

# Oregon State Bar Bylaws

(As amended by the Board of Governors through September 27, 2024)

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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) "Chief Executive Officer" means the Chief Executive Officer of the Oregon State Bar.
- (H) "Governor" means a member of the Board of Governors of the Oregon State Bar.
- (I) "Member" means a member of the Oregon State Bar.
- (J) "Policies" means bar policies adopted by the Board pursuant to these Bylaws.
- (K) "Principal Office" means the location the member holds out to the public as an office where the member engages in the practice of law, whether the member engages in the practice while physically present in that location, or while teleworking via telephone, internet, or other electronic connection from a remote location.

### **Section 1.2 Purposes**

The mission of the Oregon State Bar is to serve the public interest by:

- (a) Regulating the legal profession and improving the quality of legal services;
- (b) Supporting the judiciary and improving the administration of justice; and
- (c) Advancing a fair, inclusive and accessible justice system.

## **Article 2 Board of Governors**

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

- (a) The Board of Governors governs the Bar, except as provided in ORS 9.136 to 9.155, and must at all times direct its power to serve the public interest as provided in ORS 9.080(1).
- (b) The Board establishes and monitors implementation of the mission, strategic plan, programs, services and policies of the bar.
- (c) The Board monitors the financial condition of the bar, ensures that adequate resources exist for operations, programs, and services, and approves the annual bar budget.

(d) 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, pursuant to these Bylaws. The admissions, discipline and Minimum Continuing Legal Education components of the Board's preliminary budget for the following year shall 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.

(e) Each year, the Board will prepare a statement explaining the financial condition of the Oregon State Bar for the 12 months preceding, as required by the Bar Act. The Chief Executive Officer of the bar shall promptly submit the statement to the Chief Justice of the Supreme Court.

(f) The Board selects and appoints the Chief Executive Officer, who is the Board's only employee. The Chief Executive Officer is responsible for implementing, administering and supervising bar operations, bar staff, bar programs and services as provided in OSB Bylaw 2.21. The Board supports, provides direction to, evaluates the performance of, and determines compensation for the Chief Executive Officer.

(g) The Board commits to providing a work environment for the Chief Executive Officer and bar staff that is free of harassment and discrimination, as provided in the BOG Anti-Harassment Policy. Any board member who is aware that a board member has engaged in harassment or intimidation against the Chief Executive Officer or any other OSB staff shall report the information immediately to the bar president, president-elect, Chief Executive Officer or OSB General Counsel, as appropriate.

## **Section 2.2 Election**

(a) Candidates seeking election as a lawyer-member of the Board must be eligible to be a lawyer-member of the Board under ORS 9.025, including maintaining a principal office within the region that the candidate seeks election.

(b) The election of lawyer-members of the Board will be conducted according to Article 8 of the Bar's Bylaws. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

(c) Any member of the Oregon State Bar, or the board of governors by its own motion, may request that the board determine a candidate's eligibility for the board pursuant to ORS 9.042. The board must provide written notice of the request to the candidate whose eligibility will be determined. The board will also provide the candidate, and any member who requested determination of a candidate's eligibility, the opportunity to submit additional written statements and to be heard before the board prior to a determination. The board must notify the candidate, and the person requesting a determination of the candidate's eligibility, of its determination and the reasons for its determination.

## **Section 2.3 Board Committee and Other Assignments**

At the end of each year, the president-elect will appoint members of the Board to Board Committees and other assignments for the following year.

## **Section 2.4 Judicial Campaigns and Appointments**

(a) The members of the Board must refrain from stating or suggesting that the bar or Board is taking a position on judicial campaigns or appointments, except to relay recommendations made by the Board pursuant to OSB Bylaw section 2.19, Judicial Selection.

(b) If a member agrees to be listed as supporting or opposing a judicial candidate and be identified as a member of the Board, any publication must include a prominent disclaimer that the views expressed are the member's own and do not represent the views of the bar or Board. Members of the Board who express a personal position on a judicial campaign or appointment should strive to explain that they are not taking a position on behalf of the bar or Board, during 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.

## **Section 2.5 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.

## **Section 2.6 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.

## **Section 2.7 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, bar counsel, Unlawful Practice of Law Committee, Client Security Fund, 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.

## **Section 2.8 Defense of Disciplinary Complaints and Proceedings**

(a) The bar will defend any of its current and former officers, employees and agents (hereafter "Respondent"), 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 Respondent or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Respondent which on its face falls within the provisions of subsection (a) of this bylaw, or which the Respondent 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 Respondent 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 Respondent, 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 Respondent, 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 Respondent shall cooperate fully with the lawyer(s) hired by the bar to defend the Respondent. If the Board determines that the Respondent 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 Respondent to reimburse the bar for all funds it has paid on account of the defense of the Respondent. The Board may condition the provision of a defense under this bylaw on the Respondent's agreement to make such reimbursement upon the Board's good faith determination that the Respondent 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 Respondent'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 Respondent 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 Respondent's agreement to make such reimbursement upon the Board's good faith determination that the Respondent has engaged in such conduct.

(f) If the Respondent in a disciplinary proceeding is found to have violated the rules of professional conduct, a disciplinary statute or disciplinary regulation, the Respondent must reimburse the bar for all funds it has paid on account of the defense of the Respondent. The Board may condition the provision of a defense under this bylaw on the Respondent's agreement to make such reimbursement upon the entry of a final judgment imposing discipline on the Respondent. 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 Respondent. If the discipline is a reprimand, the board may waive the reimbursement requirement.

(g) If the Board denies an Respondent a defense under this bylaw or terminates the provision of such a defense under the terms of this bylaw and the Respondent 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 Respondent for his or her reasonable attorney fees and costs in defense of such matter so long as the Respondent'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 2.9 BOG Member Removal, Censure or Suspension from Service**

(a) A board member may be censured or suspended from board service for cause on a two-thirds vote of the entire Board of Governors.

(b) A board member may be removed from board service for cause on the affirmative vote of two-thirds of the entire membership of the board. For purposes of a vote under this subsection, three-fourths of the total number of members then in office shall constitute a quorum.

(c) The board must provide the board member to be removed, censured or suspended with advance written notice of the vote. Upon request, the board must also provide the reason for the proposed censure or suspension and an opportunity to contest it in writing or in person at a meeting of the Board. "Cause" includes, but is not limited to: incapacity to serve; a serious breach of, or repeated failures to meet, the duties outlined in these bylaws, or; conduct or activities that bring discredit to, or may give rise to liability for, the bar.

(d) A board member against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board is automatically suspended from board service until the charges filed against them have been resolved or until their term ends or is terminated as provided in ORS 9.025(5).

(e) The Board of Governors may appoint a temporary replacement to serve until the board member suspended under this bylaw is again able to serve.

### **Section 2.10 Officers**

(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. 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.



(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.

**Section 2.11 Election of Officers**

(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 member of the second-year class may be a candidate for the office of President-elect by notifying the Chief Executive Officer by September 1.

(c) Nomination of President-elect

Each candidate for President-elect must submit with the candidate's 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 nominating committee members will confer 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 20 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 not less than 10 days prior to the last regularly scheduled board meeting of the calendar year. If the Nominating Committee is unable to select a sole candidate for President-elect, the board will elect a President-elect at its last regularly scheduled board meeting of the calendar year, pursuant to Section 2.11 (d).

(d) Voting

If there is only one candidate for 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.

**Section 2.12 Removal of Officers**

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 2.13 Public Members**

(a) 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.

(b) 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.

(c) 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.

(d) 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 Section 2.13(b) 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.

(e) 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 Section 2.13(b) of the Bar's Bylaws and is subject to removal as set forth in Section 2.13(d) of the Bar's Bylaws.

### **Section 2.14 Meetings**

(a) Board meetings are governed by the Bar Act, the provisions of ORS Chapter 192, the Oregon Public Meetings Act, these bylaws, and the most recent edition of Robert's Rules of Order.

(b) Meetings of the Board are held at such times and places as the Board determines. The Chief Executive Officer will provide notice of the time and place of all meetings as required by the Oregon Public Meetings Acts.

(c) 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. 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 must call the meeting and provide at least 24 hours' notice of the time and place of the special meeting.

(d) An emergency meeting may be called on less than 24 hours' notice only if the purpose of the meeting meets the definition of an emergency and is permitted by the Oregon Public Meetings Law. Only the matters for which the emergency meeting is called may be considered at the meeting.

(e) Accurate minutes of all board meetings must be preserved in writing or in a sound, video or digital recording.

### **Section 2.15 Oregon New Lawyers Division Liaison**

A member of the Oregon New Lawyers Division ("ONLD") Executive Committee will serve as a non-voting liaison to the Board.

### **Section 2.16 Expenses**

Members of the Board of Governors are eligible for expense reimbursement pursuant to OSB Bylaw 4.1.

### **Section 2.17 Government Standards and Practice Act**

Bar officials are public officials subject to the provisions of ORS Chapter 244, the Government Standards and Practices Act.

### **Section 2.18 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.

### **Section 2.19 Judicial Selection**

The Bar plays an important role in judicial selection by interviewing and evaluating candidates for appellate court appointments. The Board will appoint an Appellate Selection Committee to conduct the Board's appellate recommendation process. Results will be made public as soon as practicable to the press, the candidates and the appointing authority.

### **Section 2.20 Supreme Court Review of Oregon Rules of Professional Conduct**

In recognition of the Oregon Supreme Court's inherent authority to regulate the practice of law in Oregon, on or before January 31 of each year, the Board shall submit any proposals to amend the Oregon Rules of Professional Conduct that were considered, but not adopted, in the prior calendar year to the Court for its review and consideration.

### **Section 2.21 Chief Executive Officer**

(a) The Chief Executive Officer, appointed by and acting under the supervision of the Board, is the principal administrative officer of the Bar. The Chief Executive Officer 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 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 is responsible for preparing an annual budget for the Board's Budget Committee. The Chief Executive Officer performs other duties as imposed by the Bar Act, the Bar Bylaws, Board policies, or as otherwise directed by the Board.

(b) 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 is the designated agent for receipt.

### **Section 2.22 Financial Matters**

(a) All funds paid to the Bar will be received by the Chief Executive Officer 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 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.

(b) The President and either the Chief Executive Officer 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.

(c) The President and either the Chief Executive Officer 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.

### **Section 2.23 Financial Investments**

(a) The Chief Executive Officer or 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 bylaws and policies and with specific direction of the Board.

(b) The Board is responsible for the management of the bar's assets, including investment thereof. The Board may appoint an Investment Committee and may delegate authority for management of investments to the Investment Committee. The performance of all investments will be reviewed by the Investment Committee

no less than twice each calendar year. The Investment Committee shall act in good faith, exercising the care that an ordinarily prudent person in the same position would exercise.

(c) The Bar may engage one or more fee-for-service investment managers and delegate individual investment decisions to such investment managers within the guidelines of the Bar's bylaws and policies and the specific direction of the Investment Committee. All investment transactions shall be solely for the benefit of the bar.

(d) The investment objective of the Bar is to seek a real rate of return (return in excess of the CPI) on an annual basis of four to six percent. The performance results should seek to outperform general broad-based market indices, such as the Russell 3000 or S&P 500. Additional investment objectives may be established by the Investment Committee.

(e) Investments shall be made in instruments approved by the Investment Committee that meet or exceed credit quality standards.

(f) The Board, with advice from the Investment Committee, may utilize up to three percent (3%) of unrestricted bar fund balances for bar operations each calendar year.

#### **Section 2.24 [Reserved]**

#### **Section 2.25 Location of Office**

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

### **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. Candidates seeking election as a delegate of a region must be eligible to be delegate under ORS 9.136(5), including maintaining a principal office within the region that the candidate seeks election. 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 agenda may be considered.

### **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.

### **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 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 8 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 General Administration**

### **Section 4.1 Expense Reimbursement**

(a) Members of the Board of Governors, House of Delegates, State Professional Responsibility Board, Disciplinary Board, Oregon New Lawyers Division, Board of Bar Examiners, or any other special task force, committee, or group named by the Board of Governors will be reimbursed for their expenses in accordance with this Bylaw and OSB Policies when acting in their official capacities. The Immediate Past President of the Board of Governors and the CEO of the Oregon State Bar are also eligible for reimbursement under this section.

(b) Expenses of spouses or guests will not be reimbursed except as specifically provided in the Board policies and approved by the Board of Governors.

(c) Any person who is entitled to a travel reimbursement pursuant to this section may retain travel awards, mileage awards, credit card awards and other awards or benefits accrued while in the conduct of the person's official duties, as part of their reimbursement of expenses and official compensation.

(d) Bar funds shall not be used to pay the cost of alcoholic beverages.

#### **Section 4.2 Awards**

Each year, the Board shall consider nominations for the President's Membership Service Award, the President's Public Service Awards, the President's Diversity & Inclusion Award, the President's Special Award of Appreciation, the Award of Merit, the Wallace P. Carson, Jr. Award for Judicial Excellence, the President's Public Leadership Award, the President's Sustainability Award, and the President's Technology & Innovation Award. The Board may select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

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

Election of ABA delegates must be conducted according to Article 8 of the Bar's Bylaws. The ABA delegates will be elected from the state at large, pursuant to Article 9 of the Bar's Bylaws, for a two-year term. ABA delegates must be in-state active members of the Bar. Any vacancy due to a delegate's resignation, death or any other reason shall be filled in the manner provided in ORS 9.040(2).

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.

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

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

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.

## **Section 6.2 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. Active Pro Bono Status members agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 12 of the Bar's Bylaws and report annually to the Oregon State Bar their number of hours of pro bono service. The Chief Executive Officer or designee is authorized to determine members' eligibility for Active Pro Bono status, pursuant to the Bar Rules of Procedure.

(c) Active Pro Bono Status lawyers 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, the Disciplinary Board or as bar counsel.

(d) Active Pro Bono Status members must obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

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

### **(f) Reporting Requirement for Active Pro Bono Status**

Bar Certified pro bono programs will report to the Bar no later than April 30 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyers must ensure that the certified program reports their hours or must individually report their hours no later than April 30 of each year.

### **(g) Transfer from Out-of-State Active Pro Bono Status**

Out-of-State Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.

## **Section 6.3 Retired Status**

(a) 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) A member of the Bar who is at least 65 years old and who is retired from the practice of law may be enrolled as a retired member. Retired members are assessed a fee that is equivalent to the inactive membership fee.

## **Section 6.4 Publication of Notice of Application for Formal 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 6.5 Register of Members**

The Chief Executive Officer 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 published register of members must include at least the member's name, bar number, and current status.

### **Section 6.6 Rights of Members; Inactive and Suspended 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 6.7 Annual Membership Fees and Assessments**

(a) The payment date for annual membership fees and assessments is January 31.

(b) 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.

(c) A bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive status and timely pays the inactive membership fees, 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 the Chief Executive Officer finds extenuating circumstances exist. The Chief Executive Officer's decision is final.

(d) The Board will set a late payment penalty to be assessed on any member delinquent in payment of member fees.

(e) Any member in default of payment of annual member fees will be given a reasonable opportunity to cure the default as determined by the Board. The Chief Executive Officer shall send a notice of delinquency to each member in default at the member's electronic mail address on file with the bar on the date of the notice. The Chief Executive Officer shall send the notice by mail to any member who is not required to have an electronic mail address on file with the bar under the rules of procedure. If a member fails to pay the fees or contributions within the time allowed to cure the default as stated in the notice, the member is automatically suspended.

(f) The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. New admittees will have ninety (90) days from the date of admission to pay their membership fees. If a new admittee fails to pay the fees within the time allowed, the new admittee is automatically suspended.

(g) The Chief Executive Officer may, each year, exempt or waive payment of annual membership in cases of (i) proven extreme hardship, or (ii) for members engaged 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.

(h) The Chief Executive Officer may take reasonable and necessary actions, including extending deadlines and waiving late fees, if national or statewide events occur that severely disrupt the normal course of business. Prior to taking action, the CEO will make reasonable efforts to consult with the Bar President.

### **Section 6.8 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 in an amount sufficient to cover the cost of providing information and services to Law Student Associates.

## **Article 7 Public Records and Meetings**

### **Section 7.1 Public Records**

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

### **Section 7.2 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).

## **Article 8 Election Procedures**

### **Section 8.1 Date of Elections**

(a) 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 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.

(b) 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 of the Bar at least 30 days before the election.

(c) 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 of the Bar at least 30 days before the election. Only members with a principal office address in Oregon will be eligible to vote for the ABA House of Delegates representatives.

(d) The Board of Governors may take reasonable and necessary actions, including extending the deadline for candidate statements or the date of the annual election, if national or statewide events occur that severely disrupt the normal course of business.

### **Section 8.2 Ballots**

The Chief Executive Officer will prepare ballots whenever a contest exists and the ballots will be accompanied by the candidate statement. Ballots will be electronic.

### **Section 8.3 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. Voting must be completed on or before 5:00 p.m. on the day of the election. The Chief Executive Officer will announce the results of the balloting and will notify each candidate of the results of the election.

## **Article 9 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 invite participation that reflects this diversity. "Reflect," as used in this article, does not mean the application of quotas, but requires a good faith attempt to invite the full participation of all bar members. 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, gender identity, gender expression, 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 10 Communications**

### **Section 10.1 General Policy**

(a) 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 10.2 Editorial Policy**

(a) The Board will appoint an Editorial Advisory Committee. The Editorial Advisory Committee will review and recommend editorial policies for bar communications to the Board for approval. Periodically, the committee will meet to review and provide feedback on the planned content for The Bulletin to the editorial staff.

(b) All editorial policies will be approved by the Board. Editorial policies may address 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. Editorial policies must be consistent with Article 9 Diversity and Article 11 Legislation and Public Policy.

(c) The Chief Executive Officer has sole discretion to determine whether material submitted for publication meets the standards set forth in or adopted pursuant to this section and to accept or reject material submitted to the Bar for publication based on that determination.

## **Article 11 Legislation and Public Policy**

### **Section 11.1 Legislative Guidelines**

(a) 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.

(b) 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.

(c) 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 11.2 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 Article 11 of the Bar's Bylaws.

### **Section 11.3 Objections to Use of Bar Dues**

(a) 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 of the Bar. The Board will review each written objection received by the Chief Executive Officer at its next scheduled board meeting following receipt of the objection. The Board will respond through the Chief Executive Officer 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.

(b) 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 and the member must sign an arbitration agreement approved as to form by the Board.

(c) 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 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 12 Pro Bono**

The Board may set an aspirational standard for pro bono service for all members. The Board may approve Board Policies to certify pro bono programs that support the Bar's mission.

## **Article 13 Committees**

### **Section 13.1 Standing and Special Committees**

(a) 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. All members of standing committees must be active members of the Bar, except designated public members.

(b) The President or the Board appoints members to fill Committee 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 13.2 Joint Committees**

(a) The Board may also 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.

(b) All Bar Bylaws relating to committees apply to joint committees.

### **Section 13.3 Committee Responsibilities**

Before January 1 of each year the Board will forward a committee charge to the chair of each committee.

### **Section 13.4 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. Terms begin on January 1. The board may appoint advisory members or public members, as it deems appropriate.

### **Section 13.5 Financial Issues**

Committees have no budget.

### **Section 13.6 Quorum for Meetings**

A quorum, consisting of a majority of the voting committee members, is required for the transaction of committee business. Action of the committee will be by majority vote of those voting.

## **Article 14 Sections**

### **Section 14.1 Purpose**

Sections are entities of the Bar created by the Board to further the Bar's mission to serve justice and the public interest by promoting respect for the rule of law, improving the quality of services, and increasing access to justice. Sections are governed by section executive committees and strive to provide Bar members who share interests in particular substantive areas of law with a forum for improving legal skills and knowledge, improving the law and administration of justice, exchanging ideas and information, and engaging in pro bono service and other activities to increase access to justice.

### **Section 14.2 Formation and Sunset**

(a) Any 200 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.

(b) Factors the Board must consider in deciding whether to create a section include, but are not limited to, whether the proposed section duplicates or could be incorporated into another section and whether the proposed section is consistent with the mission of the bar.

(c) 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 requirements outlined in Standard Section Bylaws, Article XII.

### **Section 14.3 Policies and Bylaws**

Sections are governed by section executive committees, pursuant to the Standard Section Bylaws and Board policies adopted by the Board as well as these Bylaws.

### **Section 14.4 Finances and Contracts**

(A) 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 will assess and collect section dues.

(B) The Bar charges each section a per capita fee for administrative services.

(C) Only the CEO or the CEO's designee may enter into verbal or written contracts on behalf of a section or the Bar, upon request of the section.

## **Article 15 Bar Programs**

### **Section 15.1 CLE Seminars and Legal Publication Programs**

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.

## **Section 15.2 Member Services**

The mission of the Bar's Member Services program is to serve as a primary point of contact for bar members. Member Services will provide public notice of bar meetings, provide electronic communications to such as broadcast e-mails and list serves to sections, and provide support to bar staff who act as section liaisons.

## **Section 15.3 Legal Ethics Guidance**

(a) All legal ethics questions regarding the propriety of a proposed 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 or by telephone.

(b) A bar member may request that a question be submitted to the Legal Ethics Committee. The Committee may recommend that the Board adopt a Formal Ethics Opinion, for publication to the membership, or issue a letter of direct advice to the inquirer.

(c) 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 in writing by the inquirer.

## **Section 15.4 Fee Dispute Resolution Program**

The Bar may provide for a fee arbitration and mediation 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.

## **Section 15.5 Client Security Fund**

The bar operates a Client Security Fund pursuant to the Bar Act and rules adopted by the Board. The Chief Executive Officer 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.

## **Section 15.6 Referral and Information Service**

(a) The bar operates a referral and information service, including a Lawyer Referral Service, which provides legal referrals, community service referrals, and general legal information to persons with legal problems.

(b) The bar's Lawyer Referral Service operates pursuant to policies and procedures recommended by the bar's Public Service Advisory Committee (PSAC). Any changes to PSAC policies must be reviewed and adopted by the Board. Any changes to PSAC procedures must be reviewed and adopted by the PSAC.

(c) 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.

## **Article 16 Discipline**

### **Section 16.1 State Professional Responsibility Board**

(a) 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.

(b) If a complainant, 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.

(c) The service of members of the State Professional Responsibility Board against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board should recuse themselves from service until the charges filed against them have been resolved. The member should not resume service on the board until the member is once again authorized to practice law. Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

(d) 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 16.2 Disciplinary Counsel's Office**

(a) The bar will pursue, as feasible, collection of those costs and disbursements for which a disciplinary judgment was awarded to the Bar in a disciplinary or reinstatement proceeding.

(b) 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 Respondent 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(f), with a copy to the staff member named in the complaint.

### **Section 16.3 Adjudicator**

The Adjudicator is the Disciplinary Board's 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 17 Unlawful Practice of Law**

### **Section 17.1 Unlawful Practice of Law Committee**

(a) The Unlawful Practice of Law Committee ("UPL Committee") is authorized to exercise its powers and authority pursuant to statute, the bar rules of procedure and the Bar's bylaws.

(b) The Board may nominate and request the Supreme Court to appoint as many members as it deems necessary to carry out the UPL Committee's functions, pursuant to BR 12.1. At least two members of the UPL Committee must be members of the general public and no more than one-quarter of the UPL Committee members may be lawyers engaged in the private practice of law. The Supreme Court may designate a Committee liaison from the Oregon Judicial Department to provide policy direction and input to the Committee, and to report to the Supreme Court on the Committee's work.

(c) Pursuant to ORS 9.164 and BR 12.2, the UPL Committee shall investigate complaints of the unlawful practice of law. The UPL Committee may decline to investigate allegations of unlawful practice of law when: the allegations are not made to the UPL Committee in writing and submitted on the Bar's online UPL Complaint Form; the administrator determines the allegations do not involve the unlawful practice of law; the administrator determines the allegations do not involve public harm ; or the allegations consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

(d) At the conclusion of an investigation, the UPL Committee may close the matter, issue an informational letter, refer the matter to the Board of Governors for initiation of proceedings under ORS 9.166, or refer the matter to another agency or bar department, as provided in Bar Policies.

## **Article 18 Professional Liability Fund**

### **Section 18.1 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. At the request of two-thirds of the members of the Board of Directors, the Board of Governors may appoint the immediate past PLF Chief Executive Officer to the Board of Directors for a period not to exceed one year following their resignation or

retirement from the PLF CEO position. The former PLF CEO will be a non-voting, tenth member of the Board of Directors.

### **Section 18.2 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 18.3 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 18.4 Reports**

The PLF must present an annual report to the bar membership.

### **Section 18.5 Board Liaisons to the PLF**

(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 of Governors, and one public member of the Board to serve as liaisons with the PLF Board of Directors.

(c) At least one of the Board of Governor'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).

### **Section 18.6 PLF Reports to the Board**

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 Section 18.11 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.

### **Section 18.7 Release of Information to the Board**

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President 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.

### **Section 18.8 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.

### **Section 18.9 Annual Joint 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 July 1st of each year, whichever is earlier.

### **Section 18.10 Audit of PLF**

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.

### **Section 18.11 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.

### **Section 18.12 Staff Responsibility**

The Chief Executive Officer 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 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 and staff in all areas of the Bar's business and activities. The Chief Executive Officer 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. To the extent reasonably possible, Bar staff will work with PLF staff to jointly coordinate compensation analysis, cost of living adjustments, pay equity analysis, and overall adjustments to their respective compensation structures.

### **Section 18.13 PLF Assessment**

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.

#### **Section 18.14 PLF 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.

### **Article 19 Attorney Assistance**

#### **Section 19.1 Creation and Purpose**

- (a) The State Lawyers Assistance Committee ("SLAC"), created pursuant to ORS 9.568, supervises and assists lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The board may appoint members and public members as it deems appropriate.
- (b) SLAC shall receive confidential referrals regarding Oregon lawyers whose practice may be impaired and conduct investigations regarding the referrals.
- (c) If SLAC finds that a lawyer's performance or conduct may impair the lawyer's professional competence or ability to practice law, SLAC shall require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.
- (d) SLAC shall supervise referred lawyers referred pursuant to a conditional admission, conditional reinstatement or other disciplinary order.

#### **Section 19.2 State Lawyers Assistance Committee Policies**

- (a) The failure or refusal of a 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).
- (b) SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential, unless disclosure is authorized by ORS 9.458(4). 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 Bar Policy, the SLAC chairperson or designee may release the name of the referred lawyer to the OAAP.
- (g) SLAC will prepare a written annual report of its activities, which does not disclose individually identifiable confidential information regarding confidential referrals.

## **Article 20 Sustainability**

The Bar supports the goal of sustainability in the operation of the bar and in the practice of law, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs.

## **Article 21 Unclaimed Lawyer Trust Account Funds**

### **Section 21.1 Administration of ULTA Funds**

(a) The Chief Executive Officer shall assign bar staff to oversee the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar pursuant to ORS 98.386(2). The administration, disbursement and claims adjudication of unclaimed lawyer trust account funds shall be consistent with the requirements of ORS Chapter 98 and Board Policies.

(b) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund.

(c) All unclaimed lawyer trust account funds shall be invested in the same manner as the Bar's general funds as described in these Bylaws. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

Section 21.2 Disbursement(a) The Chief Executive Officer 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 pursuant to ORS Chapter 98 and these Bylaws.

(2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the Chief Executive Officer determines such disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to ORS Chapter 98 and these Bylaws 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 the Bar Act 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 from unclaimed lawyer trust account funds.

## **Article 22 Admissions**

### **Section 22.1 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 22.2 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 22.3 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 22.4 Admissions Manager**

The Admissions Manager shall manage the admissions functions of the Oregon State Bar, under the overall authority of the Chief Executive Officer. The Chief Executive Officer will make the hiring, discipline and termination decisions regarding the Admissions Manager. The Chief Executive Officer 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 Admissions Manager, recruitment will be reopened. If the Admission Manager position becomes vacant, the Chief Executive Officer may appoint another Oregon State Bar employee to perform the duties and functions of the Admissions Manager stated in the Rules for Admission. Prior to making such an appointment, the Chief Executive Officer will solicit the 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 appointment decision, then the Admissions Manager will be reopened for a new appointment or subsequent hiring decision.

### **Section 22.5 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 Manager and Chief Executive Officer 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 Section 2.5, 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 22.6 Amendments**

Any proposed amendment to Article 22 shall be submitted to the BBX and Supreme Court for consideration prior to submission to the Supreme Court. The Bar will submit proposed amendments to this Article to the Supreme Court for review, together with BBX's recommendations. Upon Supreme Court approval of the proposed amendment, the Board of Governors may adopt such amendments in accordance with Article 23.

### **Article 23 Amendment of Bylaws and Policies**

(a) 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.

(b) The Board may adopt or amend Bar Policies not inconsistent with these Bylaws by an 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.