Oregon New Lawyers Division Liaison***

The Oregon New Lawyers Division ("ONLD") has a non-voting liaison to the Board, who must be a member of the ONLD Executive Committee. The ONLD liaison is appointed by the chair of the ONLD Executive Committee to serve for a one-year term. No person may serve more than three terms as ONLD liaison. If the ONLD liaison is unable to attend a meeting of the Board, the ONLD chair may appoint another member of the ONLD Executive Committee to attend the meeting.

**Section 2.5 Expenses**

***Subsection 2.500 General Policy***

All provisions of Section 7.5 of the Bar's Bylaws (Expense Reimbursements) apply to the Board of Governors with the following additions. Officers of the Board who, because of their office, must occupy a suite or special room other than the standard room occupied by most board members will be entitled to be reimbursed for the extra expense. Members of the Board who host board dinners will be reimbursed the actual cost of the dinner regardless of whether it is held in the board member's home or at a restaurant.

***Subsection 2.501 Conferences***

The Bar will reimburse the actual expenses of the President and/or President-elect and their spouses or partners and the **Chief Executive Officer**~~Executive Director~~, to any out-of-state conference that is included in the annual budget. Other attending board members are not eligible for any reimbursement unless specifically authorized by the Board. Each year the Bar will reimburse the actual expenses of the President-elect and spouse or partner and the **Chief Executive Officer**~~Executive Director~~, to attend the ABA Bar Leadership Conference or a comparable conference.

***Subsection 2.502 Gifts***

The expense of gifts by the Board to its retiring members is a budgeted expense.

## Section 2.6 Conflicts of Interest

Bar officials are subject to the provisions of ORS Chapter 244, the Government Standards and Practices Act. Nothing in this section is intended to enlarge or contradict the statutory provisions as they may apply to bar officials. To the extent anything in ~~the~~ this section contradicts the provisions of ORS Chapter 244, bar officials shall be bound by the statutory provisions.

### *Subsection 2.600 Definitions*

As used in Section 2:

(a) "Actual conflict of interest" means that the person, a relative of the person or a business with which the person or a relative of the person is associated will derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities.

(b) "Bar official" means members of the Board of Governors; appointees of the Board of Governors, including members of standing committees, ~~Local Professional Responsibility Committees~~, bar counsel panels, and the State Professional Responsibility Board; section officers and executive committee members; and bar staff.

(c) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed person and any other legal entity operated for economic gain, but excluding any income-producing not-for-profit corporation that is tax exempt under IRC §501(c) with which a bar official is associated only as a member or board director or in a non-remunerative capacity.

(d) "Business with which the person is associated" means:

(1) any private business or closely held corporation of which the bar official or the bar official's relative is a director, officer, owner, employee or agent or any business or closely held corporation in which the bar official or the bar official's relative owns or has owned stock worth \$1,000 or more at any point in the preceding year;

(2) Any publicly held corporation in which the bar official or the bar official's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; and

(3) Any publicly held corporation of which the bar official or the bar official's relative is a director or officer.

(e) Except as excluded by ORS 244.020(6), "gift" means something of economic value given to or solicited by a bar official, or a relative or member of the household of the bar official:

(1) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not bar officials or the relatives or members of the household of bar officials on the same terms and conditions; or

(2) For valuable consideration less than that required from others who are not bar officials.



(f) "Potential conflict of interest" means that the bar official, a relative of the bar official or a business with which the bar official or a relative of the bar official is associated, could derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities, unless the pecuniary benefit or detriment arises out of the following:

(1) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the bar official of the office or position.

(2) Any action in the bar official's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the bar official, or the bar official's relative or business with which the person or the bar official's relative is associated, is a member or is engaged.

(3) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(g) "Member of the household" means any person who resides with the bar official.

(f) "Relative" means the bar official's spouse, the bar official's Oregon Registered Domestic Partner, any children of the bar official or the bar official's spouse or Oregon Registered Domestic Partner, and siblings and parents of the bar official or the bar official's spouse or Oregon Registered Domestic Partner. Relative also means any individual for whom the bar official provides benefits arising from the bar official's public employment or from whom the bar official receives benefits arising from that individual's employment.

***Subsection 2.601 Prohibited Actions***

Regardless of whether an actual or potential conflict is disclosed:

(a) No bar official may use or attempt to use the person's official position to obtain any financial gain or the avoidance of any financial detriment that would not otherwise be available to the person, but for the bar official's holding of the official position, except official salary, reimbursement of expenses for official activities or unsolicited awards for professional achievement for the bar official, a relative of the bar official, a member of the household of the bar official, or for any business with which the bar official or the bar official's relative is associated.

(b) No bar official may attempt to further the personal gain of the bar official through the use of confidential information gained by reason of an official activity or position.

(c) No bar official or relative or member of the household of a bar official may solicit or receive, during any calendar year, any gift or gifts with an aggregate value of more than \$50 from any single source that could reasonably be known to have an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the bar official acting in the bar official's official capacity. This provision does not apply to bar officials who are subject to the Oregon Code of Judicial Conduct.

(d) No bar official may solicit or receive a promise of future employment based on an understanding that any official action will be influenced by the promise.

***Subsection 2.602 Disclosure of Conflict***

When met with an actual or potential conflict of interest, a bar official must disclose the conflict and take any other action required by this bylaw.

(a) If appointed by the ~~Chief Executive Officer Executive Director~~, the bar official must notify the ~~Chief Executive Officer Executive Director~~ of the nature of the conflict and request the Executive Director to dispose of the matter giving rise to the conflict. Upon receipt of the request, the ~~Chief Executive Officer Executive Director~~ will designate within a reasonable time an alternate to dispose of the matter, or will direct the bar official to dispose of the matter in a manner specified by the ~~Chief Executive Officer Executive Director~~.

(b) If the bar official is the ~~Chief Executive Officer Executive Director~~, she/he must notify the Board of Governors, through the President, of the nature of the conflict and request the Board of Governors to dispose of the matter giving rise to the conflict. Upon receipt of the request, the President will designate within a reasonable period of time an alternate to dispose of the matter, or will direct the ~~Chief Executive Officer Executive Director~~ to dispose of the matter in a manner specified by the Board of Governors.

(c) If the bar official is elected to or appointed by the Board of Governors or other appointing authority to serve on a board, committee, council, commission or other public body, the bar official must:

(1) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a bar official; (2) when met with an actual conflict of interest, announce publicly the nature of the actual conflict, and refrain from participating in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue, except that if the bar official's vote is necessary to meet a requirement of a minimum number of votes, the bar official may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.

(d) When a bar official gives notice of an actual or potential conflict of interest under subsection 2.602(c), the conflict must be recorded in the minutes or other official record of the board, committee, council, commission or other public body on which the official serves, together with an explanation of how the conflict was resolved. If there are no minutes or other official record, then the bar official, in addition to the disclosure to the board, committee, council, commission or other public body, must disclose the conflict in writing to the ~~Chief Executive Officer Executive Director~~.

(e) No decision or action of the any bar official or of any board, committee, council, commission or other public body on which the official serves is invalid or voidable solely by reason of the failure to disclose an actual or potential conflict of interest.

***Subsection 2.603 Board Members as Witnesses in Bar Proceedings***

As provided in BR 5.3(c), a current member of the Board of Governors must not testify as a witness in any bar admission, discipline or reinstatement proceeding

except pursuant to subpoena. If requested by a party to be a witness in a bar proceeding, board members should urge the party to present the anticipated testimony through other witnesses. However, the parties ultimately decide whether a board member will be subpoenaed to testify as a witness in a bar proceeding.

## **Section 2.7 Judicial Selection**

### ***Subsection 2.700 General***

The Bar plays an important role in state and federal judicial selection by conducting preference polls for contested elections and for circuit court appointments, and by interviewing and evaluating candidates for appellate court appointments. Any poll conducted by the Bar is for informational purposes only and will not constitute an official position of the Bar. Results of evaluations and polls will be made public as soon as practicable to the press, the candidates and the appointing authority.

### ***Subsection 2.701 Statewide and Circuit Court Elections***

For statewide and circuit court elections, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar's Bylaws. The ballot will contain all the candidates who will appear on the public election ballot. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture. In any general election that includes contested judicial positions, the Bar will conduct a poll only if there was no prior poll in the primary election, there has been a significant reduction in the number of candidates that appeared on the primary election ballot or it appears that the votes were relatively spread out among most of the candidates so that another poll could potentially produce an entirely different result from that of the primary election poll.

### ***Subsection 2.702 Circuit Court Appointments***

For circuit court judicial appointments, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar's Bylaws at the request of the Governor of the State of Oregon or the Board. If the Governor's Office or the Board requests a poll, the ballot must include the name of any eligible member of the Bar who has filed a candidate statement with the Bar by the appropriate deadline. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture.

### ***Subsection 2.703 Statewide Judicial Appointments***

(a) For judicial appointments to a statewide court, the Board will appoint an Appellate Selection Committee to conduct the Board's appellate recommendation process. Bar members will be notified of the impending appointment and will be invited to participate in the appellate recommendation process. If an appellate recommendation process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board may, in its discretion, forego conducting a separate appellate recommendation process and instead resubmit the

previous list of highly qualified candidates to the Governor without notification to members.

(b) Prior to commencement of the appellate recommendation process, the Appellate Selection Committee shall establish policies and criteria for conducting its review of candidates for each position, which may include, but is not limited to, review of the written applications; interviews of candidates; reports from judges or hearings officers; reports from members of the legal and general community; reports from references supplied by the candidate; and review of writing samples.

(c) The Appellate Selection Committee will recommend to the Board at least three candidates it believes are highly qualified, based on the statutory requirements of the position, information obtained in its review of candidates, and based on at least the following criteria: integrity, legal knowledge and ability, professional experience, cultural competency, judicial temperament, diligence, health, financial responsibility, and public service. The Board will then determine the final list of highly qualified candidates to submit to the Governor. A "highly qualified" or "qualified" recommendation is intended to be objective. Failure to recommend a candidate in any particular selection process is not a finding that the person is unqualified.

(d) In addition to submitting its list of "highly qualified" candidates, the Board will respond to any specific inquiry from the Governor as to whether certain other candidates in the pool meet a "qualified" standard.

(e) Meetings of the Appellate Selection Committee are public meetings except for portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate review process. Discussion of reference reports by the committee and the Board will be in executive session pursuant to ORS 192.660(1)(f).

## **Section 2.8 Chief Executive Officer ~~Executive Director~~**

### ***Subsection 2.800 Duties***

The **Chief Executive Officer** ~~Executive Director~~, appointed by and acting under the supervision of the Board, is the principal administrative officer of the Bar. The **Chief Executive Officer** ~~Executive Director~~ is responsible for the day-to-day operations of the Bar including, without limitation: hiring, managing and terminating bar personnel; negotiating and executing contracts; collecting debts owed to the bar and assigning debts for collection as deemed appropriate; and acquiring (through purchase or lease), managing and disposing of personal property related to the bar's operations, within the budget approved by the board. The **Chief Executive Officer** ~~Executive Director~~ will attend all meetings of the Board and the House of Delegates; will keep the Board informed of all agenda items with appropriate background information and staff or committee reports; and will keep a record of the proceedings of all such meetings. The **Chief Executive Officer** ~~Executive Director~~ is responsible for preparing an annual budget for the Board's Budget Committee. The **Chief Executive Officer** ~~Executive Director~~ performs other duties as imposed by the Bar Act, the Bar Bylaws or as otherwise directed by the Board.

***Subsection 2.801 Evaluation***

No later than December 1 of each calendar year, the Board will evaluate and assess the performance of the **Chief Executive Officer** ~~Executive Director~~. The evaluation will relate to the duties and responsibilities of him or her, progress toward established goals and the working relationships among the **Chief Executive Officer** ~~Executive Director~~, staff and the membership. The Board will conduct the evaluation in executive session. The Board or its representative will meet with the **Chief Executive Officer** ~~Executive Director~~ to discuss the evaluation.

***Subsection 2.802 Service of Notice***

When a statute or rule requires a petition, notice or other writing to be filed with or serve on the Bar or the Board, the **Chief Executive Officer** ~~Executive Director~~ is the designated agent for receipt.

***Subsection 2.803 Board Member Contact with Staff***

Board members will bring any requests for information, material or assistance to the **Chief Executive Officer's** ~~Executive Director's~~ or the **Chief Executive Officer** ~~Executive Director's~~ designee. The **Chief Executive Officer** ~~Executive Director~~ will assign appropriate staff to respond to board member requests. If a board member is dissatisfied with the **Chief Executive Officer's** ~~Executive Director~~ action regarding any request or if the **Chief Executive Officer** ~~Executive Director~~ believes a board member's request is inappropriate or unduly burdensome, the board member and **Chief Executive Officer** ~~Executive Director~~, as the case may be, may bring his or her concerns to the board for resolution. The **Chief Executive Officer** ~~Executive Director~~ has the discretion to authorize board member contact with staff regarding designated matters and concerning particular topics. Board members are free to contact staff to pass on compliments and information relevant to bar activities, but only the **Chief Executive Officer** ~~Executive Director~~ may be contacted regarding complaints about the conduct of a staff member or concerns about staff activities.

## **Article 3 House of Delegates**

### **Section 3.1 Duties and Powers**

The House of Delegates ("House") is a forum for the membership of the Bar and representatives of sections and local bars to advise the Board and to debate and decide matters of policy relating to the membership or the administration of justice as provided in the Bar Act, these Bylaws and other rules and regulations of the Bar. (See rules adopted by the House.)

### **Section 3.2 Delegates**

On or before February 1 of each year, the Board must determine the number of delegates each region should have and whether there are vacancies. Once elected, however, a delegate may serve a full term even if the lawyer population of the region falls below the number required to entitle the region to the delegate. Elected delegates are subject to recall as provided in the Bar Act. Public member delegates are subject to removal by the Board on the same grounds that a public member of the Board is subject to removal under the Bar Act and these Bylaws.

### **Section 3.3 Resolutions**

House member or bar member resolutions must include the name of the bar member who will present the resolution and an estimate of the financial impact, if any, of the resolution. This information must be submitted at least 45 days before the House of Delegates meeting. The Board must independently evaluate the financial impact of the resolution. If the Board's evaluation of the financial impact differs from the sponsor's, both positions must be included when the resolution is presented to the House. Only proposed legislative measures or resolutions that appear in full in the printed agenda may be considered, except that unusually long measures or resolutions may be summarized by bar staff. If this exception applies, then the Bar must provide delegates with copies of the full text of the measures at or before the House meeting at which the proposed measures or resolutions will be discussed and voted on.

### **Section 3.4 Meeting Agenda**

After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in *Keller v. the State Bar of California*. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all bar members, at least 20 days in advance of the House meeting.

### **Section 3.5 Parliamentarian**

The Board must designate a parliamentarian for each House meeting. The parliamentarian should be knowledgeable about parliamentary procedure and familiar with the Bar's Bylaws. The parliamentarian will serve without compensation; however, the Bar may pay the expenses for the parliamentarian to attend the House meeting as allowed in Subsection 7.501 of the Bar's Bylaws.

### **Section 3.6 Initiative Petitions and Referenda**

An initiative petition of the membership or a referendum from the Board or House, brought under ORS 9.148, must be submitted to a vote of the active members. The proponent's question or measure must be printed or circulated to all members of the Bar, along with statements for and against the proposal. The Board determines the manner of circulating the required material. The Board also writes the ballot title and a factual summary of the proposal. Election procedures outlined in Article 9 of the Bar's Bylaws apply.

### **Section 3.7 Location**

The meetings of the Bar's House of Delegates must be held within the geographical boundaries of the State of Oregon.

## **Article 4 Awards**

### **Section 4.1 General Policy**

The Board will select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

### **Section 4.2 President's Membership Service Award**

The criteria for the President's Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections, boards or the Bar's legislative/public affairs process or similar activities through local bar associations or other law-related groups.

### **Section 4.3 President's Public Service Award**

The criteria for the President's Public Service Awards is as follows: The nominee must have volunteered his or her time for the activity in which she or he was involved; the nominee must be an active member of the Oregon State Bar; the nominee must have made a significant contribution to the public through efforts involving pro bono services; coordination of local public service law-related events, such as those associated with Law Day; service with community boards or organizations or similar activities that benefit the public.

### **Section 4.4 President's Diversity & Inclusion Award**

The criteria for the President's Diversity & Inclusion Award is as follows: The nominee must be an active member of the Bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of increasing diversity and inclusion in the legal profession in Oregon through progressive employment efforts, innovative recruitment and retention programs, advocacy or other significant efforts.

### **Section 4.5 President's Special Award of Appreciation**

The President's Special Award of Appreciation is a discretionary award of the President of the Bar, with the concurrence of the Board, to be presented to a person who has made recent outstanding contributions to the bar, the bench and/or the community. The award will be made in conjunction with the OSB Awards Dinner or House of Delegates events within the following guidelines. In any given year, there may be no award, one award or more than one award. The recipient may be a lawyer or a non-lawyer. The President will present his or her proposed award recipient to the Board at the same time the Board considers the Bar's other awards.

### **Section 4.6 Award of Merit**

The Award of Merit is the highest honor that the Bar can bestow. The recipient may be (1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism or (2) a non-lawyer who has made outstanding contributions to the

bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year and only one award may be bestowed in any year.

#### **Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence**

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state's judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity, and judicial independence.

#### **Section 4.8 President's Public Leadership Award**

The criteria for the President's Public Leadership Award are as follows: The nominee must not be an active or inactive member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

#### **Section 4.9 President's Sustainability Award**

The criteria for the President's Sustainability Award are as follows: The nominee must be an active or inactive member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

### **Article 5 Oregon State Bar Delegates to the American Bar Association House of Delegates**

#### **Section 5.1 Selection**

Candidate Statements for the House of Delegates of the American Bar Association ("ABA") must be in writing. The **Chief Executive Officer** ~~Executive Director~~ will prepare forms for the candidate statements and supply the forms to applicants. The applicants must file the forms with the **Chief Executive Officer** ~~Executive Director~~ not more than 90 nor less than 30 days before the election held in conjunction with the Oregon State Bar House of Delegates election. Election of ABA delegates must be conducted according to Article 9 of the Bar's Bylaws. The ABA delegates will be elected from the state at large and the term of office is two years. ABA delegates must be in-state active members of the Bar. The Board must fill a vacancy in the office of ABA delegate due to a delegate's resignation, death or any other reason in the same manner as provided in ORS 9.040(2) for board members.

#### **Section 5.2 Voting**

Each delegate to the ABA House of Delegates, as a condition of election, must vote substantially consistent with any position or direction of the Board of Governors, the Oregon State Bar House of Delegates or the Bar's membership.



## **Section 5.3 Expenses**

The Oregon State Bar will reimburse Oregon State Bar delegates to the ABA House of Delegates their individual expenses in attending the ABA annual and mid-year meetings. Expenses subject to reimbursement under this section do not include those reimbursed by the ABA to individual delegates, and are limited to an amount established each year by the Board of Governors. Bar reimbursement of delegate expenses must not exceed each delegate's proportionate share of the total amount established by the Board of Governors each year.

## **Article 6 Membership Classification and Fees**

### **Section 6.1 Classification of Members**

#### ***Subsection 6.100 General***

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon. Inactive members include Retired members.

#### ***Subsection 6.101 Active Pro Bono Status***

##### **(a) Purpose**

The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive status or even resign from membership in the Bar, and by lawyers who move to Oregon.

##### **(b) Eligibility for Active Pro Bono Status**

The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, ~~a Local Professional Responsibility Committee~~, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

##### **(c) Membership Fees**

Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee.

(d) Procedure

The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The **Chief Executive Officer** ~~Executive Director~~ or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.

(e) Reporting Requirement for Active Pro Bono Status

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyer must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

(f) Transfer from Active Pro Bono Status

Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

**Subsection 6.102 Retired Status**

(a) Purpose.

The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.

(b) Eligibility for Retired Status.

A member of the Bar who is at least 65 years old and who is retired from the practice of law (as defined in paragraph 6.100(b)) may be enrolled as a retired member.

(c) Membership Fees.

Retired members are assessed a fee that is equivalent to the inactive membership fee.

(d) Transfer of Membership.

Retired members wishing to resume regular active membership status must comply with BR 8.1 or 8.2, whichever is applicable. Retired members wishing to transfer to Active Pro Bono status must comply with BR 8.14.

**Subsection 6.103 Reinstatement**

Upon receipt of an application for reinstatement submitted under BR 8.1 of the Rules of Procedure, the bar shall publish notice of and a request for comment on the application on the bar's web site for a period of 30 days before the application is considered.

## **Section 6.2 Register of Members**

The Chief Executive Officer ~~Executive Director~~ must keep a register of the enrollment of members of the Bar, which must contain such matters of information that the Board determines to be proper and desirable. The register is subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502). The register may be published in any manner the Chief Executive Officer ~~Executive Director~~ determines suitable, including in print or electronically. The published information must include at least the member's name, bar number, and current status.

## **Section 6.3 Rights of Members**

Subject to the other provisions of these policies, all active members have equal rights and privileges including the right to hold an office of the Bar, the right to vote, and the right to serve on bar committees. Inactive members may be members, but not officers, of sections. Suspended members may remain members of or join sections during the term of their suspensions, but may not hold an office of the Bar, vote or serve on the Board of Governors, in the House of Delegates or on any bar committee or section executive committee.

## **Section 6.4 Annual Membership Fees and Assessments**

The payment date for annual membership fees and assessments is set by the Board. If the payment date falls on a Saturday, a legal holiday or a day that the bar office is closed for any reason, including inclement weather or natural disaster, the due date of such fees and assessments is the next day that the bar office is open for business. As used in this section, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020, which includes Sunday as a legal holiday. The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive membership after January 31. However, a bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive status and pays the inactive membership assessment by that date, but does not timely submit a signed Request for Enrollment as an Inactive Member, may be allowed to complete the inactive transfer without payment of the active membership assessment, if extenuating circumstances exist. The Chief Executive Officer's ~~Executive Director's~~ decision regarding the existence of sufficient extenuating circumstances is final.

## **Section 6.5 Hardship Exemptions**

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Chief Executive Officer ~~Executive Director~~ may exempt or waive payment of annual membership fees and assessments of an active or inactive member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

## **Section 6.6 Waivers of Fees and Assessments**

The **Chief Executive Officer** ~~Executive Director~~, may, each year, waive or exempt annual membership fees and assessments for members in active military service, the Peace Corps, VISTA or other volunteer programs serving the national interest or the legal profession, and for which the member receives only a subsistence income, stipend or expense reimbursement that is the member's principal source of income. Requests for waivers must be received on 15 days before the date that membership fees and assessments are due each year. Waivers will not be granted unless the lawyer's service encompasses the majority of a year except in the case of military waivers, which may be granted for less than a year under special circumstances such as a war of unknown duration.

## **Section 6.7 Late Payment Penalty**

**The amount of the late payment penalty assessed to members delinquent in the payment of fees is set by the Board.**

## **Article 7 Financial Matters**

### **Section 7.1 Management of Funds**

#### ***Subsection 7.100 General Policy***

All funds paid to the Bar will be received by the **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer and deposited to the account of the Bar in a checking account or accounts with a commercial bank. The **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer will make all disbursements from such accounts. The Board's Budget and Finance Committee will adopt the policy governing the investment, reinvestment, sale, conversion or other disposition of funds of the Bar, subject to the approval of the Board.

#### ***Subsection 7.101 Audit of the Books***

The books of account of the Bar must be audited at least biennially, unless otherwise directed by the Board.

#### ***Subsection 7.102 Borrowing***

(a) The President and either the **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer acting for and on behalf of the Bar, are authorized and empowered:

- (1) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender and approved by the Board, a sum deemed prudent and necessary to effectuate the mission of the Bar.
- (2) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.
- (3) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.

(4) To execute and deliver to any lender any financing statements, security agreements or other instruments in writing, of any kind or nature, that may be necessary to complete a financial transaction.

(5) To draw on or endorse to any lender the savings on deposit or to dispose of the proceeds there from as may be deemed advisable.

(6) To perform other acts and to execute and deliver to any lender other documents as may be deemed reasonable, necessary or proper.

(b) The President and either the **Chief Executive Officer** ~~Executive Director~~ or the Chief Financial Officer, acting for and on behalf of the Bar, are also authorized and empowered to execute and deliver documents to any lender to memorialize or otherwise complete any borrowing or other financial transaction that has been previously authorized by the Board of Governors.

#### ***Subsection 7.103 Check Signatures***

Disbursements of \$10,000 or more require two of the following signatures: (One from each group or group one alone) Group One: **Chief Executive Officer** ~~Executive Director~~ and Chief Financial Officer. Group Two: General Counsel or Deputy General Counsel.

#### ***Subsection 7.104 Credit Policy***

Generally, credit will be extended to all members of the Bar. However, credit will not be extended further to accounts that are 90 days past due. Credit may be denied to members who have had delinquent accounts in the past. The Chief Financial Officer must approve charges that exceed \$5,000. Credit will not be extended for payment of annual membership or regulatory fees. The Bar may take any reasonable and financially prudent methods to collect on accounts, including accounts of members of the Bar, that are 90 days past due.

#### ***Subsection 7.105 Write-offs***

The **Chief Executive Officer** ~~Executive Director~~ has the authority to write off bar receivables that he or she has determined are uncollectible or for other financial reasons should be written off. In the calendar quarter after the fiscal year end, the Chief Financial Officer will prepare a list of all receivables over \$500 that the **Chief Executive Officer** ~~Executive Director~~ has written off. The list will be submitted to the Board at the first meeting of the second calendar quarter. The list should include the reason for the write-off.

### **Section 7.2 Annual Budget**

The **Chief Executive Officer** ~~Executive Director~~ will develop a draft annual budget for review and approval by the Budget and Finance Committee. The Budget and Finance Committee will submit its recommendation for final approval to the Board.

#### ***Subsection 7.200 Approval by Board of Governors***

After the annual budget is adopted, the Board must approve a substantive programmatic change not anticipated or included in the budget.

***Subsection 7.201 Contingency Fund***

A contingency fund will be established within the annual operating budget of the Bar, as a line item equal to one percent of the annual expenditure budget. The contingency fund is to be used for unanticipated expenditures that were not identified in the normal budget process. All expenditures from the contingency fund must be approved by the Board.

***Subsection 7.202 Approval by Supreme Court***

The Board will establish each year the budget of the Bar's admissions, discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. The admissions, discipline and Minimum Continuing Legal Education components of the Board's preliminary budget for the following year must be submitted to the Chief Justice of the Oregon Supreme Court for review and approval by the court. Any changes made by the court in the preliminary budgets of the Bar's admissions, discipline and Minimum Continuing Legal Education programs must be incorporated into the final budget approved by the Board. Additional provisions pertaining to the development and approval of the budget for the admissions component are set out in Article 28.

***Subsection 7.203 Grants***

The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The bar's annual budget shall include an amount dedicated to providing such financial support, although that amount may change from year to year based upon the overall financial needs of the bar. This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

**Section 7.3 Reserve Policy**

***Subsection 7.300 Purpose***

The Bar maintains separate funds for the general and designated operations of the Bar and for its financial welfare. The separate funds are the General Fund, the Client Security Fund, the Affirmative Action Program, Legal Services and all sections funds. A distinct and separate fund balance will be maintained for each fund.

***Subsection 7.301 General Fund***

The General Fund will maintain cash reserves sufficient to assure fulfillment of obligations to the membership and provide funds for unforeseen future contingencies. The reserves will be used to sustain an acceptable level of operation and continue service to the membership if the standard level of operations is interrupted by unforeseen events. It is also used to offset the effects of an operational reversal until expenditures can be adjusted and to fund specific future capital enhancements and improvements in the operation of the Bar.

#### ***Subsection 7.302 Reserve Funds***

Separate reserve funds will be established and maintained for the general operating fund and the Board-authorized capital reserve fund, defined as follows:

(a) General Operating Reserve Fund: Established and maintained within the annual budget to assure continued operation of the Bar in the event of a non-dues revenue reversal or a catastrophic event.

(b) Capital Reserve Fund: established by policy decisions based on predetermined activities to replace, replenish or preserve capital assets or capital improvements that are purchased or made infrequently, to meet current regulatory requirements or provide enhanced services to the membership. Capital reserve items are capital assets that cost more than \$5,000 or items whose implementation or purchase extend into more than one fiscal year or whose purchase is planned for a future year.

(c) Each fund will maintain a separate and distinct level of cash reserves, although the reserve funds may be merged for investment purposes to obtain a higher return on the total funds invested. The operating reserve of the General Fund will be a minimum of \$500,000. The capital reserve level will be determined by the Board based on predetermined activities.

### **Section 7.4 Investment Policy**

#### ***Subsection 7.400 Purpose***

This investment policy is established to provide direction and limits for the Bar's Chief Executive Officer and Chief Financial Officer and for any fee-for-service investment manager that have been engaged in investing financial assets held by the Bar. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity, and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The Bar's short-term investments consist of cash and cash equivalents anticipated to be needed and used within the Bar's current fiscal year, generally one year or less. The objective shall be to maximize liquidity and minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The Bar's long-term investments include all reserve balances and designated funds. The objective of these investments is to provide for long-term growth and stability and to achieve reasonable yields while minimizing exposure to risk. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. The long-term investments shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the preservation of capital or returns on investment to the Bar.

#### ***Subsection 7.401 Investment Management***

The Chief Executive Officer or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as the officers may require. The Bar may

engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of the bar's Investment Policy and the specific direction of the Investment Committee.

***Management and Monitoring of Performance***

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall manage and monitor the investment policy and portfolio. All policy and bylaw changes will be reviewed and approved by the Budget & Finance Committee.

***Subsection 7.404 Prudent Investor Rule***

The standard of prudence to be used by any fee-for-service investment manager that is engaged by the Bar in managing the overall portfolio will be the Prudent Investor Rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

**Section 7.5 Expense Reimbursements**

***Subsection 7.500 General Policy***

Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors. Requests for expense reimbursement must be received in the Accounting Department not later than 30 days after the expense has been incurred. If an expense reimbursement form is submitted more than 30 days after the expense is incurred, it must be supported by an explanation for the delay. The Chief Financial Officer may deny any late-submitted request for which the justification is deemed insufficient. A person whose request for reimbursement is denied may request that the **Chief Executive Officer** ~~Executive Director~~ review the decision. Supporting documentation in the form of original receipts or copies of original receipts must be submitted with all requests for reimbursement of expenses while acting on official bar business.

***Subsection 7.501 Eligible Expenses***

Eligible reimbursable expenses while on official business include the following:

(a) Out-of-State Travel:

Out-of-state travel for board members will be reimbursed for those persons and meetings set forth in the Bar's annual budget or as otherwise approved by the Board of Governors. Employees must obtain prior approval of the **Chief Executive Officer** ~~Executive Director~~ prior to traveling out-of-state.

(b) Transportation:



Use of a personal automobile is reimbursed at the allowable IRS rate. Airfare is reimbursed at the actual cost of coach fare unless the flight is at least three hours and an upgrade to business class can be obtained for \$100 or less. Actual cost of taxi, bus or other public transportation is reimbursable. Actual cost of car rental at economy car rate when other transportation is not readily available.

(c) Lodging:

Actual cost for a moderately priced, double-occupancy room, except when the location of the meeting or conference requires other arrangements. Receipts for lodging must be attached to the reimbursement form.

(d) Meals:

Reimbursement for meals will be made at actual cost of the meal provided that the expense is supported by itemized receipts and meets the standard of reasonableness. A request for reimbursement for meals without receipts will be reimbursed according to the rates published under the Federal Travel Regulations as put out by the U.S. General Service Administration for federal government travel. Meals purchased for members of the Bar or other persons in the course of official bar business will be reimbursed at actual cost with submission of itemized receipts and an explanation provided it meets the standard of reasonableness. Official dinners of the Bar or law-related groups which staff, BOG members or volunteers and their spouses or guests are expected to attend will be paid for by the Bar and, if not, will be eligible for reimbursement.

(e) Miscellaneous Costs:

Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. Bar funds must not be used to pay the cost of alcoholic beverages.

***Subsection 7.502 House of Delegates Meetings***

(a) Elected delegates and ex officio delegates from sections and local bars will be reimbursed for their transportation to and from the annual HOD meetings. The reimbursement is limited to roundtrip mileage up to 400 miles at the allowable IRS rate. Requests for mileage reimbursement must be submitted on a form approved by the Bar within 30 days after the meeting.

(b) Public member delegates will be reimbursed for their transportation, meals and lodging as provided in Subsection 7.500 and 7.501.

**Section 7.6 Location of Office**

Unless otherwise ordered by the Board, the bar office will be maintained in the Portland metropolitan area.

## Article 8 Public Records/Meetings

### Section 8.1 Public Records

#### *Subsection 8.100 General Policy*

The records of the Bar are subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502).

#### *Subsection 8.101 Public Record Requests and Bar Fees for Public Records Searches and Copies*

(a) The **Chief Executive Officer** ~~Executive Director~~ will assign appropriate staff to respond to requests for public records. The **Chief Executive Officer** ~~Executive Director~~ will advise the board of any public records disputes that are taken by the requestor to the attorney general for further consideration.

(b) The **Chief Executive Officer** ~~Executive Director~~ will propose and the board will adopt a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.

(c) The fee schedule shall be reasonably calculated to reimburse the bar for the actual cost of making the records available. The charges for staff time shall be computed on the basis of the actual salary of the employee or employees engaged in responding to a particular public records request.

(d) The bar may estimate charges for delivering the requested documents and require the requestor to pay the estimated charges prior to the start of staff work to respond to the request. If the estimated cost of producing the records is \$25 or more, the bar will provide the estimate in writing and will take no action on the request until the requestor confirms that the bar should proceed. Any estimated fees paid in advance that exceed the actual cost of the search and production of public records will be refunded.

(e) The bar may furnish copies of public records without charge or at a substantially reduced fee if the **Chief Executive Officer** ~~Executive Director~~ or department manager determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(f) Public records shall be made available in alternative formats to qualified individuals with disabilities at no additional or at a reduced cost, provided that compliance with the request will not result in undue financial or administrative burden.

#### *Subsection 8.102 Public Disclosure of Client Assistance Office, Discipline Counsel's Office and Disciplinary Board Clerk Records*

(a) Except as provided otherwise herein, the following records of Client Assistance Office, Disciplinary Counsel's Office and the Disciplinary Board Clerk are open to inspection on request:

(1) Letters inquiring or complaining about the conduct of any member of the bar and all material submitted by inquirers, complainants, accused lawyers and other persons to the bar relating to such inquiries or complaints.

(2) All correspondence by bar employees with inquirers, complainants, accused lawyers, witnesses and other persons in the course of a disciplinary or Client Assistance Office investigation.

(3) Investigative reports and summaries concerning pending Client Assistance Office, disciplinary and reinstatement matters prepared by Client Assistance Office Counsel, Disciplinary Counsel, ~~a Local Professional Responsibility Committee~~, the SPRB or a bar investigator, to the extent they cover purely factual materials.

(4) The completed minutes of SPRB meetings.

(5) The formal complaint against a member of the bar, the accused lawyer's answer and all other documents in formal proceedings filed with the Disciplinary Board Clerk pursuant to the Rules of Procedure or statute.

(6) Letters of admonition issued by the SPRB when offered to an accused by Disciplinary Counsel.

(b) The following records are exempt from disclosure and will not be open to public inspection except as might otherwise be required by law:

(1) Investigative assignments made by Disciplinary Counsel or the SPRB to ~~a Local Professional Responsibility Committee~~ or other an investigator, to the extent they cover other than purely factual materials.

(2) Investigative reports or summaries concerning pending Client Assistance Office, disciplinary or reinstatement matters prepared by the Client Assistance Office, Disciplinary Counsel's Office, ~~a Local Professional Responsibility Committee~~, a bar investigator or the SPRB prior to a finding of probable cause in the matter, to the extent that they cover other than purely factual materials.

(3) The work product of bar counsel or Disciplinary Counsel.

(4) Communications between the Client Assistance Office and Disciplinary Counsel's Office, between bar counsel and Disciplinary Counsel's Office and between Disciplinary Counsel and the SPRB, regarding the merits of a prosecution or relating to matters of strategy to the extent they are privileged under OEC 503.

(5) Information of a personal nature submitted to the bar during a Client Assistance Office or disciplinary investigation, a reinstatement proceeding, pursuant to BR 3.2, 3.3 and 3.4 or otherwise, if the requirements of ORS 192.502(2) have been met. "Information of a personal nature" includes but is not limited to physical and mental health records, tax returns, trust and other bank account numbers, social security numbers, fingerprint cards, and credit reports.

(6) Communications between General Counsel's Office and the board, individual board members, the Chief Executive Officer ~~Executive Director~~ or bar staff that are protected by the attorney-client privilege.

(7) Other records that the bar deems exempt from disclosure under the Public Records Law.

(c) The Board of Governors may direct that member discipline histories be posted on the bar's web site or otherwise electronically. The nature of the information included and the period covered will be as determined by the Board of Governors from time to time.

## Section 8.2 Public Meetings

All regular and special meetings of the Board of Governors, Board of Bar Examiners, committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).

### *Subsection 8.201 Judicial Proceedings*

(a) Disciplinary and contested reinstatement hearings and hearings conducted pursuant to Title 3 of the Rules of Procedure, are open to the public, subject to the authority of the presiding official to maintain proper decorum and to exclude witnesses at the request of the Bar, an accused or applicant. Panels of the Disciplinary Board and any presiding official will comply with UTCR 3.180 when presented with requests to allow media coverage of proceedings.

(b) Meetings of ~~Local Professional Responsibility Committees and the SPRB,~~ and the deliberations of Disciplinary Board trial panels are closed to the public, pursuant to the exemption set forth in ORS 192.690(l) for judicial proceedings.

(c) Meetings of the Board of Governors relating to disciplinary and reinstatement matters are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings. Meetings of the Board of Governors may also be closed to the public in whole or part for consideration of any matter for which a closed session is authorized under ORS 192.660.

(d) The Board of Bar Examiners' consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law, pursuant to ORS 9.210(4).

## Article 9 Election Procedures

### Section 9.1 Date of Elections

The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a candidate statement to the Chief Executive Officer ~~Executive Director~~ of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which candidate statements for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present candidate statement to the Chief Executive Officer ~~Executive Director~~ of the Bar at least 30 days before the election.

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a candidate statement to the Chief Executive Officer ~~Executive Director~~ of the Bar at least 30 days before the election. Only members with a principle office address in

## **Oregon will be eligible to vote for the ABA House of Delegates representatives.**

### **Section 9.2 Ballots**

The **Chief Executive Officer** ~~Executive Director~~ will prepare ballots whenever a contest exists and the ballots will be accompanied by the candidate statement that includes the candidate's name, law firm, principal office address, current full-face photograph, law school from which graduated, date of admission in Oregon, state and local bar activities, offices and other pertinent information. The statement must be submitted on a form prepared by the Bar, which will also indicate that the information supplied by the candidate has not been edited or verified by the Bar. A request for a candidate statement or the submission thereof will be considered public information. Ballots will be electronic.

### **Section 9.3 Voting**

Members eligible to vote will be provided a secure link to the candidate statements and an online ballot. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. ~~Any member of the Bar will be permitted to be present while the ballots are canvassed.~~ **Voting must be completed on or before 5:00 p.m. on the day of the election.** The **Chief Executive Officer** ~~Executive Director~~ will announce the results of the balloting and will notify each candidate of the results of the election.

## **Article 10 Diversity**

The Bar respects the diversity of its membership and its employees. Bar entities, including, but not limited to standing committees, section executive committees and Continuing Legal Education programs and publications, should reflect this diversity. "Reflect," as used in this article, does not require the application of strict quotas, but requires a good faith attempt to achieve representative participation. Reports of such efforts may be required of bar entities. In addition, no bar entity may discriminate on the basis of race, religion, color, gender, sexual orientation, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law. No professional, business or social functions of the Bar, or any of its sections, committees, affiliates or other authorized entities may be held at any private or public facility, which discriminates, based upon the terms listed above. Furthermore, advertisements or solicitations for employment must offer equal employment opportunities. The United States Armed Forces are exempt from this policy as it regards advertisements in the bar's communications.

## **Article 11 Communications**

### **Section 11.1 General Policy**

Communications of the Bar and its constituent groups and entities, including printed material and electronic communications, should be germane to the law, lawyers, the practice of law, the courts and the judicial system, legal education and the Bar in its role as a mandatory membership organization. Communications, other than permitted advertisements, should advance public understanding of the law, legal ethics and the professionalism and collegiality of the bench and Bar.

## **Section 11.2 Editorial Policy**

The **Chief Executive Officer** ~~Executive Director~~ may establish editorial standards for bar communications and material permitted by the Bar to be included in its communications concerning such matters as advertising, political communication, profanity and obscenity, letters to the editor, use of artwork, photographs and illustrations, story placement, headlines and scheduling, advertising content and rates and similar topics. The **Chief Executive Officer** ~~Executive Director~~ as sole discretion to determine whether material submitted meets the standards set forth in or adopted pursuant to this policy and to accept or reject material submitted to the Bar for publication based on that determination. Editorial standards must comply with Article 10 Diversity.

## **Section 11.3 Media Relations**

The Bar will be responsive to the needs of the media and will identify persons to speak for the Bar. All statements made to the media, whether oral or by news release, must be informational in nature and must avoid statements of personal opinion or positions not considered or adopted by the Board. The President is the official chief spokesperson for the Bar. If public appearances or statements by the chairperson or other officer or member of any bar committee are deemed necessary, prior authority must be obtained in advance from the President.

## **Section 11.4 Campaign Advertisements**

Judicial candidates and candidates for Board of Governors, House of Delegates and American Bar Association positions may advertise at standard charges in the Bar Bulletin, but partisan political advertising is not allowed. Partisan political announcements or endorsements will not be accepted for publication as letters to the editor or feature articles.

## **Section 11.5 Membership Surveys and Questionnaires**

- (A) Any survey or questionnaire to all members of the Bar from a section or non-bar person or group must have the prior approval of the Board regarding purpose and content.
- (B) A survey to specific groups of the membership from bar staff must have the prior approval of the President or President-elect. A survey to all members of the Bar must have the prior approval of the President or President-elect.
- (C) A section may survey its own membership without prior approval.

## **Article 12 Legislation and Public Policy**

### **Section 12.1 Guidelines**

Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or

affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

## **Section 12.2 Initiation of Legislation**

### ***Subsection 12.200 House of Delegates and Membership***

The Bar must sponsor legislative proposals approved by the House of Delegates or through a membership initiative to the Legislative Assembly directly following the House or membership action. Legislation not enacted may not be sponsored in the following session unless resubmitted by one of the methods set forth above or by action of the Board.

### ***Subsection 12.201 Board of Governors***

The Board may sponsor legislative proposals to the Legislative Assembly on its own initiative. The Board and its Public Affairs Committee has the authority between meetings of the House of Delegates to act on legislative and public policy matters pursuant to the guidelines established.

## **Section 12.3 Legislative Process**

Because of the nature of the legislative process, the Board or its Public Affairs Committee retains the right to set priorities regarding the enactment of legislation, to propose amendments or consent to amendments to legislation and to sponsor or take positions on appropriate legislation. In so doing, the Board will make a reasonable effort to do the following:

Encourage as wide a participation of the membership as possible in formulating positions on legislative issues; inform members, especially sections and committees, of the Bar's legislative positions; respect divergent opinions of subgroups within the legal profession; provide assistance to bar sections and committees; avoid committing bar funds to issues that are divisive or result in creating factions within the profession; present major issues to the House of Delegates for approval; ensure that the Public Affairs Committee encompasses a balance of interest within the Bar and ensure that the Public Affairs Committee consults frequently with the Board.

## **Section 12.4 Committees and Sections**

Any committee or section wishing to sponsor legislation or take a position on any rule or public policy issue will inform the Public Affairs Program, and through that office, the Board, of the exact nature of the legislation proposed. A copy of the bill, proposed rule or policy will be presented for consideration and approval of the Board. A committee or section of the Bar may 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 that committee or section of the Bar without the majority approval of the members of that committee or, in the case of a section, the executive committee and the prior approval of the Board, except as follows. During a legislative session or during the interim, a bar committee or the executive committee of any section must contact the Bar's Public Affairs Program before taking any position on a bill, rule or public policy issue within its general subject area. The chair of the Board's Public Affairs Committee will determine, within 72 hours of notice of the issue, whether it is

appropriate for the Bar to take an official position or to allow the section or committee to take a position as requested. The full Public Affairs Committee or the full Board may be consulted before a final decision is made. Bar staff and the Public Affairs Committee of the Board will make every effort to accommodate committees and sections that wish to express positions on relevant issues. The Public Affairs Program shall be kept informed about the status of such positions and related activities.

### **Section 12.5 Professional Liability Fund Legislation**

The Professional Liability Fund ("PLF") may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of the Board of Governors, except as is provided in Section 12.4 of the Bar's Bylaws.

### **Section 12.6 Objections to Use of Bar Dues**

#### ***Subsection 12.600 Submission***

A member of the 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 to review the member's concerns to determine if the Board agrees with the member's objections. Member objections must be in writing and filed with the **Chief Executive Officer** Executive Director of the Bar. The Board will review each written objection received by the **Chief Executive Officer** Executive Director at its next scheduled board meeting following receipt of the objection. The Board will respond through the **Chief Executive Officer** Executive Director in writing to each objection. The Board's response will include an explanation of the Board's reasoning in agreeing or disagreeing with each objection.

#### ***Subsection 12.601 Refund***

If the Board agrees with the member's objection, it will 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 that the member's fees were received to the date of the Bar's refund. The statutory rate of interest will be used. If the Board disagrees with the member's objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. The **Chief Executive Officer** Executive Director and the member must sign an arbitration agreement approved as to form by the Board.

#### ***Subsection 12.602 Arbitration***

If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association ("OSJA") 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 will have one preemptory challenge to the list of arbitrators. The Bar and the objecting member must notify one another of a preemptory challenge within seven days after receiving the list of proposed arbitrators. If there are no challenges or only one challenge, the OSJA will designate the arbitrator. The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Oregon State Bar



Center or at another location in Oregon that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting member. The arbitrator will not be bound by rules of evidence. The presentation of witnesses will not be a part of the hearing process, although 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 must be borne by the party requesting it. The 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. The arbitrator will 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 to which the member objected. The scope of the arbitrator's review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator must file a written decision with the **Chief Executive Officer** ~~Executive Director~~ within 14 days after the hearing. The arbitrator's decision is final and binding on the parties. If the arbitrator agrees with the member's objection, the Bar will immediately refund the portion of the member's dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the date that the member's fees were received to the date of the Bar's refund. If the arbitrator agrees with the Bar, the member's objection is denied and the file in the matter closed. Similar or related objections, by agreement of the parties, may be consolidated for hearing before one arbitrator.

## **Article 13 Pro Bono**

### **Section 13.1 Aspirational Standard**

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

### **Section 13.2 Program Certification**

#### ***Subsection 13.200 Procedure***

In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's **Chief Executive Officer** ~~Executive Director~~ determines whether a program is eligible for certification and this determination is final.

***Subsection 13.201 Criteria***

(a) Purpose:

The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:

- (1) Persons of limited means.
- (2) Underserved populations with special legal needs.
- (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.

(b) Compensation:

The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.

(c) Fees:

The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

(d) Quality Control:

The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.

(e) Diversity:

The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.

(f) Professional Liability Coverage

The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

***Subsection 13.202 Volunteer Recognition***

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

## **Article 14 Committees**

### **Section 14.1 Standing and Special Committees**

Standing or special committees of the Bar or any member or officer of those committees may be appointed or discharged by the President or the Board.

### **Section 14.2 Joint Committees**

The Board has from time to time agreed to create joint committees between the Bar and other professional groups to develop better understanding between the two groups and to assist in resolving problems of mutual concern. These joint committees comprise a certain number of bar members and a certain number of members of other professional associations. All Bar Bylaws relating to committees apply to these joint committees. Lawyer members who participate in these joint committees are prohibited from engaging in any activity that seeks to restrain other groups of professionals from engaging in lawful professional activities.

### **Section 14.3 Committee Responsibilities**

Committees are established so that members can study issues within the committee's charge and make recommendations to the Board. Before January 1 of each year the Board will forward a committee charge to the chair of each committee. This charge outlines the committee's ongoing general activities as well as specific issues to be considered for the year. The Board will consult with the previous committee members before adopting the committee charge. Committees may also recommend issues to the Board to be included in the charge at any time.

### **Section 14.4 Membership**

All members of standing committees must be active members of the Bar. All members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year. The Board appoints members to fill vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

### **Section 14.5 Financial Issues**

Committees have no budget; although they may make recommendations regarding the expenditure of funds already budgeted in a particular program area. A committee cannot incur any expense without prior authorization from the **Chief Executive Officer** ~~Executive Director~~.

### **Section 14.6 Legislation**

Each committee must designate a member of the committee as a contact for legislative information and involvement. This member is to work with and coordinate all activities with the Director of Public Affairs and the Public Affairs Committee of the Board.

## **Section 14.7 Administrative Services**

The Bar's meeting rooms will be available on a first-come first-served basis. All committees are encouraged to use the Bar's meeting rooms whenever possible. The Bar will assist committees with providing meeting notices in accordance with the requirements of the Public Meetings Law. If the Bar does not produce the meeting notice, the committee member who produces the notice must provide a copy to the Bar. The Bar will assign a bar liaison to each committee. The bar liaison serves as a resource of information for the committee. Each committee will have a contact person who is a member of the Board. It is not anticipated that the board member will attend the meetings of the committee on a regular basis.

## **Section 14.8 Committee Reports**

Each committee must file an annual report of its activities with the Chief Executive Officer ~~Executive Director~~ for the preceding year by December 1 of each year. Other reports may be required from time to time.

## **Section 14.9 Quorum for Meetings**

A quorum, consisting of a majority of the committee members, is required for the transaction of committee business. No recommendation of a committee to the Board of Governors is valid if made without a quorum present, but the absence of a quorum does not preclude a committee from studying or discussing any issue within the committee's charge. Action of the committee will be by majority vote of those voting.

## **Article 15 Sections**

### **Section 15.1 Purpose**

Sections are an integral and important part of the Bar. Sections are intended to provide bar members who share particular interests an opportunity to develop and improve skills and to provide a forum for communication and action in matters of common interest.

### **Section 15.2 Formation**

Any 100 members of the Bar who wish to form a section in a particular area of law may submit a petition to the Board to create a section. The petition must state that the signators are committed to becoming members of the section, if the Board approves forming the section. The Board must consider creating a section when it receives the petition and determines that the proposed section does not duplicate another section's activities or area of legal interest. The Board may merge, reorganize or abolish sections at the request of affected sections or as the Board deems appropriate. Factors that the Board must consider include, but are not limited to, the section's membership falling below 100 members, failure to conduct Continuing Legal Education activities or failure to hold regular meetings.

### **Section 15.3 Bylaws**

Sections are governed by the Standard Section Bylaws adopted by the Board. Sections may propose and the Board may approve, modified bylaws commensurate with the section's needs.

## **Section 15.4 Finances**

### ***Subsection 15.400 Dues***

The Bar will assess and collect section dues at the same time that bar membership dues are collected. Section dues will be assessed and collected together with bar dues by the Bar. The Board must approve the dues for each section. Each section should set dues at an appropriate level to pay for programs and activities. The Bar charges each section a per capita fee equal to 50 percent of the cost of providing services to the sections. This fee is recalculated periodically as determined by the **Chief Executive Officer** ~~Executive Director~~. No section may maintain a separate bank account. Each section's receipts and expenditures are handled by the Bar and accounted for in the section's monthly financial statement provided by the Bar. Interest on section accounts accrues to the Bar's General Fund and is used to offset the calculation of the per capita fee.

### ***Subsection 15.401 Donations***

Sections may make donations to charitable causes or organizations only with prior approval of the **Chief Executive Officer** ~~Executive Director~~. The **Chief Executive Officer** ~~Executive Director~~ will allow such donations on a showing by the section that the donation is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws. The **Chief Executive Officer** ~~Executive Director~~ will maintain a list of approved recipients.

## **Section 15.5 Administrative Services**

Special services of the Bar that are not included in the calculation of the per capita assessment may be made available at cost to the sections upon adequate notification to and negotiation with the Bar. Sections must give the Bar the first opportunity to provide the necessary publications production support services before contracting with outside organizations or individuals. Sections seeking to contract for any goods or services with outside organizations or individuals must contact the General Counsel's office of the Bar for preparation of appropriate contract documents and must obtain the **Chief Executive Officer's** ~~Executive Director's~~ prior approval of all such contracts.

## **Section 15.6 Continuing Legal Education Activities**

### ***Subsection 15.600 CLE Publications and Seminars Scheduling***

The Bar, is the informational clearinghouse for the CLE activities of each section. Each section should advise the Bar's CLE Publications and Seminars Departments of any proposed CLE activities at the earliest possible date and in accordance with timelines established by the CLE Committee.

### ***Subsection 15.601 CLE Event Co-sponsorship with Bar***

If a section decides to seek co-sponsorship for a CLE event, it is encouraged to first contact Bar's CLE Seminars Department. If the CLE Seminars Department is unavailable to co-sponsor the seminar event, the section then may seek co-sponsorship with other organizations. The CLE Seminars Department will establish policies for bar co-sponsorship of section CLE events. These policies will address issues such as event revenues and expenses, topic, speakers, date and location.

***Subsection 15.602 Oregon State Bar Logo***

A section that plans a seminar or a publication without the Bar's co-sponsorship must indicate clearly on all publicity, printed seminar materials and publications that the seminar or publication is a section endeavor and the sponsoring section. The section must not use the Oregon State Bar logo or the phrase Oregon State Bar CLE. A section that plans a seminar without the Bar's co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar.

**Section 15.7 Grants**

Sections may apply for grants only with prior approval of the Board of Governors. The board will allow grant applications only upon a showing that the grant activity is consistent with the section's purposes and the mission of the bar. The board may disallow any application that the board does not believe is in the best interests of the bar. The grant application must be reviewed and approved by OSB General Counsel before submission to the grant-making organization. Any grant funds received by a section shall be deposited with the bar and will be distributed only upon request of the section treasurer and in accordance with the grant specifications. The section must periodically report to OSB General Counsel regarding the status of the grant project and any reports to the granting organization must be reviewed and approved by OSB General Counsel in advance of submission.

**Article 16 Continuing Legal Education**

**Section 16.1 Purpose**

The mission of the Bar's CLE Seminars and Legal Publications programs is to produce high quality, practical CLE Seminars, books, and resources on Oregon law in a timely manner, with a goal of ensuring a competent bar by enhancing the knowledge and skills of Oregon lawyers.

Except as otherwise provided herein, participating members of the Bar will not receive compensation for services on behalf of CLE Seminars or Legal Publications, beyond a modest memento or other recognition and payment of expenses within board guidelines.

**Section 16.2 OSB Continuing Legal Education Seminars Program**

***Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts***

(a) Complimentary registration for CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary registration does not include the cost of lunch, materials in hard copy for which a separate fee is charged, any fee-based activities held in conjunction with a CLE seminar, or any other item not included in the registration fee.

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available for the following lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(d) For purposes this policy, “judges” means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(e) Complimentary registration for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(f) Reduced registration, tuition assistance and complimentary copies of programs may be available to certain other attendees, at the sole discretion of the CLE Seminars Director.

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

***Subsection 16.201 Expenses of Speakers and Planners***

CLE seminar speakers and planners will be admitted free to the seminar and receive seminar materials without charge. CLE seminar speakers and planners are eligible for reimbursement for necessary travel expenses subject to the Bar’s travel reimbursement policies.

**Section 16.3 OSB Legal Publications Program**

***Subsection 16.300 Benefit of Membership***

The BarBooks™ online library comprises all Legal Publications products as well as other materials as the Bar deems appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive members, non-members, and libraries.

***Subsection 16.301 Discounts on Print Books***

Discounts on the purchase of OSB print legal publications, when available, will be allowed to the following: Law school bookstores, law professors when teaching a course using the particular publication, libraries, and members of the Bar within one year following their admission.

***Subsection 16.302 Volunteer Copyright Agreement***

Each volunteer author of a legal publication will sign a Volunteer Copyright Agreement under which the author retains the copyright in his or her chapter, and grants to the Oregon State Bar a nonexclusive right to include the chapter within the Publication as a collective work; to use, distribute, or sell the collective work in any manner the OSB deems appropriate; to revise the collective work, including his or her chapter, for use, distribution or sale as a subsequent edition of the collective work, a revision of the collective work, or as an entirely new publication; with the Oregon State Bar and its licensees having similar rights to use, distribute, or sell the collective work in any manner they deem appropriate.

## Article 17 Member Services

### Section 17.1 Administrative Services

Administrative services, such as mailing services, mailing lists and labels and photocopying will be provided to member and nonmember groups at the cost of providing the service or product. Priority is given to official bar business.

### Section 17.2 Bar-sponsored Tours

The Bar may not enter into any agreement concerning, nor may it sponsor or co-sponsor, any travel or tour arrangement, by charter or otherwise, without the prior approval of the Board.

## Article 18 Discipline

### Section 18.1 State Professional Responsibility Board

#### *Subsection 18.100 Duties*

The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of six members is present at any meeting and act by a vote of a majority of those present.

#### *Subsection 18.101 Composition*

The SPRB will consist of eight resident active members of the Bar and two at large public members ~~appointed~~ **nominated** by the Board of Governors **and appointed by the Supreme Court**. The Board of Governors annually will ~~appoint~~ **nominate and request the Supreme Court to appoint** one **attorney** member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions **located within the state of Oregon**. The two public members are appointed for terms of not more than four years. No member may serve more than four years **consecutively**. **Members are eligible for reappointment to a nonconsecutive term not to exceed four years**. The Board of Governors may **nominate and request the Supreme Court to appoint** replacement **ment** members of the SPRB as the need arises.

#### *Subsection 18.102 Expenses*

All members of the SPRB will receive the same reimbursement of expenses as is accorded the members of the Board of Governors.

#### *Subsection 18.103 Notice to the ~~Accused~~ Respondent*

Disciplinary Counsel will notify the ~~accused~~ **respondent** as soon as possible after the SPRB has directed the institution of a formal disciplinary proceeding against the ~~accused~~ **respondent**. The notice will contain a statement that all communications on



the merits of the matter must be restricted to the lawyers in Disciplinary Counsel's office and with appointed counsel for the Bar and that an accused must not contact a member of the Board of Governors, the SPRB, ~~any Local Professional Responsibility Committee~~ or any other employee, agent or representative of the Bar regarding the matter.

**Subsection 18.104 Disclosure of Contacts**

If a complainant, ~~an accused~~ **respondent** or their representatives contact a SPRB member concerning the merits of a disciplinary complaint, the SPRB member contacted must make a full disclosure of the nature of the contact before the SPRB takes action on the complaint.

**Section 18.2 Letters of Admonition**

(A) A disciplinary investigation, whether in response to a complaint filed with the Bar or otherwise instituted as authorized by law, may be terminated after investigation by the SPRB's issuing a letter of admonition.

(B) An admonition does not constitute the imposition of formal discipline. An admonition is, however, a public statement that the lawyer's conduct, in the opinion of the SPRB, violated the Rules of Professional Conduct of the Bar.

(C) An admonition may be issued, at the discretion of the SPRB, only when a Rule of Professional Conduct has been violated and if in light of all circumstances, the violation was not aggravated, but was of sufficient concern that dismissal would be inappropriate.

(D) The procedure for issuing letters of admonition is provided in the Rules of Procedure. If accepted, a letter of admonition will be placed in the lawyer's personal file maintained by the Bar.

**Section 18.3 Recovery of Costs/Collection of Judgments**

The bar will pursue, as feasible, collection of those costs and disbursements for which a judgment was awarded to the Bar in a disciplinary or reinstatement proceeding.

**Section 18.4 Disciplinary Correspondence**

Members of the Board of Governors or other bar officials may receive occasional correspondence related to disciplinary matters. All such correspondence, including letters from complainants or accused lawyers, must be forwarded to Disciplinary Counsel for response. Disciplinary Counsel need not send a copy of any response to the board member or bar official to whom the initial correspondence was addressed. Any correspondence alleging an ethics complaint about Disciplinary Counsel or General Counsel must be sent directly to the chairperson of the SPRB pursuant to BR 2.6~~(g)~~, with a copy to the staff member named in the complaint.

**Section 18.5 Removing Lawyers from the Lawyer Referral Service Panel of Lawyers**

Members of the Bar against whom charges of misconduct have been approved for filing will be removed from the Lawyer Referral Service panel of lawyers until those charges have been resolved. If a member is suspended as a result thereof, the

member may not be reinstated to the panel until the member is authorized to practice law again. Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

## **Section 18.6 Suspension of Service**

### ***Subsection 18.600 Applicability to BOG, LPRG and SPRB***

The service of members of the Board of Governors, ~~local professional responsibility committees,~~ and the State Professional Responsibility Board against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board is suspended until the charges filed against them have been resolved. If a member is suspended as a result thereof, the member may not resume service on the board or committee until the member is once again authorized to practice law or as otherwise provided by ORS 9.025(5)(a). Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

### ***Section 18.601 LPRG and SPRB Replacements***

In the case of a ~~local professional responsibility committee~~ or the State Professional Responsibility Board, the Board of Governors may **nominate and request the Supreme Court to** appoint a temporary replacement to serve until the member suspended under this bylaw is again able to serve. The temporary replacement will have the same rights and responsibilities as any other member of the entity.

### ***Section 18.602 Board of Governors Replacement***

Upon the suspension of a member of the Board of Governors pursuant to Bar Bylaw 18.6, the board will promptly notify all members from the affected region. Sixty days after the date of suspension, the board will seek the advice of the members of the House of Delegates from the region whether to appoint a temporary replacement for the suspended member, and if so, the name of a suggested temporary replacement who is qualified. If a name is suggested, the board will appoint the suggested candidate as the temporary replacement effective at the next regularly scheduled board meeting. The temporary replacement will serve under the same terms and conditions as the suspended member until the suspension is lifted or the term of the board member ends.

## **Section 18.7 Adjudicator**

**The Adjudicator is the Disciplinary Board statewide adjudicator, who is authorized to exercise his or her powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The Adjudicator is appointed by and serves at the pleasure of the Oregon Supreme Court, and is an employee of the Oregon State Bar.**

## **Article 19 Legal Ethics Questions and Opinions**

### **Section 19.1 General Counsel's Office**

#### ***Subsection 19.100 Submission and Questions***

All legal ethics questions from members or the public regarding the propriety of a course or act of professional conduct or the intent or interpretation of a rule or

statute regulating the professional conduct of members of the Bar must be submitted or referred to General Counsel's office. Legal ethics questions may be submitted in writing by mail, e-mail, fax or by telephone.

***Subsection 19.101 Determination by General Counsel***

General Counsel's office will determine whether the matter appears to present or involve a question of ethics or professional conduct and whether it states facts sufficient to permit the formulation of an opinion based on the facts stated. General Counsel's office may ask the inquirer to submit necessary additional facts or may advise the inquirer that no question of ethics or professional conduct is presented or involved.

***Subsection 19.102 Ethics Advice to Bar Members***

General Counsel's office will endeavor to assist bar members in analyzing the ethics of the inquirer's prospective conduct and may provide reactions to the questions presented. Ethics questions and responses thereto are not confidential and communications with General Counsel's office are not privileged. No attorney-client relationship is intended or created by such communications with the Bar. Members submitting ethics questions must specify a deadline by which they need a response from the Bar. General Counsel's office will endeavor to meet the member's deadline, but General Counsel's office always has at least three business days after receiving a member's question to provide a written response to the member.

***Subsection 19.103 Application of Oregon RPC 8.6***

For Oregon RPC 8.5 to apply to a request for ethics assistance, a member must put his or her ethics question in writing. "In writing" includes letters, faxes or e-mails. General Counsel's office will respond in writing, by fax, e-mail or regular mail, as time allows. The Bar will retain all written ethics assistance requests and General Counsel's office responses for at least five years and those requests are public records. General Counsel's office has the discretion to decline to provide a written response, if it determines that the question should be considered by the Legal Ethics Committee due to the difficulty, complexity or novelty that the question raises or the difficulty or complexity of an appropriate response. Members must provide General Counsel's office and the Legal Ethics Committee with accurate, and as complete as possible, explanations of the facts underlying their ethics questions. General Counsel's office may ask the inquirer to submit additional or clarifying information and the timeframe for response as set forth in Subsection 19.102 of the Bar's Bylaws does not begin until General Counsel's office receives the requested information.

**Section 19.2 Limitation of Advice**

Responses and opinions provided by General Counsel's office, the Legal Ethics Committee and the Board of Governors are limited to and deemed to address only the facts as submitted by the inquirer.

**Section 19.3 Legal Ethics Committee**

***Subsection 19.300 Response to Inquiries***

A bar member may request that a question be submitted to the Legal Ethics Committee. The chair of the Committee will assign those requests and questions

submitted directly to the Committee to one or more committee members to prepare a response. Inquiries submitted to the Committee should be anonymous, insofar as possible. To preserve anonymity, if the facts are inadequate to permit the formulation of an opinion or a direct answer, General Counsel's office may ask for submission of necessary additional facts. On receipt of those additional facts, General Counsel's office will promptly submit them to the assigned member of the Committee. The Committee may, in its discretion, write opinions on subjects that the Committee believes would be helpful to the membership, whether or not the Committee receives a specific inquiry on the subject. Such opinions will be handled in the same fashion as opinions based on specific questions.

***Subsection 19.301 Formal Opinion Process***

The Committee will review and discuss all responses prepared by individual members and will, by majority vote, determine whether the response should be referred to the Board of Governors to be issued as a formal opinion or whether it should be issued by the Committee as a letter of direct advice to the inquirer. The Committee will establish and will periodically review guidelines for determining the appropriate form of response. Members may use formal opinions and letters of direct advice issued by the Committee in the same manner and to the same effect under Oregon RPC 8.6 as written responses from General Counsel's office. When the Committee approves an opinion and recommends formal publication, General Counsel's office will place a copy of the opinion on the Board's next meeting agenda. All dissents, comments of substance or minority opinions will also be placed on the Board's agenda. The Board will review the proposed opinion and either approve it for formal publication, refer it back to the Committee for further study or revision or direct that no opinion be issued in the matter. The Board may also distribute the opinion to the membership for comment before making a final decision. All opinions that the Board designates to be issued as formal opinions will be published in Oregon Formal Ethics Opinions (OSB 2005) and on the Bar's website.

**Article 20 Unlawful Practice of Law**

**Section 20.1 Definitions**

For the purpose of this Article, the following definitions apply:

- (A) "Administrator" means the Bar employee assigned to provide administrative support to the Committee and Bar Counsel.
- (B) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.
- (C) "Unlawful practice of law" means (1) the practice of law, as defined by the Oregon Supreme Court, in Oregon, by a person who is not an active member of the Oregon State Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.
- (D) "Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.
- (E) "Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of conduct related to the unlawful practice of law.

(F) "Accused" means the person or persons who are the subject of a complaint to the committee.

(G) "Complaint" means the matter or occurrence that causes the Committee to open a file for the investigation of the accused's alleged unlawful practice of law.

## **Section 20.2 Unlawful Practice of Law Committee**

The Board may **nominate and request the Supreme Court to** appoint as many members as it deems necessary to carry out the Committee's functions, **pursuant to BR 12.1**. At least two members of the Committee must be members of the general public and no more than one-quarter of Committee members may be lawyers engaged in the private practice of law.

## **Section 20.3 Investigative Authority**

Pursuant to ORS 9.164 **and BR 12.2**, the Committee shall investigate complaints of the unlawful practice of law. The Committee may decline to investigate allegations of unlawful practice of law when: the allegations are not made to the Committee in writing; the administrator determines the allegations do not involve the unlawful practice of law, or; the allegations consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

## **Section 20.4 Other Investigators**

~~The Administrator may hire a person who is not a member of the Committee to perform further investigation when the Committee determines it is necessary in order to complete the investigation.~~

## **Section 20.5 Processing Unlawful Practice of Law Complaints**

### ***Subsection 20.500 Investigation***

On receiving a complaint of unlawful practice of law, the Administrator will give the complaint a case number and assign it to a committee member for investigation. The committee member may only employ methods in his or her investigation that comply with the Rules of Professional Conduct. Upon completion of the investigation, the investigator will submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition.

### ***Subsection 20.501 Dispositions***

Upon receipt and review of the investigator's report, the Committee may either continue the matter for further investigation and revisions to the report or make one of the following dispositions:

(a) Closure.

This disposition is appropriate when the Committee has insufficient evidence to prove that the accused engaged in the unlawful practice of law. The Committee may reopen a closed matter if it receives additional information or evidence of the unlawful practice of law by the accused.

(b) Informational Letter.

This disposition is appropriate when the Committee has insufficient facts evidence to prove that the accused has engaged in the unlawful practice of law, and believes that that the accused would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter will notify the accused that the investigation is concluded, and state that the accused may wish to seek legal advice about whether any specific practice constitutes the unlawful practice of law.

(c) Referral to Board of Governors for initiation of proceedings under ORS 9.166.

(1) Filing suit for injunctive relief is appropriate when (i) the Committee has clear and convincing evidence to establish that the accused engaged in the unlawful practice of law, (ii) the practice is ongoing or likely to recur, and (c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(2) Filing suit for contempt relief is appropriate when a) a court has entered an injunction against the accused b) the Committee has clear and convincing evidence to establish that the accused continues to engage in the unlawful practice of law and c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(3) The Committee may decline to request authorization from the Board to initiate proceedings allowed under to ORS 9.166 in favor of other resolutions provided in these rules.

(d) Referral to or Cooperation with Other Agency or Bar Department.

This disposition is appropriate when the Committee determines that another agency or department is better positioned to investigate or address the complaint, including but not limited to when:

(1) The allegations involve activity prohibited by law, ordinance or statute within the jurisdiction of a federal, state or local agency;

(2) The accused is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;

(3) An agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation;

(4) The agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused, or;

(5) The complaint concerns conduct by a lawyer or bar applicant, or implicates the rules of professional conduct.

## **Section 20.6 Bar Counsel**

### ***Subsection 20.600 Role of Bar Counsel***

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may retain counsel to represent the Bar in the action and will report periodically to the Committee and Board on the status of the litigation. To the extent necessary, the Committee and Administrator will assist bar counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

#### ***Subsection 20.601 Settlement Authority***

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may negotiate a settlement of the unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Committee.

#### ***Subsection 20.602 Referral to Bar Counsel***

When a new complaint of unlawful practice of law involves an accused against whom the Board has already authorized suit, the administrator refer the matter directly to bar counsel without obtaining prior authorization from the Committee or the Board. The administrator and Bar counsel may ask the Committee to conduct an investigation into the new complaint and have discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

### **Section 20.7 Public Outreach and Education**

#### ***Subsection 20.700 Public Outreach***

The Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law, **pursuant to BR 12.3(a)**. The Committee may cooperate in its education efforts with federal, state and local agencies tasked with preventing consumer fraud

#### ***Subsection 7.701 Informal Advisory Opinions***

The Committee may write informal advisory opinions on questions relating to what activities may constitute the practice of law, **pursuant to BR 12.3(b)**. Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Oregon Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

### **Section 20.8 Records**

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar. Records will be kept in accordance with the Bar's records retention policy.

### **Article 21 Client Security Fund**

The **Chief Executive Officer** ~~Executive Director~~ or General Counsel of the Bar will continue, as feasible, collection efforts in each instance in which Client Security Fund ("CSF") money is paid out. In each of these cases, the Bar will obtain an assignment of judgment in the amount paid out. The status of any such outstanding judgments shall be reviewed at least annually by the CSF Committee and the Board.

### **Article 22 Fee Arbitration**

(A) The Bar may provide for a fee arbitration procedure whereby fee disputes between attorneys maintaining offices in Oregon and their clients or other attorneys

are submitted to arbitration panels for resolution. Such a procedure shall be administered through General Counsel, pursuant to rules approved by the Board.

(B) The Bar's fee arbitration procedure is a private, contract dispute resolution mechanism and not the transaction of public business.

(C) Except as provided in (E) below, or unless all parties to an arbitration agree otherwise: all records, documents, papers, correspondence and other material submitted by the parties to General Counsel or to an arbitration panel during the course of an arbitration proceeding and any award rendered by an arbitration panel is not subject to public disclosure.

(D) Arbitration hearings conducted pursuant to the Bar's fee arbitration procedure will be closed to the public unless all parties to an arbitration agree otherwise. Witnesses who will offer testimony on behalf of a party may, however, attend the arbitration hearing.

(E) Notwithstanding subsection (B), (C) and (D), arbitrators must disclose to Disciplinary Counsel any knowledge obtained during the course of an arbitration proceeding of an apparent violation of the Rules of Professional Conduct or ORS Chapter 9 committed by an attorney and all records, documents, papers, correspondence and other material submitted to General Counsel or to the arbitration panel during the course of the proceeding and any award rendered by the panel must be made available to Disciplinary Counsel for the purpose of investigating alleged ethical violations.

## **Article 23 Professional Liability Fund**

### **Section 23.1 Board of Directors**

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

### **Section 23.2 Authority**

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors



appropriate requirements for PLF coverage and amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

### **Section 23.3 Operation**

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

### **Section 23.4 Reports**

The PLF must present an annual report to the bar membership.

### **Section 23.5 Relationship with the Board of Governors**

#### ***Subsection 23.500 Liaisons***

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints two lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors.

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) The PLF CEO or the CEO's designee must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

(e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

***Subsection 23.501 Reports***

The PLF must regularly provide to the BOG the following:

- (a) All financial statements when completed;
- (b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;
- (c) All reports of investment performance and changes in investments;
- (d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;
- (e) On or before October 1 of each year, the proposed assessment for primary coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;
- (f) A report generally describing the previous year's excess enrollment, including total firms enrolled, total lawyers and gross premiums from the excess program;
- (g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;
- (h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

***Subsection 23.502 Release of Information***

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President of the Board of Governors to the Chair of the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

***Subsection 23.503 BOG Members Participating in PLF Claims***

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

***Subsection 23.504 Annual Meeting***

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and discuss matters of common interest to the Board of Governors and the PLF. This

meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by May 1st of each year, whichever is earlier.

***Subsection 23.505 Audit***

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

***Subsection 23.506 Location of Office***

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

***Subsection 23.507 Staff Responsibility***

The **Chief Executive Officer** Executive Director of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the **Chief Executive Officer** Executive Director and bar staff will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its **Chief Executive Officer** Executive Director and staff in all areas of the Bar's business and activities. The **Chief Executive Officer** Executive Director of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

**Section 23.6 Assessment**

***Subsection 23.600 Principles***

The Board of Governors recognizes that the assessment for coverage is derived by the prudent application of actuarial principles, responsible evaluation of past and present operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit to the Board of Governors its recommended assessment for the subsequent year (or any mid-year special assessment) supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt an assessment that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

## **Article 24 Attorney Assistance**

### **Section 24.1 Creation and Purpose**

There is hereby created, pursuant to ORS 9.568, the State Lawyers Assistance Committee ("SLAC") and the Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC"). The purpose of the SLAC is to supervise and assist lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The purpose of the PLF-PPMAC is to provide voluntary personal and practice management assistance to lawyers.

### **Section 24.2 Authority**

#### ***Subsection 24.200 State Lawyers Assistance Committee***

The SLAC has authority:

- (a) To receive, review, investigate, process and resolve all complaints and referrals to SLAC regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence.
- (b) To require lawyers within SLAC's jurisdiction to submit to a professional assessment and diagnosis and to comply with any remedial program that SLAC has established. A remedial program may include conditions on the law practice and other law-related activities of any lawyer found to be within SLAC's jurisdiction. Conditions may include, but are not limited to, requiring a lawyer to obtain medical or psychological treatment at his or her expense and to discontinue the practice of law and/or law-related activities pending completion of such treatment.
- (c) To monitor a lawyer's compliance with the recommended measures of a remedial program.
- (d) To maintain records regarding a lawyer's assistance referrals.
- (e) To prepare an annual report to the Board of Governors.
- (f) To recommend, for approval by the Board of Governors, such rules as may be necessary to properly operate SLAC.
- (g) To appoint local bar members as it may deem appropriate for carrying out the work and purpose of SLAC.

#### ***Subsection 24.201 Professional Liability Fund Personal and Practice Management Assistance Committee***

The Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC ") has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training in law practice management. The PLF-PPMAC may provide this assistance through the PLF's Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

## **Section 24.3 Composition**

### ***Subsection 24.300 State Lawyers Assistance Committee***

The board may appoint members and public members as it deems appropriate.

### ***Subsection 24.301 Professional Liability Fund Personal and Practice Management Assistance Committee***

The PLF-PPMAC consists of the members of the PLF's Board of Directors. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.

## **Section 24.4 State Lawyers Assistance Committee Review and Intake**

### ***Subsection 24.400 Complaints and Referrals***

(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer's professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

"We appreciate your interest in bringing this matter to our attention. Our Committee will respond by contacting the lawyer to discuss the problem. It is important for you to understand, however, that the purpose of this Committee is to provide confidential assistance to lawyers who are impaired in the practice of law for reasons such as drug or alcohol problems, emotional problems or lack of competence. For that reason, we focus our work on determining the specific assistance that the lawyer needs and making sure that the lawyer follows a treatment or assistance program. This Committee does not deal with lawyer discipline issues. All information we receive from you will be kept confidential and will not be reported to the bar disciplinary authorities. If you believe that this lawyer has acted improperly and you wish to make a complaint to the bar, you should write to Client Assistance Office, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281."

(b) If a referral is received from a member of the Bar, the letter required in paragraph (A) must also contain the following statement:

"If you are a member of the Bar, please review Oregon RPC 8.3(a) to determine whether you may have an independent obligation to contact the Bar."

(c) The OSB Client Assistance Office and the OSB Disciplinary Counsel may refer to SLAC the name of any lawyer whose performance or conduct appears to be impairing the lawyer's ability to practice law or professional competence. The referral will include a description of the circumstances and copies of any relevant documents. The State Professional Responsibility Board may refer to SLAC any lawyer whose performance or conduct may be impairing the lawyer's ability to practice or

professional competence whether or not the SPRB authorizes prosecution for misconduct. The chairperson will confirm in writing referrals from the Client Assistance Office, Disciplinary Counsel's Office, or the SPRB.

***Subsection 24.401 Designees***

SLAC members, lawyers and other persons assisting SLAC and employees thereof working on a matter related to the Lawyers Assistance Program authorized by ORS 9.568 are designees of SLAC. Designees are subject to SLAC rules, including the confidentiality requirements set forth in Section 24.701. Appointment of a designee who is not a SLAC member will be at the discretion of the chairperson. Considerations for appointment of such a designee include, but are not limited to, the designee's qualifications, the designee's previous experience with the referred person or with a situation similar to that of the referred person and the location of the referred person and designee. The chairperson will confirm the appointment of a designee. The chairperson will advise the designee of his or her authority and obligations and will include a copy of the SLAC's rules and other pertinent SLAC information. The designee will be notified of SLAC meetings while the referral is pending and must give regular progress reports to SLAC. Those reports may be given in person, in writing, by telephone or through the chairperson. The appointment of a designee will remain in effect until the case is concluded or SLAC otherwise provides.

***Subsection 24.402 Preliminary Assessment and Intake***

Upon receipt of a referral, the chairperson will assign the matter to one or more designees to conduct a preliminary assessment and make a recommendation to the committee. The Intake designee will gather relevant information regarding the referral including, but not limited to, interviewing the referred lawyers and the person who made the referral, and any other person who may have knowledge about the lawyer's ability to practice law or professional competence.

Prior to making initial contact with the referred lawyer, the SLAC designee will notify the Oregon Attorney Assistance Program (OAAP) of the referred lawyer's name. If the OAAP informs the SLAC designee that the referred lawyer poses a substantial and imminent risk of harm to the referred lawyer or others, the SLAC designee will wait a reasonable amount of time before contacting the referred lawyer and will coordinate and communicate with OAAP about how to make contact with the referred lawyer.

If, based on the preliminary assessment, the committee determines that the lawyer's professional competence or ability to practice law may be impaired, SLAC will have jurisdiction over the matter. Otherwise, the matter will be dismissed without further action.

***Subsection 24.403 Notice to Referred Lawyer***

Prior to assuming jurisdiction, SLAC will notify the referred lawyer and provide an opportunity to respond. If jurisdiction is assumed, the chairperson will assign the matter to a designee for case development, notify the referred lawyer of the matter and direct the lawyer to meet with the designee. Notices to the referred lawyer will include a reminder that failure to respond to or cooperate with SLAC is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority. If a

case is not opened, the chairperson will notify the source of the referral that the matter is being dismissed without further SLAC action.

## **Section 24.5 State Lawyers Assistance Committee Investigations**

### ***Subsection 24.500 Meeting with Referred Lawyer***

Within 30 days after notice has been given as provided in Subsection 24.403 of the Bar's Bylaws, the designee, either individually or with another designee, will meet with the referred lawyer to discuss the nature of the referral, SLAC's function, the general steps that will be taken, any questions that the referred lawyer may have about the process and the lawyer's explanation, opinion or questions about the referral.

### ***Subsection 24.501 Release of Information***

The designee may require the referred lawyer to authorize the release of relevant medical or other background information regarding the referred lawyer to SLAC or to a professional selected to evaluate the referred lawyer. Medical or background information is relevant, if it relates to the referred lawyer's professional competence or ability to practice law. The referred lawyer may voluntarily provide additional information.

### ***Subsection 24.502 Professional Evaluation***

The designee may require the referred lawyer to obtain a medical or other diagnostic evaluation from a professional or a panel of professionals selected by SLAC. The scope of the medical or other diagnostic evaluation will be limited to issues related to the referred lawyer's professional competence or ability to practice law. The designee may inform the medical or other professional of the general nature of SLAC's concerns but will not disclose to the professional the identity of the referral source or any other confidential information. The lawyer must bear the expenses of the medical or other diagnostic evaluation, except that SLAC may advance the costs in cases of demonstrated financial hardship.

### ***Subsection 24.503 Remedial Action Plan***

(a) Based on all the information gathered by the designee, SLAC will consider and determine whether the referred lawyer's performance or conduct may be impairing the lawyer's professional competence or ability to practice law. If SLAC finds that the lawyer's performance or conduct may not impair the lawyer's professional competence or ability to practice law, the matter will be dismissed and the lawyer notified of the disposition of the matter. If SLAC finds that the lawyer's professional competence or ability to practice law is impaired, SLAC will so advise the referred lawyer in writing and require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.

(b) The referred lawyer will have the opportunity to participate in determining the nature and extent of the remedial program to be undertaken, but SLAC's decision regarding the program is final.

(c) SLAC will set forth the remedial measures to be undertaken in a written agreement to be signed by the lawyer. The agreement will contain the referred lawyer's acknowledgement that failure or refusal to cooperate in the remedial

program is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority.

(d) SLAC may require the lawyer to submit periodic reports from persons responsible for implementing the remedial program or who have information about the lawyer's compliance.

(e) The referred lawyer must pay the costs of the remedial program that SLAC requires.

(f) The designee will monitor the referred lawyer's participation in the remedial program and will report regularly to SLAC.

(g) The remedial program may be revised from time to time, as SLAC deems appropriate, and may include an extended period of monitoring.

(h) When SLAC determines that the referred lawyer has successfully completed the remedial program and that the lawyer's ability to practice law and professional competence is no longer impaired, the case will be closed.

### **Section 24.6 State Lawyers Assistance Committee Records**

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened, will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee's possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar's Bylaws. Closed files will be maintained for ten years in locked storage at the Bar's offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

### **Section 24.7 Other State Lawyers Assistance Committee Policies**

#### ***Subsection 24.700 Non-cooperation***

The failure or refusal of the referred lawyer to respond to SLAC's initial inquiry; to participate in interviews with designees during the course of SLAC's investigation; to respond to SLAC requests for information or for a professional evaluation; or to participate in and comply with a remedial program, may result in the lawyer being referred to Disciplinary Counsel for possible action under Oregon RPC 8.1(c).

#### ***Subsection 24.701 Confidentiality***

SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential. Those records and information are not subject to public disclosure and are inadmissible as evidence in any disciplinary or civil proceeding. Pursuant to ORS 9.568(4), the confidentiality does not apply to information relating to a lawyer's non-cooperation with SLAC or its designees or to information obtained by the Bar from any other source not connected



with the referral to SLAC. Pursuant to Subsection 24.402 of the Bar's Bylaws, the SLAC chairperson or designee may release the name of the referred lawyer to the OAAP. SLAC may also release statistical data, pursuant to Subsection 24.703 of the Bar's Bylaws.

***Subsection 24.702 Duty to Report Unethical Conduct***

SLAC and its designee are exempt from the reporting requirements of Oregon RPC 8.3(a) pursuant to Oregon RPC 8.3(c)(1).

***Subsection 24.703 Statistical Data***

SLAC will prepare a written annual report of its activities. The report will include statistical data such as: the total number of referrals received by SLAC, the number of direct referrals, the number of referrals received from the State Professional Responsibility Board, the number of referrals to the Client Assistance Office as a result of non-cooperation with SLAC, the number and types of cases in which assistance was provided through SLAC, the number of cases completed during the reporting period and other information that will assist the Bar in evaluating the workload and effectiveness of the SLAC program. The report will not include any information that could jeopardize the confidentiality of persons participating in SLAC's programs. The report will be delivered to the Bar annually as an attachment to SLAC's annual report.

***Subsection 24.704 Public Meetings***

SLAC meetings are exempt from the provisions of ORS 192.610 to 192.690, pursuant to ORS 9.568(3)(b). OAAP staff may be invited to attend SLAC meetings, including case review of referred lawyers, if appropriate releases have been signed by the referred lawyers.

**Article 25 Law Student Associates**

Any student currently enrolled in an Oregon law school may become a Law Student Associate of the Bar. Law Student Associates are not members of the Bar and, except as provided in this article, do not have any of the rights and responsibilities of members. Law Student Associates must pay an annual fee established by the **Chief Executive Officer** ~~Executive Director~~ in an amount sufficient to cover the cost of providing information and services to Law Student Associates. Services and information provided to Law Student Associates will be determined by the **Chief Executive Officer** ~~Executive Director~~.

**Article 26 Sustainability**

The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the **Chief Executive Officer** ~~Executive Director~~ will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in

addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

## **Article 27 Unclaimed Lawyer Trust Account Funds**

### **Section 27.100 Purpose**

This policy is established to provide direction and limits for the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar. For the purposes of this section, “unclaimed lawyer trust account funds” are defined to mean all funds allocated to the bar pursuant to ORS 98.386(2).

### **Section 27.101 Administration**

- (a) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund in the manner authorized by Section 7.1.
- (b) All unclaimed lawyer trust account funds shall be invested in the manner described at Section 7.4. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

### **Subsection 27.102 Disbursement**

(a) The **Chief Executive Officer** ~~Executive Director~~ and the Chief Financial Officer are authorized and empowered to make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:

- (1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection 27.103; and
- (2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the **Chief Executive Officer** ~~Executive Director~~ determines such disbursements will not impair the Bar’s ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

(b) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to the Legal Services Program established under ORS 9.572 for the funding of legal services. The Board may authorize such disbursements only if the Board determines the disbursements will not impair the Bar’s ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

### **Subsection 27.103 Claim Adjudication**

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, the Bar shall review the claim and approve or deny the claim within 120 days after the completed claim form and all necessary information to process the claim is received. If a claimant is requested to provide additional information and fails to do so within 90 days after the request is

made, the Bar may close the file without further action. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The **Chief Executive Officer** ~~Executive Director~~ or the **Chief Executive Officer's** ~~Executive Director's~~ designee shall decide whether to approve or deny all claims for amounts under \$5000. Claims for amounts of \$5000 or more must be reviewed and approved or denied by the Board.

(c) The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Subsection 27.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(d) If a claim is approved pursuant to this Subsection, the **Chief Executive Officer** ~~Executive Director~~ or designee shall notify the claimant.

(e) If a claim is denied, the **Chief Executive Officer** ~~Executive Director~~ or the **Chief Executive Officer's** ~~Executive Director's~~ designee shall notify the claimant. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(f) A claimant may appeal the denial of a claim by making a request in writing to the **Chief Executive Officer** ~~Executive Director~~ within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request.

(g) Additional evidence shall not be admissible on appeal to the Board, except by mutual consent of the Board, the claimant, and any other parties to the proceeding. If such additional evidence is not admitted, the Board shall allow the claimant to resubmit the claim to the **Chief Executive Officer** ~~Executive Director~~ with the new evidence.

(h) The **Chief Executive Officer** ~~Executive Director~~ or designee shall notify the claimant of the Board's decision on appeal.

(i) A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

(j) On a quarterly basis, the **Chief Executive Officer** ~~Executive Director~~ or designee shall provide a listing of the claims resolved to the Department of State Lands. The **Chief Executive Officer** ~~Executive Director~~ shall also provide an annual report of the claims resolved to the Board.

## **Article 28 Admissions**

### **Section 28.1 Board of Bar Examiners**

Pursuant to ORS 9.210, the Supreme Court appoints a Board of Bar Examiners (BBX) to carry out the admissions function of the Oregon State Bar. The BBX recommends to the Supreme Court for admission to practice those who fulfill the requirements prescribed by law and the rules of the Court. The BBX's responsibilities include: investigating applicants' character and fitness, developing a bar examination, determining the manner of examination, determining appropriate accommodations for applicants, grading the bar examinations and setting standards for bar examination passage. The BBX may appoint co-graders to assist with the grading of examinations. The BBX may also recommend to the Court rules governing the qualifications, requirements and procedures for admission to the bar, by examination or otherwise, for law student appearance, and other subjects relevant to the responsibilities of the BBX.

### **Section 28.2 Nominations**

The bar and the BBX will recruit candidates for appointment to the BBX and for appointment as co-graders. The BBX will solicit input from the Board of Governors before selecting co-graders and nominating candidates for appointment to the BBX.

### **Section 28.3 Liaisons**

The Board of Governors shall appoint one of its members as a liaison to the BBX. The BBX may appoint one of its members as a liaison to the Board of Governors. The liaisons shall be entitled to attend all portions of the BBX and Board of Governor meetings, including executive and judicial sessions.

### **Section 28.4 Admissions Director**

The Admissions Director shall report to and be supervised by the Director of Regulatory Services, under the overall authority of the **Chief Executive Officer** ~~Executive Director~~. The **Chief Executive Officer** ~~Executive Director~~ and Director of Regulatory Services will make the hiring, discipline and termination decisions regarding the Admissions Director. The **Chief Executive Officer** ~~Executive Director~~ and Director of Regulatory Services will solicit BBX's input into these decisions and give due consideration to the recommendations and input of the BBX. If the BBX objects to the final hiring decision for the Admission Director, recruitment will be reopened.

### **Section 28.5 Budget**

With the approval of the Oregon Supreme Court, the BBX may fix and collect fees to be paid by applicants for admission. A preliminary annual budget for admissions will be prepared by the Admissions Director and Director of Regulatory Services in consultation with the BBX. Upon approval by the BBX, the budget will be submitted to the Board of Governors. The final budget presented to the Board of Governors will be provided to the BBX. Upon adoption by the Board of Governors, the budget will be submitted to the Supreme Court in accordance with Bylaw 7.202, and the BBX may make a recommendation to the Supreme Court regarding adoption of the budget.

The budget will align with bar policy generally after consideration of the policy goals and objectives of the BBX.

**Section 28.6 Amendments**

Any proposed amendment to Article 28 shall be submitted to the BBX and Supreme Court for consideration and the BBX shall make its recommendation to the Supreme Court regarding adoption of the proposed amendment. Upon Supreme Court approval, the Board of Governors may adopt such amendments in accordance with Article 29.

**Article 29 Amendment of Bylaws**

Any amendment of the Bar's Bylaws requires notice at a prior Board meeting unless two-thirds of the entire Board waives the notice requirement. The Bar's Bylaws may be amended by affirmative vote of a majority of the entire Board at any regular meeting or at any special meeting of the Board called for that purpose.

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DRAFT

**FORMAL OPINION 2017:xxxx**

**Conflicts of Interest, Current Clients: Representing Husband and Wife in Preparation of Estate Plan Involving Waiver of Elective Share**

**Facts:**

Married Couple approaches Lawyer jointly and asks Lawyer to represent both of them in the matters described below.

Married Couple have been married for 15 years and both have children from their previous marriages. They have no children from their current marriage.

Married Couple own their house as tenants by the entirety, but have kept the majority of their assets separate. Spouse A has substantially more assets than Spouse B. They inform Lawyer that it is their individual intent that they would prefer that their estate plans provide that their separate assets be distributed to their children by their previous marriages and their jointly owned assets pass to the surviving spouse by right of survivorship.

Because of the value of Spouse A's separate property, it is clear to Lawyer that Spouse B would have an elective share claim if Spouse A were to die first. An elective share claim would defeat Married Couple's current intentions for their estate plan.

Married Couple does not have a prenuptial agreement.

**Questions:**

1. May Lawyer provide information to Married Couple as to their respective elective share rights under ORS 114.600 to 114.725?
2. May Lawyer advise both Spouse A and Spouse B as to their respective elective share rights as provided in ORS 114.620(1)?
3. May Lawyer prepare an agreement to mutually waive the elective share rights of Married Couple?
4. After Spouse A and Spouse B have agreed to waive the elective share, may Lawyer advise Married Couple concerning their estate plan?

**Conclusions:**

1. Yes.
2. No, qualified.
3. No, qualified.
4. Yes.

**Discussion:**

Oregon RPC 1.7 provides:

“(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.”

1. Lawyer May Provide Information About The Elective Share And Its Potential Waiver To Both Spouses.

Under Oregon’s elective share statute, a surviving spouse may elect to receive a percentage share of the decedent’s estate according to a formula based on the length of the marriage. ORS 114.605. Absent a waiver of that right, the elective share will override a contrary provision in the decedent’s will. *Id.* However, that legal right can be waived. Under ORS 114.620, a spouse may enter into a written agreement, before or after the marriage, to waive his or her elective share. Such agreement to waive the elective share is a type of pre-nuptial or post-nuptial agreement. *In re Estate of Richard B. Wilber*, 75 A3d 1096, 1099 (2013).

Providing general information about the elective share does not create a significant risk that Lawyer’s responsibility to one client will be materially impaired by his responsibilities to the other. Each spouse has a fiduciary obligation to the other requiring full disclosure and fairness. *Day v. Vitus*, 102 Or App 97, 792 P2d 1240 (1990); *Matter of Marriage of Eltzroth*, 67 Or App 520, 526, 679 P2d 1369 (1984); *Bauer v. Bauer*, 1 Or App 504, 464 P2d 710 (1970). Providing information about the elective share and its waiver to both spouses is consistent with each spouse’s duty to each other. Therefore, it does not create a significant risk of impairing Lawyer’s obligation to either spouse for Lawyer to provide such information to both spouses.

2. Advice to Waive Elective Share Presents A Current Client Conflict Of Interest.

Spouses often seek joint representation in estate planning. Typically, the interests of the spouses will be aligned for such purposes. However, there are exceptions in which simultaneous representation would be prohibited. OSB Formal Opinion No. 2005-86. “For example, spouses with children by prior marriages may have very different opinions concerning how their estates should be divided.” *Id.* Thus, an attorney was reprimanded for representing both spouses in revising their estate plans in *In re Plinski*, 16 DB Rptr 114 (2002). In that case, the spouses’ interests were adverse because they had children from prior marriages, their respective estates were of different values, they had ongoing financial disagreements, and one spouse was, for reasons of health and disposition, likely susceptible to pressure from the other. *Id.*

An agreement to waive the elective share presents such conflicting interests. As with any pre-nuptial or post-nuptial agreement, it requires one or both spouses to give up potentially valuable legal rights. Such agreement may be particularly fraught with issues that could impair a lawyer’s ability to provide competent and diligent representation to both spouses. By definition, it contemplates that the spouses might leave the majority of their estates to others. One or both spouses may wish to provide for children from another marriage. There may be a potential imbalance between the spouses’ respective estates, such that the right to an elective share could be more important to one spouse than the other. One spouse may be more sophisticated than the other; one may be in better health and more likely to benefit from the elective share. Waiver elective shares might even require renegotiation of the terms of a prenuptial agreement. Any of those factors creates “a significant risk

that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client." RPC 1.7(a)(2).

Some conflicts may be waivable with informed consent confirmed in writing. RPC 1.7(b)(1) allows such waiver if "the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client." Comment 15 to the ABA Model Rule 1.7 notes that "[c]onsentability is typically determined by considering whether the interests of the clients will be adequately protected if the clients are permitted to give their informed consent to representation burdened by a conflict of interest." The *Restatement of Law Governing Lawyers* § 122, comment g.iv, explains:

"The general standard . . . assesses the likelihood that the lawyer will, following consent, be able to provide adequate representation to the clients. The standard includes the requirements both that the consented-to conflict not adversely affect the lawyer's relationship with either client and that it not adversely affect the representation of either client. In general, if a reasonable and disinterested lawyer would conclude that one or more of the affected clients could not consent to the conflicted representation because the representation would likely fall short in either respect, the conflict is nonconsentable."

Were Lawyer to represent both spouses with respect to an agreement to waive the elective share, Lawyer would be literally representing both sides of an agreement likely to benefit one client more than the other. Such conflict may be waivable in limited circumstances, but it is perilous. The Oregon Supreme Court observed, in a case where an attorney drafted an employment contract while representing both the employer and the employee, that "[i]t is never proper for a lawyer to represent clients with conflicting interests no matter how carefully and thoroughly the lawyer discloses the possible effect and obtains consent." *In re Jans*, 295 Or 289, 295, 666 P2d 830 (1983). It explained:

"It is of the utmost importance that the attorney representing both parties to a transaction reflect upon the rationales behind conflict of interest proscriptions. It is not sufficient that the attorney believes himself able adequately to represent potentially differing interests, or even that all parties have consented. The possibility of subconsciously favoring the interests of either party, the appearance of impropriety that may arise from even the slightest dissatisfaction, the likelihood of receiving confidential information from one party that is damaging or helpful to the other, and the possibility that a court will subsequently disagree with the attorney's decision that he was able adequately to represent both interests—all dictate extreme caution in these situations.

The temptation to represent potentially conflicting interests is particularly difficult to resist in family disputes. Often the attorney is the ‘family lawyer’ and has represented husband, wife, and even the children on previous occasions. . . . If the parties have not clearly understood the lawyer's ethical responsibilities *ab initio*, the ensuing rancor may be directed toward him.”

*Id.* at 295 n 7 (quoting Aronson, *Conflict of Interest*, 52 Wash L Rev 807, 826–27 (1977)); see also *In re Robertson*, 290 Or 639, 648, 624 P2d 603 (1981) (lawyer is disciplined for representing both buyer and seller of real property).

Comment 30 to ABA Model Rule 1.7 notes that “[a] particularly important factor in determining the appropriateness of common representation is the effect on client-lawyer confidentiality.” Attorney-client privilege is typically waived among clients who are jointly represented. OEC 503(4)(e). Such lack of confidentiality may make it difficult for Lawyer to explore whether one spouse has concerns about waiving the elective share, since that spouse may be reluctant to fully share those concerns with the other spouse. That, in turn, impairs Lawyer’s ability to fully advise each spouse.

In addition to potentially impairing the lawyer’s ability to represent the spouse who might object to waiving the elective share, the conflict also creates risk for the other spouse. A spouse may make certain estate planning decisions based on what he or she believes to be other spouse’s waiver of the elective share. A later finding that the waiver was invalid, due to the attorney’s conflictive representation, would likely frustrate the decedent’s estate plan that counted on that waiver of elective share.

Under the facts as presented here, the conflict is very likely to be nonconsentable. The facts listed are likely to impair Lawyer’s ability to give complete, competent and diligent advice to both spouses as to waiver of the elective share. In particular, the existence of children from previous marriages and the imbalance between the spouses’ separate estates heightens their need for thorough and independent advice. One may reasonably expect Lawyer’s ability to render such advice to be impaired by Lawyer’s duties to the other spouse.

There may be other circumstances in which a lawyer could reasonably believe that he or she could provide competent and diligent representations to both parties to an agreement to waive the elective share. That is likely if the elective share appears unlikely to substantially affect the estate plan,<sup>1</sup> the spouses do not have children from prior marriages, their separate assets are similar in value, they are both highly sophisticated and unlikely to be susceptible to pressure, and they are similarly positioned with respect to life expectancy. See *In re Plinski*, 16 DB Rptr 114 (2002). Additionally, Formal Opinion No. 2005-86 set forth a list of factors that, in rare circumstances, might

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<sup>1</sup> It is not always clear, at the time an estate plan is created, whether a devise is likely to be more or less than the elective share. The value of the estate and the devise may be changed by fluctuating values of joint and separate assets, unforeseen expenses, and other inheritances or gifts. Additionally, the statutory percentage of the elective share changes with the length of the marriage.



allow for joint representation during a divorce. Although that opinion addressed different circumstances, some of the listed factors may be applicable here, including:

- “(3)The marital estate must not contain substantial assets or liabilities;
- (4) The parties must have fully agreed on the disposition of all assets and liabilities [or, here, waiver of the elective share] before consulting the lawyer;
- (5) The lawyer must be in a position to conclude that each party has provided full disclosure of all assets . . .”

To sum up, the more important the elective share appears to be to either spouse, the less likely the conflict is to be waivable, and vice versa.

A lawyer weighing the totality of these factors might reasonably believe that he or she could competently and diligently represent both spouses with respect to an agreement to waive of the elective share. Even in a case where the conflict is waivable, the lawyer would still be required to obtain both clients’ informed consent pursuant to RPC 1.7(b).

### 3. Preparation of Agreement Waiving Elective Share.

The same analysis applies with respect to preparing the agreement to waive the elective share. Once Lawyer has undertaken to represent both spouses with respect to estate planning, there is a conflict if he represents either spouse with respect to drafting an agreement to waive the elective share. For example, an attorney drafted a property settlement on behalf of divorcing spouses in *Matter of Marriage of Eltzroth*, 67 Or App 520, 679 P2d 1369 (1984). The lawyer “acted only as a scrivener” and “did not provide independent advice to either party.” *Id.*, 67 Or App at 526. Nonetheless, the Court of Appeals noted that it did “not condone the conduct of the attorney in continuing to represent both parties” to the agreement. *Id.* at n 7.

This conflict may be avoided if Lawyer has not yet undertaken representation of one of the spouses with respect to estate planning. As attorney for only one of the spouses, Lawyer may prepare an agreement mutually waiving the elective share on behalf of the spouse that Lawyer represents. It is not mandatory that both parties to a prenuptial or postnuptial agreement be represented by counsel, although that is a factor in determining whether such agreement is enforceable. *Matter of Marriage of Leathers*, 98 Or App 152, 779 P2d 619 (1989).

### 4. Advice Concerning Estate Plan after Execution of Agreement to Waive Elective Share.

Once the issue of waiver of the elective share has been eliminated by execution of an agreement, Lawyer may represent Spouse A and Spouse B in preparation of their estate planning, absent other circumstances that would create a conflict of interest under RPC 1.7.

# OREGON STATE BAR

## Board of Governors Agenda

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**Meeting Date:** November 16, 2017  
**Memo Date:** November 1, 2017  
**From:** MCLE Committee  
**Re:** Category II credit for service on certain committees

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### Action Recommended

Approve the MCLE Committee's recommendation to amend the MCLE Rules and Regulations to allow members to claim Category II credit for service on certain committees and councils that are responsible for drafting court legal rules or jury instructions.

### Background

At its April 2017 meeting, Board of Governors reviewed and approved the following MCLE rule and regulation amendments, which allow members to claim Category II MCLE credit for service on the Oregon Council on Court Procedures:

**MCLE Rule 5.12 Oregon Council on Court Procedures.** Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.

**MCLE Regulation 5.200**

- (i) Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.

This proposed rule amendment was approved by the Oregon Supreme Court on June 14, 2017.

#### 1. Board's Interest in Uniform Approach

While the Board approved the recommendation to allow Category II Credit for service on the Oregon Council on Court Procedures, some members expressed concern about adding committee service to Category II on a piecemeal basis. Board members voiced a belief many members serve on similar rulemaking committees, such as the Uniform Trial Court Rules

Committee<sup>1</sup> and the Federal Bar Association's Local Rules Advisory Committee<sup>2</sup>, which may be equally deserving of Category II credit.

Currently, members who serve on most committees that require them to provide legal advice or rely on their legal expertise will only qualify for Category III credit, which is capped at six credits per three-year reporting period. Category II credit is capped at twenty credits per three-year reporting period, and is therefore seen as more valuable to members.

Based on the Board's input, the MCLE Committee reexamined MCLE 5.11, 5.12 and related regulations and discussed whether it would be possible to take a more uniform approach to granting Category II credit.

## 2. MCLE Committee Proposal

After discussion, the MCLE Committee determined that a more uniform approach to committee service MCLE credit is possible. The Committee recommends that rules on committee service be amended to focus on the utility of a committee's service to the judicial system and judicial process. The MCLE Committee concluded that committees with a focus on rulemaking or drafting jury instructions are likely to require rigorous service and demand in-depth legal analysis from their membership. Further, the bar has a general interest in encouraging lawyers to engage in and support the work of the judicial branch. On either basis, a case can be made that such activities should be entitled to Category II credit.

Accordingly, the MCLE Committee recommends amending Rule 5.11 as follows and deleting Rule 5.12, rather than separately enacting a rule for each committee:

~~**Rule 5.11 Jury Instructions Committee Service.** Credit may be claimed for serving on the Oregon State Bar Uniform Civil Jury Instructions Committee or Uniform Criminal Jury Instructions Committee.~~ **Credit for Committee and Council Service.** Credit may be claimed for serving on committees that are responsible for drafting court legal rules or jury instructions that are designed to

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<sup>1</sup> Uniform Trial Court Rules Committee – Members are appointed by the Chief Justice of the Oregon Supreme Court to review proposed changes to the rules each year. The rules must be consistent with state law and with the Oregon Rules of Civil Procedure. This committee also reviews all of the Supplementary Local Rules of the Oregon Trial Courts.

<sup>2</sup> FBA's Local Rules Advisory Committee – Members are appointed by the Chief Judge to review proposed changes to the FBA's Local Rules of Civil Procedure. This committee is currently being restructured in respect to defining member terms, meeting schedule and refining the committee's charge.

aid the judicial system and improve the judicial process. Examples include service on the Oregon State Bar Uniform Civil Jury Instructions Committee, Uniform Criminal Jury Instructions Committee, Oregon Council on Court Procedures, Uniform Trial Court Rules Committee, and the Federal Bar Association's Local Rules Advisory Committee.

~~**Rule 5.12 Oregon Council on Court Procedures.** Credit may be claimed for service as a member or as staff on the Oregon Council on Court Procedures.~~

If the above-proposed amendments are approved, the MCLE Committee recommends that the following regulations also be amended:

**Regulation 5.300**

~~(f) Credit for Committee and Council Service: Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.11, a member must attend at least 9 hours of regularly scheduled committee or council meetings during the year. Jury Instructions Committee Service. Members may claim two general credits for each 12 months of service. To be eligible for credit under MCLE Rule 5.10, a member of a jury instructions committee must attend at least six hours of committee meetings during the relevant 12-month period.~~

(g) Service as a Bar Examiner. Three (3) credits may be claimed for writing a question and three (3) credits may be claimed for grading a question.

(h) Legal Ethics Service. Members may claim two ethics credits for each twelve months of service on committees and boards listed in Rule 5.9.

~~(i) Oregon Council on Court Procedures Service. Members may claim three general credits for service per year. To be eligible for credit under MCLE Rule 5.12, a member must attend at least 9 hours of regularly scheduled Council meetings during the year.~~