

**Oregon State Bar
Special Meeting of the Board of Governors**

January 11, 2013

11:00 a.m.

Oregon State Bar Center – Tigard

McKenzie Room

1. **Call to Order**
2. **Swear-In New Board Members (Mr. Haglund)**
3. **Finance 101 (Mr. Wegener)** **Exhibit**
4. **Legal Opportunities Task Force Report (Mr. Haglund)** **Exhibit**
5. **Western States Bar Conference Attendees**

Oregon State Bar

2012 Board of Governors Orientation

Surfsand Resort
Cannon Beach, Oregon
November 9, 2012

2012 BOG Orientation Handbook

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Introduction

Welcome to the Oregon State Bar Board of Governors!

This manual will introduce you to the OSB, the Board of Governors and your role as a board member. In addition to providing you with practical information, it is designed to:

- Ensure continuity,
- Ensure adherence to established law, policy and procedures,
- Create an identity for the board,
- Build the board as a team, and
- Develop a shared sense of purpose and shared expectations

This manual contains the principal organizing and governance documents for the OSB, some basic information about the bar and its programs, and a brief introduction to what you can expect as a member of the Board of Governors.

Additional information will be provided during your term of service, depending on the issues being addressed by the BOG. Because the bylaws and other bar rules and regulations are subject to frequent change, your best source for current versions is the OSB website at www.osbar.org. The website is also where you will find information and the board, its meeting and event calendar, and the meeting agendas and minutes. Consistent with the bar's sustainability goals, we try to provide as much information as possible electronically and you are encouraged to become familiar with the OSB website.

The Executive Director and the Executive Assistant are always available to answer any questions or direct you to a member of the OSBS staff for information or assistance. We are committed to making your board service interesting, meaningful, and enjoyable.

Thoughts on the Future of the Legal Profession

1. The effect outsourcing is going to have on the profession. It is estimated that outsourcing to India will result in a reduction of 10% of the legal jobs in the United States, or between 40,000 and 100,000 positions over the next five years.
2. How do the present rules of professional conduct square with a global economy which requires attorneys to practice in a flat, global world with no artificial borders?
3. How are we going to be able to charge clients for documents and provide answers to legal questions that they can get on the internet for free?
4. The effect of becoming a profession of value added services.
5. The commoditized part of the practice is going to eventually disappear as part of the everyday practice because it will be available at little or no cost on the Internet. Web sites such as legalzoom.com and completcase.com are going to provide significant competition for this part of the practice.
6. The phenomenon of the vanishing jury trial is occurring not only in federal courts, but also in state courts as well as more litigants resort to alternative dispute resolution and other available dispute resolution systems such as cybersettle.com.
7. The number of people representing themselves pro se is rising, especially in divorce cases. In Oregon the number is approximately 70%.
8. The pressure on large law firms to change how they bill and staff cases is only going to increase as web sites such as elawforum.com force large law firms to bid for work which they would automatically get historically.
9. The retirement of the baby boom generation is going to change how the profession looks and may, in some states, leave a shortage of attorneys. This shortage of attorneys may be met with outsourcing and technology innovations.

There are no right answers to any of the questions or clear responses to the statements listed above. But we as a profession must continue this discussion. We are part of this great democracy. We are a nation that lives by the rule of law. We, as lawyers, need to be a healthy, independent, and vibrant profession to be effective. This is the future of the legal profession.

The Changing World of the American Lawyer

Thomas D. Morgan¹

A. Introduction – The Golden Age is Over

In the legal world's game of musical chairs, 2008 was the year the music stopped. For a long time, the greatest single complaint heard from lawyers was that they had to work too hard. By 2009, however, lawyers who had been chasing more and more work at an ever faster pace found themselves suddenly looking for a secure place – almost any place – to survive the declining demand for their services. Over 5,000 lawyers, some of them equity partners, have lost positions in major firms. Students all over the country have found promised jobs “deferred” until some often-undefined future date, and many in the graduating classes of 2010 and beyond wonder if they will get any employment offers at all.

Lawyers hope the music will begin again, and it probably will, but if my predictions are correct, the melody lawyers hear will be quite different. As has always been true, those who practice law face a world in which the demand for lawyers is determined by what clients need lawyers to do. The premise of this paper and the book on which it is based is that lawyers are facing fundamental changes in both what they will be asked to do and how much work that lawyers once did will continue to be done by them. The world that lawyers face in 2011, in short, may be much like the world in which they are destined to live.

When we talk about the American lawyer, the world many still imagine is that of the 1950s and 1960s, a period now sometimes called the “golden age” of the American bar. I can remember that time. Lawyers' lives were relatively stable. An associate who worked hard could expect to have senior lawyers act as mentors. The young associate would likely become a partner and would likely retire from the firm in which he began his practice. Along the way, he would have earned an above-average income, worked on a variety of cases, and been a leader in community organizations. Most lawyers did not get rich in the golden age, but Professor Mitt Regan summarizes the prevailing ethos as “nobody starves.”²

Lawyers are properly worried that the new world will be different. Legal regulation is not vanishing. Indeed, as society becomes more complex, the place of law in regulating conduct is likely to increase. Instead, I predict that the interaction of law with increasingly complex economic and social issues will make distinctively legal questions less common and make many of the skills that we stress in law schools less relevant. Rather than needing professionals whose understanding of law dwarfs their understanding of the substantive issues faced by clients, the world will require legally-trained persons to be more fully integrated into the substantive

¹ Oppenheim Professor of Antitrust and Trade Regulation Law, George Washington University Law School. This paper, prepared for the 2011 meeting of the National Conference of Bar Presidents, is based on THOMAS D. MORGAN, *THE VANISHING LAWYER: THE ONGOING TRANSFORMATION OF THE U.S. LEGAL PROFESSION* (Oxford University Press 2010). It is Copyright © 2010 by Thomas D. Morgan.

² MILTON C. REGAN, JR., *EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER* 26 (2006).

challenges tomorrow's clients face. That reality may require that more persons, not fewer, have some legal training, but the training of most people will almost certainly not be today's three year graduate program designed to produce an all-purpose legal generalist.

Today's lawyers, in turn, will not be unemployable, but for at least significant parts of their careers, they will be required to develop specialized expertise both in an area of substantive law and in the non-legal aspects of their potential clients' problems. If they fail to develop both kinds of expertise, they will find at almost every turn that clients will take their problems to those prepared to deliver what the clients need at a higher level of quality, a lower cost, or both.

B. Changes That Have Brought Us to Where We Are

What has happened since the golden age to bring lawyers to this state of affairs? I think that the transformation of lawyers' work reality has been the result of eight important trends over the last 40 years.

First, we used to think of the legal profession as "self-regulating." Lawyers wrote the rules by which lawyers lived, and not surprisingly, we tended to write them in a way that favored ourselves. That all changed in the mid-1970s. Some of the case names are familiar. In *Goldfarb v. Virginia State Bar*,³ the United States Supreme Court in 1975 struck down a bar association's minimum fee schedule as a violation of the antitrust laws. In 1977, the Supreme Court held in *Bates v. State Bar of Arizona*⁴ that even a state supreme court's prohibition of lawyer advertising was a violation of the United States Constitution. Quite apart from the substance of those cases, the reality that external law governed lawyers themselves unsettled the quiet life most lawyers had enjoyed.

Second, growth in the number of lawyers over the last 40 years has greatly increased the competitive pressure on each of them. In 1970, at the end of the "golden age," there were about 300,000 lawyers in the entire country. That same year, however, about 100,000 students had enrolled in law school, and law schools have produced 40,000 or more new lawyers each year ever since.⁵ Today, the nation has about 1.2 million licensed lawyers, about 1 million of whom are in practice. With that kind of competition, it is no wonder the ability to attract business is a primary determinant for a lawyer's success.

If you want a simple picture of why today's law students are having a hard time finding jobs, you need to know that the nation's demand for new lawyers most closely tracks the rate of

³ 421 U.S. 773 (1975).

⁴ 433 U.S. 350 (1977).

⁵ See, e.g., BARBARA A CURRAN, ET AL., *THE LAWYER STATISTICAL REPORT: A STATISTICAL PROFILE OF THE U.S. LEGAL PROFESSION IN THE 1980S* (1985).

increase in the nation's gross domestic product.⁶ Every time the economy slows but law schools keep churning out the same number of new lawyers, we produce a lawyer surplus that does not go away. We had roughly 20% more lawyers than the country could fully employ before 2008-09, but in those years we produced 4% more lawyers at the same time economic activity shrank about 6%. Thus, in a single year, we added roughly another 10% surplus of lawyers nationally. If our graduates want to practice law B and many will B competition for the available work is only going to be even more intense than before. Yet the business model of most law schools makes cutting back enrollments almost unthinkable.

Third, the impact of globalization has transformed the reality of many lawyers' practices. In the 1950s and 60s, most Atlanta lawyers thought of Miami and Dallas as the significant "foreign" capitals. Today, an Atlanta lawyer is as likely to help a client do business in Dubai or Shanghai. Instead of sometimes conflicting state laws, lawyers must deal with conflicts in whole legal systems. For a real estate lawyer, Blackacre could as easily be in London as Lincoln. Even a will drafter or family lawyer may have to protect the interests of children who are in Sydney or Sao Paulo. The complexity created by that reality of today's law practice has made it nearly impossible to be the kind of generalist we once thought of when we called someone a lawyer.

Further, in today's globalized environment, American lawyers find themselves in competition with legal service providers all over the world who operate under different rules. As a result of the Legal Services Act of 2007, for example, British lawyers now can operate in firms with non-lawyers and the attorney-client privilege extends to communication with the non-lawyers. Australian lawyers are now permitted to practice in corporate entities that sell stock to the general public, and the European Union is considering similar changes in lawyer regulation. If American lawyers ignore the fact their direct competitors play by different rules, they will have only themselves to blame when clients seek the same or better services at lower cost elsewhere.

A fourth major factor contributing to today's lawyer reality is the revolution in computer storage and communications technology that has occurred over roughly the same 40-year period since the lawyers' golden age. We all know the changes in legal research and in document discovery that technological developments have created. We also know technology has made lawyers' lives more hectic. Somewhere in the world, it is always daylight, and clients want lawyers always to be on call.

⁶ See B. Peter Pashigian, *The Market for Lawyers: The Determinants of the Demand for and Supply of Lawyers*, 20 *J. L. & Econ.* 53 (1977).

Most important, information technology promises to transform lawyer work that used to be seen as complex, unique and worthy of substantial fees into a set of “commodities” – simple, repetitive operations that will be provided to clients by the lowest bidder. Technology available on the simplest personal computer today can allow a lawyer to copy a 500-page document used in one transaction and change the names and terms for use in the next. Obviously, the result will be a disaster if the document is not equally relevant to the new situation, so the malpractice risk created by the ease of copying can be enormous. Knowing what changes are needed to fit a new situation will always be a big part of the professional’s service, but the benefits of standardizing forms in transactions promises to transform what we used to see as creative work.⁷

Further, and in some ways most frustrating for lawyers, is the fact that much of the information lawyers have traditionally sold is now freely available on the Internet. Books about law have been around for years, but technology now makes the information ubiquitous. Insights may be provided free at websites ranging from Wikipedia to blogs, and the effect is to render a great deal of formerly exotic legal information broadly accessible. Prepared by thousands of authors, these alternative information sources threaten the monopoly on which lawyers have depended for a steady client base. Clearly, lawyers will tend to be able to assimilate and apply such information more quickly and accurately than many clients can, but the breakthrough is that a lawyer’s knowledge is no longer a black box incapable of client penetration. Whether the client is a corporation or an individual, clients can be expected to seek assistance from multiple sources ready to provide them using publicly-available information rather than buying assistance in a proprietary form created and sold by lawyers alone.

Fifth, and clearly related to the developments we’ve described, has been the growth of the size of organizations in which lawyers now practice. When I was in law school during the golden age, my dad was in the largest firm in Illinois outside Chicago. It had eleven lawyers. In 1960, less than 20 U.S. law firms had more than 50 lawyers each, and even by 1968, only 20 firms in the entire country had over 100 lawyers. Now, size leadership has passed to Baker & McKenzie and DLA Piper that each has over 3500 lawyers. Indeed, at least 20 firms have now crossed the 1000-lawyer mark. I am not decrying law firm growth, but the all-purpose “lawyer” we remember in stories of Abraham Lincoln, Clarence Darrow and Atticus Finch, is disappearing B not likely to be seen again.

The sixth key development of the last 40 years has been the transformation of what scholars call the “hemispheres” of the bar. In 1960, sociologist Jerome Carlin reported that in New York, business lawyers made up 45% of the bar, while individual-oriented work such as personal injury, criminal, divorce, wills and real estate made up the other 55%.⁸ Lawyers tended

⁷ The leading analysis of the effect of technology on law practice is RICHARD L. SUSSKIND, *THE END OF LAWYERS?: RETHINKING THE NATURE OF LEGAL SERVICES* (2008).

⁸ JEROME E. CARLIN, *LAWYERS= ETHICS: A SURVEY OF THE NEW YORK BAR* (1966).

to work on one side or the other of the individual/business divide; but it was “people” lawyers who represented the public face of the law.

Just fifteen years later, Jack Heinz & Edward Laumann documented the individual/business distinction in the Chicago bar and showed that the lawyers who populated each differed in terms of social class, where they went to law school, how much money they made, their status as leaders of the bar, and the like. They concluded that by 1975, 53% of lawyers worked on business issues (up from 45%), while only 40% of lawyers still did work for individuals.⁹ After another two decades, in 1995, the authors concluded that the proportion of corporate lawyers had increased from 53% to 64%, while lawyers for individuals had fallen from 40% to 29%. In short, less than 1/3 of legal talent in this country now tries to meet the needs of individual clients.

That does not mean lawyers for individuals are unimportant. It does not even mean all such lawyers are poor. Successful plaintiffs’ personal injury lawyers, for example, can earn incomes that make corporate lawyers jealous. Lawyers who help preserve pools of individual wealth similarly charge high fees. What the trends do mean, however, is that a realistic look at the legal profession reveals that the number of attractive opportunities available to lawyers who do *not* want to do corporate work is getting smaller and at a faster rate than ever before.

Seventh, even the growth of law firms and the shift of law practice toward corporate work pale by comparison to the rising power of in-house counsel. Thirty years ago, and in many cases much more recently, lawyers in private firms saw their role to be providing wise counsel to lay officers or employees of corporate clients. That is now much less true. The people most of today’s lawyers have to please are other lawyers – this time lawyers acting in the role of general counsel to corporations, government agencies, and other organizations. In short, private law firms advise – and market their services to – corporate lawyers and it is that group, who number 10% of all lawyers, that tends to decide what outside services the client requires and why.

Recruiting in-house lawyers rather than depending exclusively on outside firms began as a way for companies to avoid high law firm billing rates and as a form of vertical integration that reduced the cost of searching for lawyers to do recurring tasks. But a strong internal lawyer staff also helps assure that legal service decisions are made by people who understand the client’s business, know the type of legal work that is required, and are able to help managers think about the non-legal issues inherent in important business decisions.¹⁰ A survey of CEOs for the Corporate Counsel Association (CCA), for example, said that 93% of senior executives believe inside counsel understand the company better and 37% even say they trust inside counsel more.

⁹ JOHN P. HEINZ & EDWARD O. LAUMANN, CHICAGO LAWYERS: THE SOCIAL STRUCTURE OF THE BAR (REV. ED. 1994)

¹⁰ See, e.g., Robert L. Nelson & Laura Beth Nielsen, *Cops, Counsel, and Entrepreneurs, Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC. REV. 457 (2000).

Private law firms are familiar with the practice of hiring “contract lawyers,” i.e., lawyers hired to do particular tasks when the firm is especially busy on a case or regulatory filing but who the firm will not need in the long run. Today, private law firms can best be understood as inside counsel’s version of contract lawyers. It hurts for lawyers in private firms to realize that their practice has come to that. The firm they spent their lives building has now become the functional equivalent of a temp agency, and it hurts even more when they are beaten out for commodity work on which they used to train associates but that can be done less expensively by firms in India. There is no escaping the reality that the practice of law has become more competitive and lawyers have become more personally insecure. It is unfortunate but true that many lawyer-client relationships have become less like life-long marriages and more like one-night stands.

Eighth and finally on our list of changes driving ways the lawyer’s world is transforming, the logical outcome of the growing significance of corporate counsel managing legal needs, and the world-wide availability of help with legal matters, is the declining significance of having an American law license before providing traditional legal services. One might think traditional unauthorized practice of law prohibitions will protect American lawyers’ former practice areas, but as we have seen, changes ranging from globalization to the way clients get information are likely to undercut efforts to protect American lawyers against these fundamental changes. An Executive Order signed by President Clinton requires federal agencies to allow non-lawyers to counsel and represent clients in agency proceedings,¹¹ and the effect has been both increased aid available to claimants and a decline in the number of potential claimants that rely on lawyers.

Lawyers themselves are breaking down traditional unauthorized practice barriers as they assist their clients, not only in the state in which the lawyer is licensed to practice, but in other states or nations where the client has legal needs. Law firms have long used paralegal and other support personnel nominally working under the lawyer supervision that ethical standards require. In addition, corporations now use non-lawyers to help deliver the total package of services they need done. Negotiating contracts, troubleshooting discrimination claims, even writing court documents can all be done by non-lawyers within an organization receiving a level of lawyer supervision and training to which unauthorized practice rules cannot effectively speak. Current legal ethics rules require a lawyer in a private law firm to supervise and take responsibility for the non-lawyer’s work, but that requirement is easily met, and the non-lawyers are often accountants or lobbyists, economists or nurses, statisticians or business specialists who are more than capable of acting on their own.

The message that I hope comes through is that the vision of the American lawyer traditionally held out to the country by our nation’s bar associations is largely vanishing. Lawyers now must understand themselves in terms of the world in which they work and whose changing dynamics they cannot ignore. Ours will not become a society with no persons specially trained to deal with legal issues, but people we today call lawyers seem destined

¹¹ Exec. Order No. 12,988, 3 C.F.R. 157: Civil Justice Reform (Feb. 5, 1996).

primarily to provide a form of business consulting service rather than traditional legal advice and litigation.

And lest you think this can't happen, not too many years ago, one of the most secure jobs available was that of a toll booth operator on a bridge or highway. The bridge and the road were there to stay, and cars on both had to stop at the booth and pay a toll. Lawyers were in much the same position; no one could safely write a contract or seek legal relief without passing the issues by a lawyer. Now, toll booths are largely empty and an electronic EZ Pass collects tolls as cars pass by at highway speed. It will be occupational suicide if we fail to try to avoid the same fate.

C. Implications for the Future American Lawyer

What then will the future American lawyer do? I believe lawyers are likely to spend their career trying to stand out among a collection of diverse service providers, each offering to add more to a client's work and life than the client must pay for their service. Even if some of the providers even still call themselves lawyers, at any given time in their careers they will likely focus their work in narrow fields in which they can be known as among the best.

In principle, it still might be possible for someone with legal training and considerable free time to prepare hard enough in a new field to handle a case without committing malpractice, but the skills required to represent a client effectively will often be so multi-dimensional that few lawyers will be likely to stray far from the kinds of work they know how to perform well. Lawyers might change areas of concentration as areas of client need become obsolete or others open up, but in a stratified, globalized world in which clients have technology available to find the kind of counselor they need, each provider will have to become among the best at doing particular kinds of work that a reasonable number of clients need done.

Many traditional lawyer services to individuals will tend to be delivered as commodities, that is, as standardized products sold primarily on the basis of price. Estate planning, real estate transactions, adoptions and uncontested divorces each can present unique negotiation and human relations problems, but the legal components of the cases tend to be repetitive. Technology will allow documents for many such cases to be sold as forms or tailored to individual needs using a few clicks of a computer mouse. If a client needs face-to-face advice for reassurance, needs help in places to which it would be costly for the client to travel, or needs to take a matter to court, someone with legal training might become involved and provide valuable services. But for the kinds of work that many legal service providers with modest training can do quite well, competition should drive fees and lawyer incomes to levels far lower than we see today.

It is a mistake, of course, to view all cases as routine matters. Some individual clients find themselves injured and in need of compensation from persons or organizations who are not willing to pay. Others find themselves charged with crime, finding their immigration status challenged, or assessed back taxes, fines and penalties. Such clients will continue to entrust their

future to legally-trained providers. Even some litigation can involve standardized templates to be sure issues are raised or defended correctly, but many who today call themselves trial lawyers will continue to find their services in demand in the years ahead.

The trend of American lawyers toward disproportionately serving organizational clients is likely to continue if only because businesses are likely to offer the most money for legal services. There, too, however, tomorrow's lawyers are likely to find themselves competing for attention against a wide range of foreign lawyers and non-lawyer consultants. Lawyers are likely to find that fewer issues will be seen as distinctively "legal" in character. Lawyers might be retained among a mix of advisors as a company formulates an environmental compliance program, for example, but the company is likely to give equal or even greater weight to the views of biologists, chemists and ecologists. Legal training may add weight to a lawyer's opinion, but lawyers who cannot provide non-legal insights as well may find their phone rings less often.

A practitioner's value to clients, in short, will have two dimensions – what she knows about a particular body of law and what she knows about a clients' industry or substantive concerns. A lawyer who tries back injury cases will need to know almost as much about backs as about tort law and trial practice. A securities lawyer will need to know as much about the economics of financial instruments, as about SEC regulation of them. A trade lawyer will need to know the culture of the countries in which her clients do business, and all lawyers will benefit from knowledge of some of the languages in which their clients – or their clients' suppliers and customers – work.

Some lawyers have resisted developing such non-legal expertise and even assert that professional rules urge them not to intrude into a client's substantive decisions. Likewise, I am not suggesting here that lawyers become directors of their clients or otherwise go into business with them. The issue is not about making or profiting from a clients' decisions; it is about having enough training and experience to understand and advise about those decisions.

Patent lawyers, for example, long have been required to be trained in a scientific or technical discipline so that they can prepare patent applications and evaluate and negotiate patent disputes. They are not expected to be inventors, but they would be less helpful to their scientist and inventor clients without the ability to speak and understand the technical language that both the clients and the patent examiners understand. Corporate mergers are similarly increasingly driven by issues of accounting and finance at least as much as by corporate and antitrust law.

Lawyers like to think they are good at lots of things, but experts in finance and accounting are equally likely to think they can look up the law themselves or hire less expensive lawyers to do it for them. Lawyers will continue to be called upon to be problem solvers, but they will be working in competition with a million fellow lawyers – as well as several million other consultants – to try to advise yet other lawyers who themselves have training relevant to a client's needs. Non-lawyer providers will make it a point to learn enough about the law relevant

to their own activity that lawyers will not be able simply to bluff them into submission by asserting an exclusive right to explain legal issues.

The lawyers who prosper will be those who can make themselves the best available go-to person in a combined law-and-substantive field and who market themselves accordingly. Blogging and use of networking sites will increasingly be attractive to lawyers who want to make themselves known to potential clients. To the extent someone else offers services of more value, clients will turn elsewhere. In any event, client needs will typically have little or no relation to subjects now traditionally tested on bar examinations.

For lawyers trained to think they are good at dealing with a wide range of legal issues, the prospect of becoming a mere consultant in a narrow specialty or mode of practice delivery may not initially be attractive. There is no inherent reason that a practitioner could not try to become competent in more than one field, but the ones in greatest demand are likely to be those who have specific, recognizable skills and who can work well with a team of lawyers and complimentary professionals to meet a client's needs.

It seems to follow, then, that rather than living in an era like the golden age with a motto "nobody starves," future American lawyers are likely to face a world in which relatively few compete to be visible stars in the practice sky. Star lawyers will have big personal reputations and the demonstrated ability to manage teams of other lawyers and non-lawyers. Other practitioners, whatever their training, are likely to serve on the stars' teams or as consultants to the stars, as they all the while seek to burnish their own star qualities. One effect of all this on people now in law school, or considering going to law school, is likely to be that even fewer will see the financial rewards that top graduates have come to expect as their due.

D. The Future of the American Law Firm

On the surface, the image of today's American lawyer becoming even more an individual specialist who markets his or her talent on the Internet might seem the antithesis of being part of a world-wide law firm. It does not follow, however, that if individual lawyers become more narrowly focused, law firms must become disappear or become small. Many specialized lawyers are likely to continue to practice in groups that resemble today's law firms, just as business consultants now practice in multi-specialty organizations, and the best law firms are likely to thrive. There are at least four reasons for that potential success.

First, law firms help lawyers manage the risk associated with being a narrow specialist. So long as a lawyer's expertise is widely needed, the lawyer may do well, but if needs of clients change, even able lawyers in a declining field will face problems. A booming economy may keep experienced corporate and commercial lawyers busy as clients seek to expand or go public. Bankruptcy lawyers get busier when the economy turns down. Deal lawyers keep the revenue flowing in good times, and to some extent pay the bankruptcy lawyers more than they deserve. Bankruptcy lawyers are expected to return the favor later.

Second, assembling lawyers into firms can also be useful to provide the sheer number of people that a large client may require for the kind of work the client needs done in closing a business deal, for example, or trying a major lawsuit. This so-called “project” work would overwhelm a solo practitioner or an in-house legal department, and while it would often be possible to form ad hoc teams of unrelated people for each new project, having groups already available from a single supplier may be significantly more convenient for a client.

Third, a firm allows lawyers to diversify the services they can provide for clients. This is another side of risk sharing. Because individual lawyers will tend to limit their practices and position themselves to be at the top of relatively small fields, it will take groups of lawyers with different areas of expertise to provide clients with the range of legal services any given matter might require. A firm that can provide what is sometimes called “one-stop-shopping” promises to be attractive to clients who want to retain a firm that is immediately ready to deliver help.

Fourth is the matter of marketing. Most lawyers do not like the prospect of advertising on late-night television. An Internet web site seem more respectable, but by far the best way for a lawyer to get instant recognition, respectability and the kind of credibility that will become even more important as clients have many professionals from whom to choose is likely to be to join a well-regarded law firm.

The challenge for many clients – even those with inside counsel – is likewise knowing which lawyers they can count on to provide good service. In an earlier era, consumers knew their service providers personally and could make their own assessment of trustworthiness and quality. Today, when dealings are distant and often under time pressure, it is brand names that provide the level of confidence and trust necessary to let transactions proceed. For many years, law firms ignored the importance of branding. Now, most national firms have no more than one or two words in their firm name and efforts to bring firm names to the attention of business travelers in airports, on television and in other commercial settings are ubiquitous. Lawyers realize that, when a client faces a significant question, it wants its advice to come from someone with instant credibility. It hard to know how significant brand names will be in clients’ choice of counsel for all cases, but the growth of modern law firms in part reflects a belief that potential clients all over the world will find those names important.

But however attractive the current business model has been for big American firms, there are significant signs the model cannot survive without important changes. We often hear about changes in billing for legal services; that is too big an issue to take on here, and because it requires no regulatory change, clients and lawyers are likely to find that they can make changes in billing methods by themselves.

The first change that does require regulatory action should be the recognition that few clients need only legal service. As lawyers become a species of business consultant, they will need to integrate their own services with those of other kinds of consultants. Some clients may

choose to retain only one or a limited number of a firm's providers, but one of the reasons for having a firm will be to make it possible to provide each of the services a given client needs.

Several law firms already have expanded their range of services by adding law related services ranging from economic consulting to private investigation to financial management. Sometimes the services have been provided from within the firm; at other times, separate stand-alone or side-by-side entities have been created. A friend of ours who is an estate planner in Virginia, for example, has transformed himself and his firm into one giving wealth planning and give investment advice in addition to drafting wills and trusts. Lawyers in the firm have become licensed securities dealers and certified financial planners as well as lawyers in order to be able to deliver this total package. I believe other lawyers and firms are likely to take similar steps in their own areas of expertise.

ABA Model Rule 5.4 currently prohibits a lawyer from sharing fees with, or forming a partnership with, a nonlawyer if any of the activities of their common work involves the practice of law. That is the provision that required our friend to himself become a financial planner instead of simply partnering with one. A decade ago, a report of the ABA's Multidisciplinary Practice Commission called for revisions in Rule 5.4, but they were defeated. The proposal had the misfortune to be considered by the ABA around the time of the Enron scandal, and the concern most often expressed was that association with non-lawyers would lead lawyers into crooked behavior, never mentioning that Enron was itself advised several law firms, all operating under the current regime. The time has come to revisit the multidisciplinary practice decision. Multi-service practice organizations are not of interest only to corporate clients. Social service agencies that want to provide legal services as part of a package of services to the poor also have a stake in changing the present rules, and D.C. has permitted non-lawyer partners for many years with no loss of lawyer independence.

Further, the limitations on such organizations are ultimately self-defeating. Although U.S. lawyers are barred from participating in multi-disciplinary firms that deliver legal services in the United States, U.S. clients can often get the services from firms operating out of Great Britain or Europe. The ABA has acted as though lawyers still operate in a world in which communication and travel are difficult. Clients know better. Regulatory regimes might properly continue to require competent service, protection of privileged information and avoiding conflicts of interest not waived by clients of the firm. Blanket prohibition of multi-service firms, however, should no longer be the rule.

The second needed regulatory change arises from a new concept likely to underlie most American law firms. Such firms have traditionally seen themselves as much like department stores, that is, a series of practice groups housed within a single firm. Even clients who seek out particular lawyers become clients of the firm as a whole. Each lawyer in the firm owes each firm client – even clients the lawyer has never met – the same duties owed by any other lawyer in the firm. Further, just as a Macy's clothing salesperson will try to get a customer to patronize

Macy's for housewares needs, today's lawyers try to "cross-sell" clients of their own service, the services of other lawyers in the firm for their other needs.

That vision of a law firm will be under pressure. In the future, clients are likely to see professional service firms – including law firms – as less like department stores and more like shopping malls in which providers share a common location and overall name but each supplies its own services. For many years, the top law firms have competed to hire the brightest people possible, pay them top dollar, and employ them more-or-less as generalists to be used to handle matters in which the firms had a need for help. For reasons already discussed, there is good reason to doubt that such a strategy will work as well in the future.

If the dominant model for American law firms is to be one of practice groups built around star lawyers in particular fields, law firms will become little more than collections of service providers that offer particular services someone needs, when they need it. Under this model, if they wish to do so, corporate general counsel will retain less than an entire law firm for matters. They will assemble their own teams from multiple firms for a particular matter. Firms faced with this reality are likely to find themselves offering partial or "unbundled" services as an alternative to traditional legal representation. They might only try a case, for example, leaving discovery work to others. They might incorporate contract terms into a written agreement but leave negotiation of the deal to others. Unbundling is likely to be unsettling to lawyers who used to do an entire job, but such services will take maximum advantage of the lawyer specialization that seems inevitable.

The risks of law firms becoming "shopping centers," on the other hand, are substantial and will present serious problems for law firm managers. When a law firm does not have control over an entire matter, it may be hard to demonstrate later which provider's acts caused a client's loss. Even more unsettling, under such conditions, lawyers in a firm will be even more likely than today to be paid on a basis that they "eat what they kill" and try to operate independently of a central firm strategy and authority. When a lawyer knows she will get paid for fee-generating work she brings in B but that others will share the liability if the client turns out to be dishonest B the risk to firms will be enormous.

In such an environment, clients as well as lawyers will have a stake in having professional standards reinforce efforts of law firms to establish a culture of ethical conduct by each of its lawyers and non-lawyers. Firm culture can make a difference. Young lawyers learn quickly that their future in the firm depends on how well they please their elders. Clients as well as lawyers will have a stake in having firms preserve the value of the reputation that is a firm-wide asset, but the challenge for managers will be to preserve that asset as firms have a less cohesive feel.

One of the steps that may assist firms to operate as a unit under the conditions I am suggesting would be to abandon the rules that regulate how lawyers may raise capital to finance their practices. Under current rules, lawyers who practice together in a firm may allocate

revenue among themselves according to a partnership agreement or other contract. In a small firm, the senior partner who founded the firm might get 50% of all revenue, for example, while in other firms the revenues might be divided according to a formula that acknowledges who attracted cases as well as who did work on each.

What ABA Model Rule 5.4(d) says firms may not do today, however, is allow non-lawyers either to invest in B or share in allocation of legal fees earned by B a law firm. This prohibition both denies law firms the ability to raise potentially important form of capital and reduces the incentive a firm can give its members to help build the firm as an effective, ethical institution that will be attractive to outside investors. Further, if one accepts my first proposal to permit multi-service partnerships, the sale of stock in a law firm is but a short step. Non-lawyer participation in firm operation and management will itself involve recognition of the propriety of non-lawyers investing time and sharing the benefits of a law firm's potential success.

I don't make this proposal because law firms are capital hungry. Most firms are not capital intensive, and most will likely not want to pay investors the price investors would demand for the risk they would take investing in a law firm. That said, however, permitting firms to raise capital and create liquidity for members' own investments should not be a shocking prospect. The proposal should tend to keep firms working together in an environment otherwise tending to split them apart. In this sense, incentives created by this change to Rule 5.4(d) would benefit firms, firm clients and the public.

Third, I would suggest that ABA Model Rule 5.6(a) should be amended to permit covenants designed to impose reasonable restrictions on a lawyer's changing firms. In the name of not restricting lawyer mobility, Model Rule 5.6 now permits a lawyer to leave her current firm with little or no notice, while at the same time trying to persuade clients to follow the lawyer to a new firm. The Rule likewise prohibits most kinds of financial penalties that firms might try to use to discourage such departures. The traditional argument against such restrictions has been that they violate a lawyer's professional independence. That made sense in a world in which most lawyers practiced alone anyway. Today, however, relatively few lawyers are independent; most work within some kind of firm or other organization and the financial viability of such firms and organizations depends on a reasonably stable number of participants.

Today, it costs law firms competing for top talent anywhere from \$200,000 to \$500,000 to bring a recent law graduate into the firm as an associate. The sum includes recruiting costs associated with a summer program after a student's second year, the tuition for a bar prep course, often a salary while the recent graduate studies for the bar examination, and the inevitable costs associated with writing off time spent on assignments the new lawyer did not fully understand. Nevertheless, at many firms, at least 40% of new hires have voluntarily resigned by the end of their 3rd year in practice, hardly having made back the cost the firm spent to recruit them. One need not argue that lawyers must be yoked to the same firm forever to recognize that reasonable restrictions on departure can allow firms more financial security and flexibility in establishing their partnership rules and compensation structures. Law firms must contract for space, hire

associates, and create incentives to develop the firm's reputation that only a degree of institutional stability permits.

Ultimately, firms are likely to have to convince young lawyers see that they have a future at the firm that will be attractive over a multi-year career. Doing so is likely to improve a firm's bottom line. In some cases, the solution may be part time work. In other cases, associates need to be given a sense they are growing in their practice, but requiring lawyers to spend a given period at a firm after joining it could be an important part of the process. In other employment cases, the law will not enforce restrictive covenants that are excessive in breadth or duration, but there seems no good reason to subject law firm covenants to greater restriction. Some courts have implicitly acknowledged this, recognizing that persons who make up a law firm should be capable of reaching arrangements appropriate to their situation. Conforming the rules to the decisions would be a third step in helping firms deal with the oncoming realities they will face.

E. Impact of the Coming Changes on Bar Organizations

The changing world facing American lawyers cannot help but impact the organizations that you lead. State and local bar associations on the level have nurtured lawyers since the nation's early days. They have been around far longer than the ABA.¹² You are the experts on what your members need, but let me suggest a few implications for your work based on the trends we've been discussing.

First, broaden the subjects of CLE programs that you offer to include both international issues and non-legal aspects of a subject. As someone who has found himself on programs only because each event needed an ethics component, I recognize that bringing in extra issues just to say we did it does little good for anyone. Not every program needs to do international and non-legal issues, then, but moves in this direction could be extremely useful. Many CLE participants don't want to think; they largely want programs to tell them what they already know. But what your members need is education that tells them something new about a field they thought they knew well and that will let them move in the new directions the future is likely to require.

Second, and in the same vein, increase your members' exposure to technology. My experience is that there are often two kinds of lawyers – those who can't get enough technological understanding and those who seem to want little or none. That may not change until my generation retires, but the future clearly lies in making technology a lawyer's servant rather her master. We think of professional education as learning more law. At least equally important is education that teaches us how to practice law more effectively. It is no longer acceptable to be a Luddite when it comes to technology. Clients demand efficient, responsive lawyers, and it can be bar associations that help all of us keep up in the world we are facing.

¹²The classic work on the subject remains ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES: WITH PARTICULAR REFERENCE TO THE DEVELOPMENT OF BAR ASSOCIATIONS IN THE UNITED STATES* (1953).

Third, if I'm right that firms may start breaking down and lawyers will need to have contacts in different subject areas and in different parts of the country and the world, another key role for bar associations will be to assist lawyers to make those contacts. Networking has seemed a self-serving if not manipulative idea to many, but I would suggest that it is just another way of being able to put faces with names. You have helped lawyers do this for many years, but the need for it has never been greater. In the events you hold and all the publications you produce, save room for people to get to know each other in receptions, meals, even service projects that you do. Get lawyers together in ways that make it easy and natural for them to know and become known to each other.

Fourth, a specialized form of networking will be bridging today's gulf between in-house and outside counsel. The Association of Corporate Counsel is a fine organization, but I would suggest that you should not concede its role as the principal bar association for inside counsel. In-house lawyers have an extraordinary role to play today in the way legal work is handled, including whether it is done by lawyers or U.S. lawyers at all. The more you can program in ways that appeal to in-house counsel and attract both them and the outside counsel whom they may want to consult, the more you can increase chances that clients will continue to consult lawyers for what have heretofore been recognized as legal needs.

Fifth, continue your efforts to advocate substantive legal change that you see to be in the public interest and procedural changes that can reduce the burden law can sometimes place on those subject to its regulation. Bar associations have been national leaders in law reform for several generations and it is a reputation we should not forego, no matter how the way law is practiced ultimately evolves. In the course of your efforts, of course, continue to articulate what lawyers can uniquely bring to the issues in which they are likely to be involved. We do have special training, experience and insight, and we should not easily give up our claim to leadership in the role of client advisor.

Sixth, it will continue to be important to stress work for the poor and middle class. There are still a lot of Americans who don't receive the legal help they need. Some of our pro bono work might now take the form of drafting forms or other ways to standardize and simplify routine legal tasks. We have tended to dismiss standardized forms as second-class service, but it is likely to be better than no service at all. In short, pro bono work may change for the same reasons the rest of the practice is likely to no longer survive as a single model.

Finally, I hope you won't forget legal education. In recent years, students have lined up to pay for the privilege of a legal education because a license to practice law long seemed the key to what many students see as a high-paying career. But if we are correct that the license is losing its significance and that the demand for lawyers as we traditionally think of them is likely to decline, the impact on legal education will be inescapable. One form more cost-effective legal education is likely to take may involve student involvement directly with law firms. Howrey and some other firms have proposed to offer an apprenticeship experience with a lower entering salary but mentoring and early client contact opportunities designed to lead to a long-term

career. No one knows whether such programs will be as good as they promise, but I believe they represent the future of lawyer training. Your role in facilitating such developments is likely to be critical.

F. Conclusion

One of the responses to the changes I have proposed may be that the suggestions do not sufficiently recognize lawyers' "professional" traditions. There is not time now to discuss the history of and problems created by the concept of professionalism. Suffice it to say that while many of the characteristics attributed to professionals – integrity, loyalty, keeping confidences, and a commitment to serve the client effectively – represent highly praiseworthy traits to which any of us should aspire, those characteristics are ultimately those of individuals, not groups. It is individual lawyers – and non-lawyers acting both alongside and in competition with lawyers – that we hope will act in ways traditionally called "professional."

Firms and law schools can – and some already have started to – make the transition to the changes world I am describing. A number of firms seem to be taking advantage of the economic slowdown to reexamine the business model on which they are based. Firms that see change and embrace its implications are likely to survive and prevail; as for others, I have some doubt.

We are in the last days of the American lawyer we once knew. We should pay homage to that model, but then bury it. At the end of the day, ignoring the changes lawyers face will not constitute a mark of professional courage. Failing to recognize the reality of the pressures that we face, and changes like the ones I have proposed, are likely only to delay efforts to make our members and colleagues constructive contributors to the challenging world that lies ahead.

The Oregon State Bar and Affiliated Entities

Brief History of the Oregon State Bar

The Oregon State Bar (OSB) was created in 1935 by the Oregon Legislative Assembly as a “unified” or “integrated” bar, meaning that membership is required to practice law. The bar was made responsible for recommending applicants for admission to the Supreme Court, for formulating rules of professional conduct, and for enforcing those rule after adoption by the Supreme Court. The Board of Governors was created to carry out the executive functions of the bar and to at all times “direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice.”¹

The precise legal status of the OSB was a continuing question in subsequent years. In 1949, the Attorney General opined that “while the state bar is created [as] a state agency, its functions are wholly independent and amenable only to the Oregon supreme court.” In 1954, while acknowledging that the OSB was unlike any other state board, the Attorney General held that the OSB was a “state agency” and that the board was an “administrative, and not a judicial, body,” thus making OSB employees eligible to participate in the Public Employees Retirement System.

Concerned that the AG had not fully explored the implications of declaring that the bar was a state agency and believing that his opinion was not in accord with “the intent and purposes of the 1935 integration act as outlined by members of the bar most active in passing it,” the board submitted a bill in the 1955 legislative session to delete the characterization of the bar as a “state agency”² but not replacing it with anything specific.

In 1964 the status of the bar came into issue again when the bar wanted to purchase a building and some state officials and title officers questioned the bar’s ability to hold title to real property. In that same year, the IRS ruled that the bar was exempt from federal taxation because it was “an instrumentality of the government of the State of Oregon – a state agency.” Legislation was introduced and passed in the 1965 session designating the bar as “a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon.” This change reflected the legislature’s acknowledgement that the bar was fundamentally unlike other governmental bodies because it received no public funds, was answerable to its own members, and performed its core functions under the direction of the Supreme Court.

¹ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The "administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

² The 1955 bill also included language making OSB employees’ participation in PERS elective.

In 1981 the OSB and the Bar Act (ORS Chapter 9) were subject to a rigorous “sunset review” by the legislature and suggestions by some who sought to either “de-unify” the OSB or to bring it under the control of the legislature and the governor. Ultimately, Chapter 9 was reenacted and the OSB reestablished as “a public corporation and instrumentality of the judicial department of the State of Oregon.”

In 1985, the Bar Act was amended to further clarify the unique nature of the Bar. ORS 9.010(3) was added, providing that the Bar is subject to certain statutes applicable to public bodies (the Public Records and Public Meetings laws, and portions of the Oregon Tort Claims Act, for example). Except as specifically enumerated in ORS 9.010(3), however, the bar is not subject to the statutes governing public bodies unless the statute expressly provides that it is applicable to the Oregon State Bar.

While the OSB is at its core a regulatory body, responsible for the admission and regulation of lawyers for the protection of the public. At the same time, many of the programs and activities are the kind that would be found in any professional organization. However, even those programs relate to the bar’s core functions. For instance, the Client Security Fund and Fee Arbitration programs further our obligation to protect the public. Continuing education seminars (and the mandate for continuing education) and legal publications help to ensure that lawyers are competent. Sections afford practitioners a mechanism for networking and education, which enhances their competence. Lawyer referral and our legal services programs help to ensure that Oregonians have access to justice.

The Board of Governors

The bar is governed by the Board of Governors, an 18-member body comprised of 14 lawyers and 4 public members. The lawyer members are elected from the seven regions into which the state is divided, proportional to their respective lawyer population:

Region	Lawyers	BOG Members
1	779	1
2	926	1
3	714	1
4	1,587	2
5	5,653	6
6	1,524	2
7	968	1

The public members are appointed by the board. They enjoy all the rights of elected lawyer members except a public member may not serve as president or president-elect of the bar.

Bar members who serve in the legislature or who perform official duties in the executive branch are prohibited from serving on the BOG by the separation of powers doctrine, which prevents officials in one branch of government from encroaching on, interfering, or influencing

the functions of another branch. By statute, municipal, state and federal judges and any other full-time judicial officers are also ineligible for election or appointment to the board.

The Board of Governors is charged with “the executive functions” of the bar and must at all times direct its power to “the advancement of the science of jurisprudence and the improvement of the administration of justice.” The board has authority over the operations of the bar in all respects, except that the membership (through the House of Delegates) must approve increases in the annual membership fee³ and most regulatory decisions are subject to the final authority of the Supreme Court. The board determines the general policies of the bar and approves its budget each year.⁴

The BOG’s sole employee is the executive director who, in turn, is responsible to implementing the policies established by the BOG and, administering and supervising the bars operational and program activities.

The principal governing documents of the OSB are the Bar Act (ORS Chapter 9) and the OSB Bylaws and copies of both are included in this handbook. Both are subject to frequent change, however, and current versions of the Bar Act and the bylaws, as well as the rules, regulations and policies governing a variety of OSB programs are available on the OSB website at <http://www.osbar.org/rulesregs>.

The Professional Liability Fund

The Oregon State Bar Board of Governors created the Professional Liability Fund in 1977 pursuant to the enabling authority of ORS 9.080 and with approval of the membership. The Fund first began operation on July 1, 1978, and has been the mandatory provider of primary malpractice coverage for Oregon lawyers since that date.

The PLF has no independent legal status, but has its own Board of Directors and hires its own CEO to manages its day-to-day operations. The PLF Board is appointed by the BOG, generally based on recommendations from the PLF Board. The BOG approves PLF budget and its operating policies, but has no role in the resolution of malpractice claims.

In the interest of facilitating and maintaining cooperation and communication between the BOG and the PLF, the OSB Executive Director and three members of the BOG are liaisons to the PLF and attend the public portions of the board meetings.⁵ Similarly, the PLF Board president and the CEO generally attend BOG meetings.

The Board of Bar Examiners

Admission o lawyers to practice has been a function of the OSB since its inception in 1935. Originally, the BOG was authorized to appoint a “committee of bar examiners” to

³ The annual membership fee is often referred to as “dues,” a term that is more appropriate to a voluntary membership organization. A better analogy is the licensing fee paid by members of other regulated professions and occupations.

⁴ The regulatory program budgets are subject to final review by the Supreme Court.

⁵ Discussion and resolution of malpractice claims are handed in closed session.

examine applicants and make recommendations for their admission. Over time, however, the committee became a Board of Bar Examiners appointed by the Supreme Court. The BBX, with the Supreme Court, establishes the standards and rules for admission. The Rules for Admission authorize the BBX to appoint an Executive Director who oversees the day to day operations of the admission and examination process. The BBXED and the admissions staff are employees of the OSB, subject to all personnel rules and policies. The BOG has no direct role in the admission of applicants to the bar.

The Oregon Law Foundation

The Oregon Law Foundation is a 501(c)(3) charitable corporation created by the Board of Governors in 1981. In 1983, with the adoption of a disciplinary rule implementing an Interest on Lawyer Trust Accounts (IOLTA) program, the OLF became the recipient of that interest. The OLFs organizing documents describe its purposes as providing legal services to the poor, improving the administration of justice, and promoting the study of law and the dissemination of legal knowledge.

The OLF has an 11-member board. Three members are appointed by the BOG (one of whom must be a former OSB president), one member is appointed by the Chief Justice of the Oregon Supreme Court, one member is appointed by the chair of the Oregon Association of Legal Aid Program Directors and six members (including two public members) are appointed by the OLF Board.

The OSB has an agreement with the OLF pursuant to which the OSB provides facilities, equipment and administrative support to the OLF. The OLF appoints an executive director who is an employee of the OSB and is hired by the OSB executive director in consultation with the OLF board. The OLF pays the salary of the OLF executive director and an agreed annual charge for the support services provided by the Bar.

Mission

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.

Functions of the Oregon State Bar

We are a regulatory agency providing protection to the public.

We are a partner with the judicial system.

We are a professional organization.

We are leaders helping lawyers serve a diverse community.

We are advocates for access to justice.

And the bar does this as a “public” corporation – as an instrumentality of the Oregon Supreme Court.

Values of the Oregon State Bar

Integrity

Integrity is the measure of the bar’s values through its actions. The bar’s activities will be, in all cases, consistent with its values.

Fairness

The bar embraces its diverse constituencies and is committed to the elimination of bias in the justice system.

Leadership

The bar will actively pursue its vision. This requires the bar and all individual members to exert leadership to advance their goals.

Diversity

Diversity and inclusion mean acknowledging, embracing and valuing the unique contributions our individual backgrounds make to strengthen our legal community, increase access to justice, and promote laws and creative solutions that better serve clients and communities.

Promote the Rule of the Law

The rule of law is the premise of the democratic form of government. The bar promotes the rule of law as the best means to resolve conflict and achieve equality. The rule of law underpins all of the programs and services the bar provides.

Accountability

The bar is committed to accountability for its decisions and actions and will provide regular means of communicating its achievements to its various constituencies.

Excellence

Excellence is a fundamental goal in the delivery of programs and services by the bar. Since excellence has no boundary, the bar strives for continuous improvement. The bar will benchmark its activities to organizations who exhibit “best practices” in order to assure high quality and high performance in its programs and services.

Sustainability

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.

About the Bar

The Oregon State Bar (OSB) was established in 1935 by the Oregon Legislative Assembly to license and discipline lawyers, regulate the practice of law and provide a variety of services to bar members and the public. The bar is a public corporation and an instrumentality of the Oregon Judicial Department, funded by membership and program fees. It is not a state agency and does not receive any financial support or taxpayer dollars from the state's general fund.

Membership

The OSB has nearly 14,000 active members. Approximately half of our members engage in the private practice of law. The rest work primarily in government, corporate and business settings. More than 4,500 of our active members are women. More than 2,000 reside in a state other than Oregon.

Governance

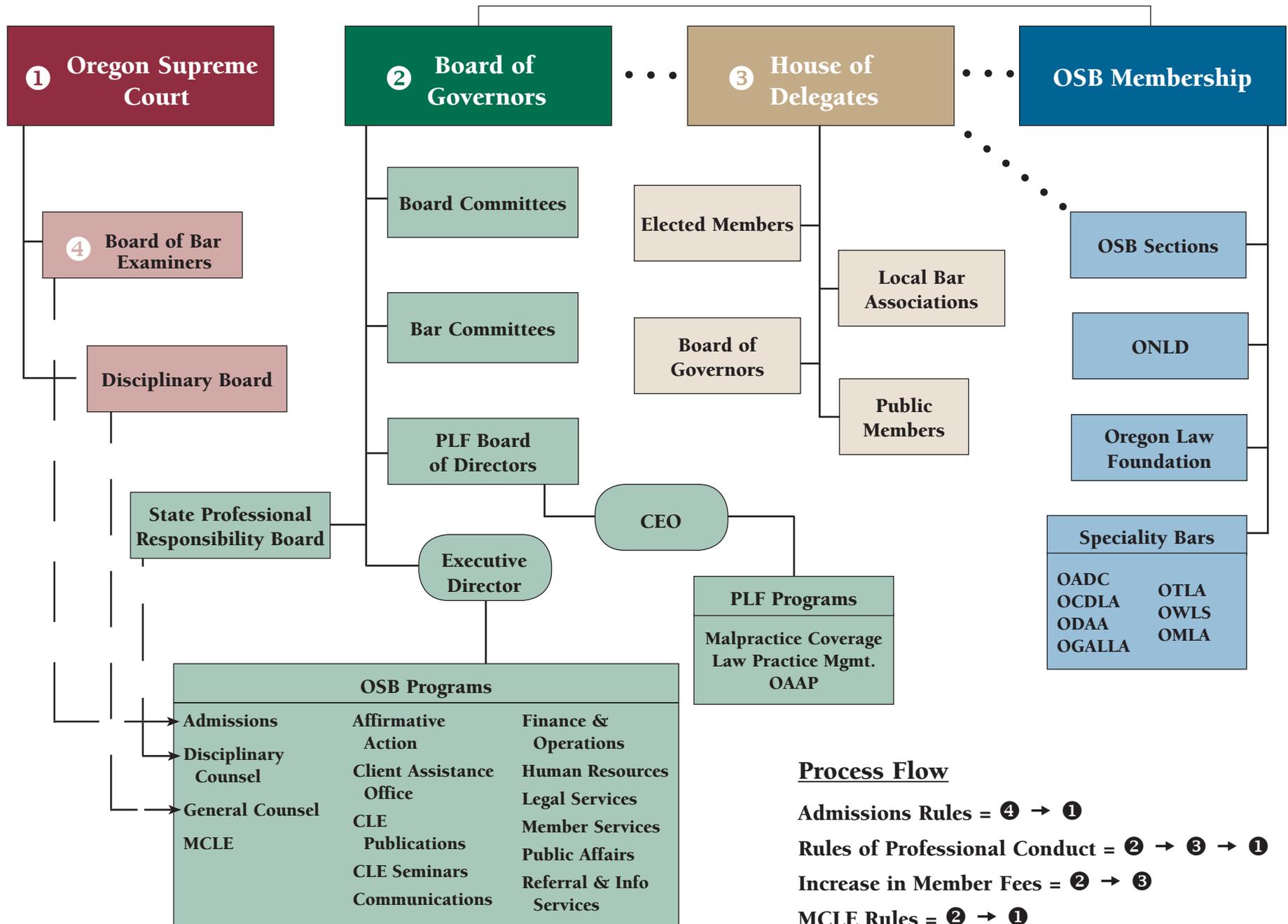
An eighteen-member volunteer Board of Governors oversees the activities of the OSB. Fourteen board members are lawyers, elected by the membership by geographic region. The other four board members are public (non-lawyer) members appointed based on their areas of interest and expertise. The Board of Governors has established numerous committees and interest groups to advise and make recommendations to the board on matters involving the legal profession and justice system.

The OSB House of Delegates serves as the representative assembly of the membership, voting on proposed changes to rules, membership fees and other matters. It has more than 200 members, most of whom are elected by geographic region. Other delegates represent OSB Sections and local bar associations, and six public members are appointed by the Board of Governors on a regional basis. The House of Delegates meets annually.

The Oregon Supreme Court has authority over appointments to the Disciplinary Board and the Board of Bar Examiners. Members of these boards are also volunteers, and receive staff and administrative support from the OSB.

The OSB Executive Director oversees bar operations, managing a staff of approximately 90 people and an \$11 million annual budget.

Oregon State Bar



Process Flow

- Admissions Rules = 4 → 1
- Rules of Professional Conduct = 2 → 3 → 1
- Increase in Member Fees = 2 → 3
- MCLE Rules = 2 → 1

Oregon State Bar

Sylvia Stevens — Executive Director

Departments and Staff 10/2012

Executive Services

Helen Hirschbiel | *General Counsel*
 Cassandra Stich | *Administrative Assistant*
 Amber Hollister | *Deputy General Counsel*

Client Assistance Office

Chris Mullmann | *Assistant General Counsel /CAO Manager*
 Scott Morrill | *Assistant General Counsel and CAO Attorney*
 Paul Neese | *Assistant General Counsel and CAO Attorney*
 Karen Graham | *CAO Intake Coordinator*
 Jennifer Mount | *CAO Intake Specialist*

MCLE

Denise Cline | *MCLE Program Administrator*
 Laurel Edwards | *MCLE Program Assistant*

Human Resources

Christine Kennedy | *Director of Human Resources*
 Margaret Wagner | *Administrative Assistant*

Diversity and Inclusion

Mariann Hyland | *Director of Diversity and Inclusion*
 Toni Kelich | *Diversity and Inclusion Coordinator*
 Benjamin James | *Diversity and Inclusion Assistant*

Public Affairs

Susan Grabe | *Director of Public Affairs*
 Amanda Roeser | *Public Affairs Assistant*
 David Nebel | *Public Affairs Legislative Attorney*
 Matt Shields | *Public Affairs Staff Attorney*

Oregon Law Foundation & Legal Services Programs

Judith Baker | *Oregon Law Foundation Executive Director and Director of Legal Services Programs*
 Dawn Nelson | *Administrative Bookkeeper*
 Cathy Petrecca | *Pro Bono and Loan Repayment Assistance Program Coordinator*

CLE Seminars

Karen Lee | *Director of CLE Seminars*
 Matt Campbell | *CLE Customer Service Specialist*
 April Behrman | *CLE Seminars Assistant*
 Kelly Dilbeck | *CLE Seminars Event Coordinator*
 Suzanne Cushing | *CLE Seminars Marketing Specialist*
 Kes Joerg | *CLE Seminars Planning Specialist*
 April Behrman | *CLE Seminars Production Assistant*
 Jennifer Guenther | *CLE Seminars Production Specialist*

Office of the Executive Director

Camille Greene | *Executive Assistant*

Member and Public Services

Kay Pulju | *Member and Public Services Director*
 Julie Hankin | *Associate Editor*
 Paul Nickell | *Bulletin Editor*
 Dustin Dopps | *Marketing Specialist*
 Leone Gholston | *Multimedia Specialist*

Member Services

Danielle Edwards | *Member Services Manager*
 Michelle Lane | *Member Services Specialist*
 Sarah Hackbart | *Member Services Section Specialist*
 Amy Meyri | *Member and Public Services Administrative Assistant*

Professionalism and Public Outreach

Kateri Walsh | *Professionalism and Public Outreach Manager*
 Karla Houtary | *Professionalism and Public Outreach Assistant*

Customer Service

Brenda Cerda | *Customer Service Supervisor*
 Katie Corgan | *Receptionist*
 Janet Sams | *Receptionist*

Referral and Information Services

George Wolff | *RIS Manager*
 (vacant) | *RIS Assistant*
 (vacant) | *RIS Assistant*
 Safiyah Moustafa | *RIS Assistant*
 Shalla Oster | *RIS Assistant*
 Jacki Smith | *RIS Assistant*
 Tony Sterling | *RIS Assistant*
 Marina Cheatham | *RIS Assistant (Bilingual)*
 Sergio Hernandez Fidencio | *RIS Assistant (Bilingual)*
 Alysha Rogers | *RIS Assistant (Bilingual)*
 Dominique Shannon | *RIS Assistant (Bilingual)*
 (vacant) | *RIS Assistant (Bilingual)*
 Claudia Cerda | *RIS Program Assistant*

Legal Publications

Linda Kruschke | *Director of Legal Publications*
 Jenni Abalan | *Legal Publications Administrative Assistant*
 (vacant) | *Legal Publications Assistant Editor*
 Lorraine Jacobs | *Legal Publications Attorney Editor*
 Dean Land | *Legal Publications Attorney Editor*
 Cheryl McCord | *Legal Publications Attorney Editor*
 Karen Zinn | *Legal Publications Attorney Editor*
 Stacey Malagamba | *Legal Publications Production Coordinator*

Finance and Operations

Rod Wegener | *Chief Financial Officer*
 Carolyn McRory | *Business Systems Analyst and Project Manager*
 Dana Lofstrom | *Facilities Assistant*
 Darrell Stoffer | *Facilities Coordinator*

Accounting

Michelle Peterson | *Controller*
 Susan Skurdahl | *Accounting Specialist – A/P & P/R*
 Cheryl Dexter | *Accounting Specialist – A/R*

Information Design & Technology

Anna Zanolli | *IDT Manager*
 Cathi Pittman | *Accounting and Documentation Specialist*
 Molly Whiteside | *Design and Production Artist*
 Sunny Chao | *Graphic Designer*
 (vacant) | *Help Desk Support Technician*
 David Crosland | *Software Programmer*
 David Johnson | *Systems and Network Administrator*
 Michael Legleiter | *Website Developer*

Regulatory Services

Jeff Sapiro | *Disciplinary Counsel and Director of Regulatory Services*
 Amber Bevacqua-Lynott | *Assistant Disciplinary Counsel*
 Mary Cooper | *Assistant Disciplinary Counsel*
 Susan Cournoyer | *Assistant Disciplinary Counsel*
 Linn Davis | *Assistant Disciplinary Counsel*
 Stacy Hankin | *Assistant Disciplinary Counsel*
 Martha Hicks | *Assistant Disciplinary Counsel*
 Kellie Johnson | *Assistant Disciplinary Counsel*
 Lynn Bey-Roode | *Discipline Investigator/Litigation Assistant*

Discipline Support Staff

Lynn Haynes | *Discipline and Regulatory Services Office Manager*
 Karen Duncan | *Discipline Legal Secretary*
 Sandy Gerbish | *Discipline Legal Secretary*
 Christopher Ouellette | *Discipline Legal Secretary*
 Jacki Smith | *File Scanning*
 Jennifer Brand | *Public Records Coordinator*
 Vickie Hansen | *Regulatory Services Coordinator*

Admissions

(vacant) | *BBX Executive Director and Admissions Director*
 (vacant) | *Admissions Assistant*
 Charles Schulz | *Admissions Coordinator*
 Lisa Oreskovich | *Admissions Specialist*

Oregon State Bar Programs

Client Assistance Office

The CAO screens and evaluates all inquiries and complaints about lawyer conduct. Those presenting sufficient evidence to support a reasonable belief that misconduct may have occurred are referred to Disciplinary Counsel's Office for further investigation. As appropriate and as resources permit, the CAO will also attempt to assist those who contact the bar about the conduct of OSB members with common problems, such as obtaining file materials from their lawyers, and to resolve issues between lawyers and clients that are the result of poor communication or misunderstanding. CAO staff members also provide information concerning resources outside the bar that may be of assistance, like Legal Aid or public agencies. As part of General Counsel's Office, the CAO lawyers also provide ethics assistance to bar members as needed. CAO lawyers are frequent speakers at continuing legal education programs of the bar and other organizations.

CLE Seminars

The Continuing Legal Education (CLE) Seminars Department is dedicated to improving the knowledge and skills of Oregon attorneys and maintaining CLE standards through seminars and seminar products that are cost-effective, relevant, and widely accessible. To meet the needs of a broad audience, the department provides CLE in a wide range of formats: live seminars, webcasts, and teleseminars; MP3 downloads; online streaming media; video replays; and CD and DVD products. The CLE Seminars Department markets its seminars in a variety of ways, ranging from traditional print pieces to significant use of electronic media, including HTML email and a website that provides immediate access to the latest OSB CLE information.

Diversity and Inclusion

The Diversity and Inclusion Department (D&I), formerly known as the Affirmative Action Program, supports the OSB's mission of improving the quality of legal services and increasing access to justice. D&I works strategically and in collaboration with OSB leaders, the diverse legal community and the community at large to promote policies, practices and programs to increase the diversity of the Oregon bench and bar to reflect the diversity of the people of Oregon, to educate attorneys about the cultural richness and diversity of the clients they serve, and to remove barriers to justice. The OSB's diversity activities began in 1975 when the bar membership approved a resolution to establish a program with the goal of "achieving representation of minority persons in the bar in the same proportion as they are represented in the population of Oregon...." At that time, there were 27 racial and ethnic minority attorneys in Oregon, 0.5% of the total active bar members. Now approximately 6.0% of active bar members self-identify as racial and ethnic minorities. In contrast, 16% of Oregonians are racial and ethnic minorities. The OSB has made significant progress in diversifying the bar since the 1975, but there is more work to be done. D&I has a long history of cultivating and supporting a diverse pipeline of law students in Oregon through programs including Opportunities for Law in Oregon (OLIO), clerkship stipends, fellowships, bar exam grants, scholarships, and law school study skills and bar exam workshops. These programs are designed to recruit and retain participants who can help advance D&I's mission and goals.

Finance and Operations

Business Systems Analyst and Project Manager: This one-person department works with all bar departments to assure efficiencies in workflow processes, map out new or revised procedures, and oversee any new projects developed from the analysis.

Accounting and Finance: Accounting and Finance services include accounts payable, accounts receivable, order processing, payroll, financial statement preparation and reporting, budgeting, membership dues billing and collections, and similar services for all sections.

Distribution Center and Facilities: The Distribution Center manages the bar's inventory of printed materials and office supplies. It also provides shipping, copying and delivery services, and distributing mail and parcels that include CLE brochures, pamphlets, tapes, handbooks, publications and section newsletters. Facilities oversees the 68,525-s.f. office building owned by OSB to provide a safe, functional, and comfortable business environment, and to maintain, protect, and enhance the value of the asset. It also provides maintenance, facilities, and rental services to tenants and association owners.

Information Design and Technology: Information Systems manages the bar's network and proprietary software, including access to OSB's website hosted off-site. The department oversees hardware at each employee workstation. The Design Center provides a wide range of print and web design functions for bar departments and sections; it also manages the bar's website.

General Counsel's Office

The primary objective of General Counsel's Office is to provide cost-effective, high-quality legal advice and representation to protect the legal and policy interests of the Oregon State Bar. General Counsel's Office also administers the Client Assistance Office, the Client Security Fund,¹ Fee Arbitration, Unlawful Practice of Law and State Lawyers' Assistance programs and assists the Disciplinary Board. General Counsel's Office is primarily responsible for the bar's provision of timely and accurate ethics assistance to members.

General Counsel's Office provides legal advice to the OSB on internal matters such as personnel, contracts, public meeting and public records compliance and non-disciplinary litigation. General Counsel's Office also advises and assists the Board of Governors in the development of bar policy on a variety of issues. The Office is a resource to the public, the courts, and other branches of government regarding the role of lawyers and the legal profession, the regulation of lawyers and other related issues.

The Client Security Fund (CSF) reimburses clients who have suffered a loss of money or property through the dishonest conduct of their lawyers. A volunteer committee of bar members and a public member investigates and reviews all claims; the final decision on CSF awards is made by the Board of Governors.

The Fee Arbitration Program is a voluntary mechanism for resolving fee disputes between bar members and their clients, or between bar members.

General Counsel's Office provides legal advice and staff support to the Unlawful Practice of Law (UPL) Committee. The UPL Committee is responsible for investigating complaints regarding the unlawful practice of law and either resolving the complaint or making recommendations to the Board of Governors for litigation to enjoin the unlawful practice of law. Prevention is also a focus of committee activity.

General Counsel's Office staffs the State Lawyer's Assistance Committee (SLAC). SLAC receives referrals regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The purpose of SLAC is to assist and monitor these lawyers to ensure that they get the help they need and that the public is protected.

General Counsel's Office provides ethics assistance to bar members, responding to approximately 4,000 telephone requests, 400 e-mail requests, and 100 requests for advice letters each year. General Counsel

¹ Currently, the Executive Director serves as administrator of the Client Security Fund.

and the Deputy General Counsel contribute a column on professional responsibility issues to each issue of the *OSB Bulletin* and make presentations at continuing legal education programs of the bar and other organizations. General Counsel's Office is liaison to the OSB Legal Ethics Committee, assisting in the development of formal opinions that are issued by the Board of Governors.

General Counsel's Office provides assistance to the Disciplinary Board and serves as the Disciplinary Board Clerk's Office, a central repository for all pleadings and official documents relating to formal disciplinary proceedings. The DB Clerk maintains the original record of pleadings and other documents in disciplinary cases, tracks the progress of the proceedings through final disposition, provides periodic notices when events do not occur within the time frame set out in the Bar Rules of Procedure, and assists with the logistics of arranging hearings.

Human Resources

The Human Resources Department provides direct service to all bar departments relating to hiring, discipline and termination of employees; training and development; performance evaluation; benefits administration; workers' compensation and all safety and wellness related activities. The department ensures compliance with federal and state human resources and safety requirements.

Legal Publications

The Legal Publications Department supports the members of the Oregon State Bar in the practice of law through the publication of quality books and other research tools. The library contains 48 titles, ranging from 100-page booklets to five-volume treatises, from A (Administering Oregon Estates) to W (Workers' Compensation). The books are distinguished from those of national publishers because they are Oregon-specific and written by Oregon practitioners. The books also provide practice tips, caveats, queries, and notes. Many titles include practice forms. The entire library is available online as BarBooks™ online library, which is provided to all Oregon bar members as a benefit of membership. The program strives to publish 5,000 pages per year, which amounts to 7 to 8 new books or revisions. Members consistently indicate that these legal publications are very important to their practice.

Legal Services Program

Created in 1997 when the Oregon Legislature appropriated a portion of court filing fee revenues to legal services for the poor, the LSP receives and distributes the filing fee revenues to fund an integrated, statewide system of free civil legal services for the poor which is centered on the needs of the client community; and to work with providers to assure delivery of a broad range of quality legal services to low-income Oregonians. The director works with the Legal Services Program Committee to provide ongoing oversight, evaluation and support to legal services providers to ensure compliance with the Standards and Guidelines and to further the program's goals. Besides conducting an accountability process and facilitating integration of services among the legal services providers, LSP works with other funding sources and organizations to promote statewide collaboration and to improve access to civil justice in Oregon. A large part of the collaborative effort is with the private bar through the Campaign for Equal Justice.

The program also provides oversight and coordination for the bar's Pro Bono Program and promotes the OSB Pro Bono Aspirational Standard. Additionally, staff administers the Loan Repayment Assistance Program (LRAP) that assists Oregon lawyers to pay their educational debt while working in public interest jobs in Oregon. The LSP Director is also the Executive Director of the Oregon Law Foundation, which distributes IOLTA (Interest on Lawyer Trust Account) revenues to legal services programs and collaborates with other legal services funding sources.

Member and Public Services

Communications: The Member Communications group publishes the OSB Bulletin, Bar News, BOG Updates and miscellaneous publications designed to benefit members in their practices and increase awareness of leadership issues and program activities. This group also coordinates various annual events and other membership projects and events, including membership surveys and research. Public Communications comprises programs and services designed to educate the public about laws, lawyers, and the legal system, and how to find help with legal problems. Education efforts include: public legal education seminars and cable TV programs, pamphlets and specialty publications, public service announcements, website materials, and Tel-Law. Media relations activities support the department's education and access goals as well as those of partner groups.

Member Services: The Member Services Department provides administrative support services to the bar's 40 sections and 20 committees. These services include the scheduling of meeting rooms, maintenance of rosters, recruitment and appointment of volunteers, distribution of meeting and membership notices, bar leadership training conference, and compiling annual reports. The department provides similar services to county and specialty bars and the Oregon New Lawyers Division. The department is also responsible for administering the bar's elections and judicial preference polls, the list of Volunteer Defense Counsel members, and the affinity member Visa credit card program. A member of the department serves as administrative staff to the Board of Governors Appointments Committee and Public Member Selection Committee.

Referral and Information Services: Referral and Information Services (RIS) is comprised of several programs designed to increase the public's ability to access the justice system, as well as benefit bar members who serve on its panels. The **Lawyer Referral Service (LRS)** is the oldest and largest program in RIS and the only one that produces revenue. The basic LRS operating systems (e.g., computer hardware and software) support the other department programs. Approximately 850 OSB members participate as LRS panel lawyers; in 2012 the LRS implemented a new business model under which participating lawyers pay the bar 12% of the fees earned from referred cases. It is anticipated that LRS revenue will ultimately cover the cost of all RIS program. The **Modest Means Program** is a reduced-fee program assisting moderate-income clients confronting certain kinds of family law, criminal defense, landlord/tenant and foreclosure matters. The **Problem Solvers Program** is a pro bono program offering legal advice for youth ages 11-17. The **Lawyer to Lawyer Program** connects Oregon lawyers working in unfamiliar practice areas with experienced lawyers willing to offer informal advice at no charge. The **Military Assistance Panel Program** connects deployed military personnel and their families in Oregon with pro bono legal assistance. Lawyers volunteering for this program are provided training on the Service members' Civil Relief Act (SCRA) and other applicable law.

Public Affairs

The Public Affairs Program applies the public policy knowledge and experience of the legal profession and program staff to the public good. This work is achieved by advising government officials, responding to issues affecting the justice system, proposing legislation for law improvement, and advocating on those matters that affect the legal profession and the public it serves. The program provides information and assistance to bar groups, bar members, and government bodies on a wide variety of bar related legislation and public policy issues, with special emphasis on current legal system problems and needs of the profession. The law improvement program works primarily with sections and committees on law improvement projects, and identifies responses to significant legal trends that affect the practice of law and the bar. The Public Affairs Committee of the Board of Governors oversees the special projects and other work of the program. It also recommends positions on public policy issues affecting the legal profession and bar governance.

Regulatory Services

Admissions: The Admissions Department is responsible for investigating and evaluating all applicants seeking a license to practice law in Oregon either by examination, through reciprocity, as house-counsel or otherwise as permitted in the Rules for Admission of Attorneys. The Oregon Supreme Court appoints a 14-member Board of Bar Examiners (BBX), which works with the Court to develop policies and standards for admission and recommends qualified applicants for admission. The BBX appoints an Executive Director to implement its policy decisions and administer the admissions process including receipt and review of applications, and administering and grading the semi-annual examinations. Admissions staff investigates applicant qualifications and coordinates the BBX's interviews and hearings.

Disciplinary Counsel's Office: Disciplinary Counsel's Office (DCO) is responsible for administering the programs that are mandated by statute or court rule as part of the professional regulation of lawyers in Oregon for the protection of the public. DCO investigates and, where probable cause is found, prosecutes lawyers for violations of the Oregon Rules of Professional Conduct. DCO also administers the Trust Account Overdraft Notification program and monitors lawyers who are on probation or conditional admission. DCO's other responsibilities include processing membership status changes, screening *pro hac vice* admission applications, responding public records requests, and issuing certificates of good standing. DCO staff represents the bar in contested reinstatement proceedings and represents the Board of Bar Examiners in contested admissions proceedings.

Limitations on the Use of Mandatory Dues

Often during BOG meetings reference is made to “Keller,” generally in the context of whether an action under consideration is or would be “a violation of Keller.” “Keller” refers to a decision of the US Supreme Court that limits the use of mandatory dues.

The Keller Decision

In *Keller v. State Bar of California*, 499 US 1,111 SCt 2228 (1990), the US Supreme Court held that an integrated bar's use of compulsory dues to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not "necessarily or reasonably incurred" for the purpose of regulating the legal profession or improving the quality of legal services.

The activities complained of by the petitioners (21 members of the bar) included lobbying for or against state legislation,¹ filing amicus briefs in various cases,² holding an annual conference of delegates at which resolutions were approved,³ and engaging in a variety of educational programs. The California Supreme Court had rejected the petitioners' challenge, holding that the State Bar was a state agency and, as such, could use the dues for any purpose within its broad authority.

The Supreme Court reversed, holding that the State Court's determination as to the bar's status was not binding when the determination was essential to the decision of a federal question. The Supreme Court found that the bar's role in governance of the legal profession was essentially advisory in nature, since final authority to establish rules of conduct and discipline lawyers for violating them rested with the State Court. The Supreme Court concluded that the relationship between a state bar and its members was analogous to that of a union and its members. The Court pointed to its decision in *Abood v. Detroit Bd. Of Education*, 431 US 209,97 SCt 1782 (1977), holding that the use of compulsory union dues to express political views or advance ideological causes not germane to the union's collective-bargaining duties infringed on the dissenting members' constitutional rights.

Applying the *Abood* analysis to the California State Bar, and finding that the "compelled association and integrated bar are justified by the State's interest in regulating the legal

¹ The legislation for or against which the bar lobbied covered such topics as compelling state employees to take polygraph tests; prohibiting possession of armor-piercing ammunition; criminalizing the sale or display of drug paraphernalia to minors; imposing life without parole on minors tried as adults and convicted of murder; and creating an unlimited right of action to sue anyone causing air pollution.

² The cases involved the constitutionality of a victim's bill of rights; the power of the worker's compensation board to discipline attorneys; and a requirement that attorney-public officials disclose the names of clients.

³ The resolutions endorsed gun control; disapproved the statements of a senatorial candidate regarding court review of a victim's bill of rights; endorsed a nuclear weapons freeze initiative; and opposed federal legislation limiting federal court jurisdiction over abortions, school prayer and busing.

profession and improving the quality of legal services,⁴ the Supreme Court held that the California State Bar could therefore constitutionally fund activities germane to those goals, but could not fund activities of an ideological nature that fall outside of those areas. The Court recognized that it was not drawing bright lines:

The difficult question, of course, is to define the latter class of activities....Precisely where the line falls between those State Bar activities in which the officials and members of the Bar are acting essentially as professional advisers to those ultimately charged with regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern. 499 US 1 at 14.

However, the Court suggested that the extreme ends of the spectrum are clear. Compulsory dues may not be spent to endorse a gun control or nuclear freeze initiative, but there is no basis to object to the use of dues for activities connected with lawyer discipline or the development of ethical codes for the profession.⁵

The Purposes of the Oregon State Bar

ORS 9.080(1) charges the Board of Governors to "direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice."⁶ Article 1.2 of the OSB Bylaws describes the purposes of the OSB as:

(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.

⁴ The State Bar of California's statutory mission is to promote "the improvement of the administration of justice."

⁵ The case was remanded with instructions that the State Bar could remedy its problem by developing procedures for dissenting members to challenge expenditures.

⁶ Webster's Dictionary defines jurisprudence as the "philosophy of law or the formal science of law." "The administration of justice" has been defined in case law variously as the "systematic operation of the courts," the "orderly resolution of cases," the existence of a "fair and impartial tribunal," and "the procedural functioning and substantive interest of a party in a proceeding."

(F) We are advocates for access to justice.

Pursuant to OSB Bylaw 12.1 the bar's legislative and policy activities must be reasonably related to any of the following:

1. Regulating and disciplining lawyers;
2. Improving the functioning of the courts, including issues of judicial independence, fairness, efficacy and efficiency;
3. Making legal services available to society;
4. Regulating lawyer trust accounts;
5. The education, ethics, competence, integrity and regulation of the legal profession;
6. Providing law improvement assistance to elected and appointed government officials;
7. Issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or
8. Issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.⁷

Post-Keller Developments

Most of the cases involving the use of mandatory dues since Keller relate to the challenge procedures established by state bars in the wake of Keller. There are a few cases, however, that offer some guidance in determining what are proper expenditures.⁸

A. Schnieder v. Colegio de Abogados de Puerto Rico, 917 F2d 620 (1st Cir. 1990).

This case was brought by five members of the Colegio (the bar organization) who objected to the use of their dues to espouse views and support causes which they contended were controversial and far removed from the concerns of lawyers, including supporting the Sandinista Front for National Liberation in Nicaragua, opposing the draft, and amending Puerto Rico's election laws. The Colegio argued that these activities were permissible under its articulated purposes, which included "the creation of a strongly pluralistic society" and "contributing to the betterment of the administration of justice."

The 1st Circuit rejected this as too broad a definition of the Colegio's purposes to justify mandatory financial support. Instead, it endorsed the district court's list of permissible purposes for which financial support may be compelled: monitoring attorney discipline, ensuring attorney competence, increasing the availability of legal services and improving court operations. Activities that promote one or more of those purposes could include continuing

⁷ Prior to 2003, numbers 1-5 were articulated in *former* BOG Policy 11.800(A). A sixth category was "other activities where the issue is recognized as being of great public interest, lawyers are especially suited by their training and experience to evaluate and explain the issue; and the subject matter affects the rights of those likely to come in contact with the judicial system."

⁸ Last updated 2009

legal education, legal aid services, public education on substantive areas of law, and public commentary on such matters as rules of evidence and attorney advertising. The 1st Circuit recognized that these purposes revolve around the "role of the lawyer as lawyer, rather than relying on the lawyer's more generic role as an informed and perhaps influential member of a complex society."

The 1st Circuit then went further, finding that the district court's list fell at the extreme end of the spectrum of permissible activities and that neither *Keller* nor any of the union cases that begot *Keller* required such a narrow interpretation of "germane" activities that could be funded with mandatory dues. Lobbying is permissible on "target issues...narrowly limited to regulating the legal profession or improving the quality of legal service" such as appropriations for new judicial positions, increased salaries for government attorneys, certification of legal specialists, or restrictions on lawyer advertising. Participation in efforts to amend technical, non-ideological aspects of the substantive law is also a permissible use of mandatory dues. By contrast, mandatory dues could not be used to lobby upon "partisan political views rather than on lawyerly concerns" such as the legal status of Puerto Rico, promotion of no-fault insurance, endorsement of pro-life amendments to the constitution or support for the death penalty.⁹

The court also cautioned against mixing permissible and impermissible activities:

[W]here the permissible and impermissible are intertwined beyond separation, the objector should be entitled to a full rebate for the cost of the function.

B. The Florida Bar v. Frankel, 581 So2d 1294 (Fla. 1991).

In 1989, in *The Florida Bar v. Schwarz*, 552 So2d 1094 (Fla. 1989), the Florida Supreme Court adopted guidelines for the Florida bar's lobbying. The guidelines were essentially identical to those in former OSB Policy 11.800(A).¹⁰ The first five subject areas (regulation of attorneys, improving the functioning of the courts, increasing the availability of legal services, regulating attorney trust accounts, and education and competence of the legal profession), were determined to fall clearly within the bar's mission relating to the administration of justice and the advancement of the science of jurisprudence. Florida's sixth category (other issues of great public interest about which lawyer are especially suited to evaluate and explain, and which affect the rights of those likely to come into contact with the judicial system) was justified as consistent with the purposes of an integrated bar.¹¹ When the guidelines were adopted, the court commented:

⁹ Looking to the specific complaints of the plaintiffs, the court found that the Colegio's involvement in the following activities was outside the narrow categories for which financial support could be compelled: studying the constitutional development of Puerto Rico and issuing a report on procedures for decolonization; developing a code of ethics to regulate public debate by political candidates; and nuclear disarmament.

¹⁰ See fn. 7.

¹¹ At the time *Schwarz* was decided, *Keller* was pending before the United States Supreme Court. The Florida court noted the position taken by the California Supreme Court in *Keller* and concluded it was not authorizing such broad legislative authority (as was eventually limited by the US Supreme Court).

It appears that the bar has an obligation, grounded upon the mandate of the integration rule setting forth the Bar's very purpose for existence, to speak out on appropriate issues concerning the court and the administration of justice and advise the legislative and executive branches of government of its collective wisdom with respect to these matters.

Two years later, in *Frankel*, the Florida court was called upon to apply the guidelines it adopted in *Schwarz*. A bar member challenged the bar's adoption of a lobbying position supporting various legislative measures involving children including expansion of the WIC program, extending Medicaid coverage for pregnant women, development of sex education I and teen pregnancy prevention programs, increasing AFDC payments and enhancing child care funding and standards.¹² The court held that the challenged lobbying positions did not fall within the first five areas "which clearly justify bar lobbying activities."

At the same time, the court rejected Frankel's claim that the additional *Schwarz* criteria were inconsistent with the US Supreme Court's decision in *Keller*, holding that the additional criteria were relevant to the bar's purpose of improving the administration of justice and advancing the science of jurisprudence. The court concluded there is no measurable difference between allowing lobbying for the purpose of regulating the profession or improving the quality of legal services, and allowing lobbying for the purpose of improving the administration of justice or advancing the science of jurisprudence.

Applying The Florida Bar's lobbying criteria for "other issues" the court agreed that children's issues are of great public interest, but disagreed that lawyers are especially suited to evaluate and explain the issues. "The merit of the position or the unanimity in its support is not the standard by which to determine the propriety of bar lobbying activities on that position."

C. Popejoy v. New Mexico Bd. of Bar Comm'rs, 887 FSupp 1422 (D. N.M. 1995).

New Mexico bar members objected to certain expenditures for construction of the State Bar Center, creation of a task force to assist Gulf War military personnel and their families, and lobbying.¹³ The court upheld the bar's expenditures in each area. The Bar Center construction did not infringe the 1st Amendment rights of the dissenters beyond that already countenanced by permitting a mandatory bar. It had no communicative value and expressed no ideological or political viewpoint and did not "implicate the core 1st Amendment principle of preventing compelled ideological conformity." Providing educational information to members and pro bono legal services to military personnel in relation to deployment for Operation Desert Storm enabled lawyers to better serve their affected clients and improved the quality of legal services available to a segment of the public. All of the lobbying activities were found to either improve

¹² The bar also supported the following lobbying positions to which no objection was made: creation of family court divisions, termination of parental rights when infants are exposed to cocaine, appointment of guardians ad litem in divorce and custody cases, and development of juvenile offender rehabilitation and treatment programs.

¹³ The lobbying activities at issue included support of the following: funding for three new appellate judges and judicial staff salary increases, changing the compensation packages for state-employed lawyers and their staff, and increased funding for court-appointed representation in child abuse and neglect cases.

the courts of New Mexico, the lawyers who served them, or the people served by them, thus improving the delivery of legal services.

In reviewing the criteria used to determine if challenged activities are permissible, the court cautioned:

All other things being equal, an expenditure with a strong political or ideological coloration is less likely to be germane to the practice of law, less likely to be related to or justified by the state's interest in regulating the legal profession or improving the quality of legal services, and more likely to add to the existing burden of First Amendment rights.

However, the court agreed that even activities possessing communicative content of a political or ideological nature may be reasonably related to the practice of law, to the regulation of the legal system, or to the improvement of legal services:

It is impossible to allow mandatory state bars to pursue such broad objectives as regulating the legal profession or improving the delivery of legal services (or to permit activities that are 'germane to the practice of law'), without at the same time approving of activities that will inevitably carry some ideological or political baggage. . . . [C]ompulsory financial support of some activities with at least a modicum of ideological content is inevitable.

Summary

The "rule" of *Keller* is quite simple: mandatory dues cannot be used to advance political or ideological positions that are not germane to the bar's purposes. *Keller* identifies the purposes of the integrated bar as regulating the legal profession and improving the quality of legal services; other decisions describe the purposes of a mandatory bar to include advancing the science of jurisprudence and improving the administration of justice.

The challenge is in applying the *Keller* standard to specific activities and issues. Existing case law doesn't provide perfect or complete guidance. Some things are clear, however:

- *Keller* is not a rule of prohibition. It does not prohibit the advocacy of purely political or ideological positions that are not germane to the bar's purposes.
- *Keller* requires that members who disagree with non-germane activities must have a process for challenging the use of their dues for those activities and are entitled to demand a refund of the portion of their dues expended on those activities.
- The use of mandatory dues for activities that have a political or ideological element or nature is not a *per se* violation of *Keller* if the activities are reasonably related to the bar's purposes.

Regulations Affecting Board Members

Members of the Board of Governors (“governors”) are subject to a variety of statutes and regulations that affect eligibility to serve, limit participation in other activities, define conflicts of interest, and provide for indemnification and defense of claims:

Structure of the OSB

ORS 9.010(1) provides that the OSB is a “public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon.” The statute lists several specific statutes applicable to public bodies to which the OSB is subject. Except as provided in ORS 9.010(3), however, the bar is not subject to any statute applicable to a state agency, department, board or commission or public body unless the statute expressly provides that it is applicable to the Oregon State Bar. In general, then, OSB employees are not public employees and members of the Board of Governors are not public officials.

Eligibility

A lawyer governor is disqualified from service and the governor’s term ends automatically upon the governor’s termination of active membership in the bar; change in principal office from the region the governor was elected to represent; or assumption of office as a judge of municipal, state, or federal court or other full-time judicial office. (ORS 9.025(5).)

Governors are subject to recall on petition of 25% of the members in the governor’s region or by 2/3 vote of the Board of Governors. If, after receiving notice of the recall request, the governor does not resign, the question will be decided by majority vote of the members voting in the governor’s region. (ORS 9.050.)

Governors are ineligible to serve as pro tem judges of any municipal, state or federal court. (ORS 9.025(6).)

A governor is suspended from service upon the SPRB’s approval of formal disciplinary charges and remains suspended until the charges have been resolved. If the governor is suspended as a result of the charges, the governor’s ineligibility to serve continues until the governor is reinstated to active practice. The BOG may appoint a replacement after consultation with members of the suspended governor’s region. (OSB Bylaw 18.6.)

Limits on Other Activities

Governors may participate publicly in judicial election and appointment campaigns, but must do so in a way that does not identify them as members of the board, officers of the bar, or otherwise representing the Oregon State Bar. (OSB Bylaw 2.103.)

Governors may not testify as witnesses in any admission, disciplinary, or reinstatement proceeding, except pursuant to subpoena. (OSB Bylaw 2.603.)

No governor may prosecute or defend a PLF-covered claim, but a governor may serve as a mediator in PLF claim matters. This disqualification is not applicable to other lawyers in the governor's firm, provided the governor is screened in the manner set forth in OSB Bylaw 23.503.

Governors are not eligible to serve as counsel for the accused in disciplinary proceedings or for applicants in contested admission proceedings during their terms or in connection with any case that was investigated or authorized for prosecution during the governor's term. (BR 2.1(c) and (d).) This disqualification does not apply to other lawyers in the governor's firm provided the governor is screened in the manner set forth in BR 2.1(f).

Governors may not serve on the Disciplinary Board during their terms, and may not sit on a trial panel relating to any matter considered by the board during the governors term. This disqualification applies to all of the lawyers in a governor's firm. (BR 2.4(d)(2).)

Conflicts of Interest

Governors are subject to certain provisions of ORS Chapter 244, the Government Standards and Practices Act. Similar rules are found in OSB Bylaw 2.600 to 2.602. Under both regulations, the following is prohibited:

- Using or attempting to use the governor's official position to obtain any financial gain or the avoidance of any financial detriment not otherwise available to the governor but for the governor's holding the official position. (This does not apply to reimbursement of expenses for official activities or unsolicited awards for professional achievement.)
- Attempting to further the governor's personal gain through the use of confidential information gained by reason of an official activity or position.
- Soliciting or receiving, during any calendar year, a gift or gifts having an aggregate value of more than \$50 from a single source reasonably known to have an interest in any matter over which the governor has authority or responsibility.
- Soliciting or receiving a promise of future employment based on an understanding that any official action will be influenced by the promise.

For purposes of ORS Chapter 244 and Bylaw 2.600:

- A "potential conflict of interest" means that the governor, a relative of the governor, or a business with which the governor or the governor's relative is associated could derive a private pecuniary benefit or detriment as a result of the governor's action.

- An “actual conflict of interest” means that the governor, a relative of the governor, or a business with which the governor or the governor’s relative is associated will derive a private pecuniary benefit or detriment as a result of the governor’s action.

When faced with a potential conflict of interest, governors must declare publicly the nature of the conflict before taking any official action thereon. When faced with an actual conflict of interest, governors must declare publicly the nature of the conflict and may not participate in any discussion or vote on the issue; provided, however, that if the governor’s vote is needed to meet a requirement for a minimum number of votes, the governor may vote but may not participate in discussion of the matter.

The disclosure of a potential or actual conflict of interest will be recorded in the minutes with an explanation of how it was resolved.

Indemnity and Defense of Claims

The Oregon Tort Claims Act, to which the bar is subject by virtue of ORS 9.010, limits the liability of the bar and requires the bar to defend and indemnify governors for tort claims relating to the performance of the governor’s official duties. Indemnification and defense of tort claims is also provided by OSB Bylaw 2.106.

Governors are absolutely immune from any civil liability in the performance of their duties relative to proposed or pending admission, reinstatement, or disciplinary proceedings. (ORS 9.537(2).)

The bar will defend current or former governors against any complaint of professional misconduct arising out of an act or omission in the performance of the governor’s official duties, except in cases of malfeasance, gross negligence, or willful or wanton neglect of duty. (OSB Bylaw 2.107.)

Speaking for the Bar

The OSB President is the official spokesperson for the bar. If the appearance or statement of another governor is deemed necessary, prior approval must be obtained from the President. Any statements made must be informational in nature and may not indicate personal opinion or positions not considered or adopted by the board.

Guidelines for Political Activity

Unlike state agencies, the OSB is not limited by ORS 260.432, which prohibits the state from using public employees to support or oppose candidates or measures while on the job during working hours. (OSB employees are not “public employees.”) The OSB is also not prohibited from using its financial resources to support a candidates or measures. Historically, however, in an abundance of caution, the bar has limited its involvement in partisan political issues to stating a position for or against, but not going any further in support or opposition.

The application of ORS 294.100 is less clear. That statute makes public officials personally liable for “expend[ing] any money in excess of the amounts, or for any other

or different purpose than provided by law.” It is part of a chapter entitled “County and Municipal Financial Administration,” and the handful of cases interpreting it involve county or other local governments or districts. The Attorney General has historically pointed to ORS 294.100 as a possible basis for personal liability of all public officials, even those holding state offices, although when pressed, the Attorney General’s office admits it has no authority for that position.

As a general proposition, members of the Board of Governors are not “public officials;” only where the bar is subject to a statute otherwise applicable to public officials do BOG members have the same rights or responsibilities. It is also significant then that ORS 294.100 is not one of the statutes to which the bar is subject pursuant to ORS 9.010, nor is the bar mentioned anywhere in Chapter 294. (Note, too, that ORS 294.100 is designed to prevent unauthorized and illegal expenditures by local governments. Assuming it applied to the BOG, liability would attach only if a board member or employee spent bar funds without authorization and for a purpose unrelated to the bar’s statutory mandate.)

Assuming no statutory impediment to political activity, the bar must still comply with *Keller v. State Bar of California*,¹ which prohibits the use of mandatory dues to endorse or advance political or ideological positions not closely related to the purpose for which the bar was formed. Pursuant to ORS 9.080(1), the BOG is charged with directing its power to “the advancement of the science of jurisprudence² and the improvement of the administration of justice.” (A more exhaustive explanation of the “Keller” rule is appended to the orientation materials.)

Guidance about political activity is also found in Bylaw 12.1:

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.

Prior to the adoption of Bylaw 12.1, the bar’s guidelines for legislative and policy activities were in *former* BOG Policy 11.800 which included a requirement that the bar “endeavor to respect the divergent opinions of subgroups within the profession” and make reasonable effort to “avoid committing bar funds to issues which are divisive or result in creating factions within the profession.” It is not clear why that language was

¹ 496 US 1 (1990).

² Webster’s Dictionary defines jurisprudence as “the philosophy of law or the formal science of law.”

deleted; even without such a specific directive, however, the BOG can always consider that factor when deciding whether and how to address a political issue.

A final consideration regarding participation in partisan political activity is preservation of the bar's long-standing reputation as a source of reliable and credible information on the issues. Some of this comes, of course, from the bar's historical reluctance to do anything more than take a position on issues affecting the practice of law or the administration of justice, and to limit our expenditures to educational forums and other neutral information. Nevertheless, the bar is doubtless viewed by many citizens as an organization whose function is to help people understand the law and the implications of initiatives and legislative proposals, without attempting to influence votes. On the other hand, many of our members see the bar as the perfect advocate on issues that are likely to impair the administration of justice and the legal profession. Striking the right balance will depend upon the facts and circumstances at the time.

Finally, the BOG establishes its legislative and other priorities from time to time, and makes appropriate budget allotments based on those priorities. Requests that the bar engage in advocacy for political issues that arise between budgeting and priority-setting periods need to be considered in connection with the impact the activity will have on the budget and the ability to meet other priorities.

Given the foregoing legal and policy framework, the PAC considers the following factors in determining what, if any, role the bar should play in connection with specific measure or other political initiatives:

1. Is the subject matter related to the bar's purpose of advancing the science of jurisprudence and improving the administration of justice (i.e., does it comply with *Keller*)?
2. What is the significance of the possible outcomes on the practice of law in Oregon or access to justice in Oregon? Should the OSB limit its activities to those that are critical or at least of high importance?
3. Is the issue one about which our members are likely to have strongly divided views? Can the bar act in a way that is sensitive to both views?
4. What effect will the bar's taking a partisan position have on the bar's credibility? Can the bar have a meaningful impact by remaining more neutral, or at least by offering balanced information to explain the partisan position?
5. Does the issue fit into existing priorities? If not, is the issue sufficiently important to justify adjusting existing priorities?
6. What kind of expenditures will be required? How will they be funded? Will the bar ask members to contribute to the cause? Are the resources available? How will the bar's position be publicized? How can the efforts of individual board members be distinguished from those of the bar?

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Overview of Public Meetings Law

The Oregon State Bar is subject to the Public Meetings Law¹ by virtue of ORS 9.010(1). The Public Meetings Law gives effect to Oregon's policy of open decision-making by the state's public bodies; in furtherance of that policy, the law requires that meetings at which decisions about the public's business is made are open to the public; that the public has reasonable notice of the time, place, and agenda for the meetings; and that the meetings be accessible to persons wishing to attend.

The Public Meetings Law applies to all meetings of a quorum of the Board of Governors. It also applies to meetings of the board's standing and other committees for which a quorum is required to make a decision or recommendation to the board or to deliberate toward a decision or recommendation .

The Public Meetings law is a public attendance law, not a public participation law. The right of the public to attend does not include the right to participate by giving testimony or comment.

Voting

All official action must be taken by a public vote. The vote of each member must be recorded if the vote is not unanimous. If written ballots are used, each ballot must identify the member voting and vote must be announced.

A quorum of the BOG is two-thirds of the member then in office (when all positions are filled a quorum is 12). Decisions are made by a majority of those present.

Minutes

Minutes must be kept of all public meetings, either in writing or by sound, video, or digital recording. The minutes must include at least the following:

- The names of members present,
- The motions and other proposals offered, and their disposition,
- The results of all votes and the vote of each member by name,
- The substance of the discussion on any matter (a true reflection of the matters discussed and the views of the participants, and
- A reference to any document discussed at the meeting.

Minutes are public records even before they are approved, although they can be marked as "draft" or otherwise to indicate their status.

¹ ORS 192.610 to 192.690

Executive and Exempt Sessions

An executive, or “closed.” session is a public meeting that is closed to certain persons while the public body deliberates on certain matters. Some meetings and proceedings are exempt from the Public Meetings Law altogether, including judicial proceedings and meetings of the State Lawyers Assistance Committee. Executive sessions must comply with all applicable provisions of the Public Meetings Law, while exempt proceedings need not.

The Public Meetings Law allows for executive session in a variety of circumstances; those that typically apply to the bar are sessions to:

- Consult with legal counsel concerning the bar’s rights and duties in pending or anticipated litigation,
- Deliberate with agents designated to negotiate real property transactions for the bar,
- Consider the employment of specific candidates for executive director, and
- Review and evaluate the performance of the executive director, except that discussion of the executive director’s salary may not be held in executive session.

Regardless of the basis for the executive session, the board or other body must return to open session to take any final action or make a final decision.

The Public Meetings Law does not define “final action” or “final decision,” but the fact that further action or further decisions may be needed does not make any particular action or decision less final. Two factors are relevant in determining whether an action is final: The nature of the proposed decision, and the purpose of the statutory authorization for executive session.

A decision to spend money is rarely appropriate for executive session. When the finality of a decision is less clear, consideration should also be given to the rationale for the executive session and whether a public announcement of the proposed decisions will frustrate the policy behind the executive session or seriously compromise further action that must be taken. When in doubt, prudence suggests making the action or decision in open session.

Convening an Executive Session

An executive session may be called during any regularly scheduled, special, or emergency meeting for which due notice has been given. When the body is ready for executive session, the presiding officer must announce the statutory authority for the executive session prior to going into executive session. The announcement should identify any persons other than news media who may remain and, if final action is anticipated, when the open session will resume. If media are present, the presiding officer should indicate any matters to be discussed in executive session that may not be disclosed.

Attendance at Executive Session

The Public Meetings Law expressly permits representatives of the media to attend executive sessions, as it offers them background information that will enhance their understanding of the final decisions and their ability to keep the public better informed.

However, the public body may require that the media not report specific information discussed during the executive session. Absent such a directive, the media is entitled to report without limitation, which may frustrate the purpose of having the executive session. At the same time, the nondisclosure requirement should be no broader than necessary to serve the body's needs. The media cannot, in any event, be forbidden from reporting the general nature of the discussion or the statutory basis for the executive session.

"Representative of the media" is not defined in the Public Meetings Law but is interpreted by the Attorney General to mean reporters of media that generally report on the activities of the body or matter of the nature under consideration.

Other than representatives of media, executive session are generally closed to all but members of the governing body and persons reporting to the body about the subject of the executive session or who are otherwise involved in the matter. The governing body may, however, invite others to attend without losing the executive character of the session.

Effect of Violation

A person who is affected by any decision made in contravention of the Public Meetings Law may seek injunctive or declaratory relief to require compliance with or prevent violations of the law.

Improperly taken actions are not void, but if a court finds that the violation resulted from intentional disregard of the law or willful misconduct by a quorum of the body, the court may void the decision if no other equitable relief is available. At the court's discretion, a successful plaintiff may be awarded attorney fees and costs. Those attorney fees and costs will be the personal obligation of any member who is found to have engaged in willful misconduct.

If the violation is also a violation of the Government Standards and Practices Act, civil penalties may also be assessed against individual members of the governing body, unless they acted on the advice of the public body's legal counsel.

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Board of Governors' Role in Reinstatements

Jeffrey D. Sapiro, Disciplinary Counsel

1. Nature of Applications

Every individual who is admitted to practice law in Oregon is admitted as an active member of the Oregon State Bar. However, not every lawyer remains an active bar member. Some voluntarily change their membership status to inactive or active pro bono, or resign. Some are suspended for administrative reasons (nonpayment of bar dues or the PLF assessment, noncompliance with MCLE requirements) or disciplinary reasons.

Every lawyer who relinquishes his or her active membership status, voluntarily or otherwise, is required to file an application for reinstatement in order to return to active status. The type of application required for any individual applicant will depend on the reason he or she is not an active member at the time of application, the length of time the individual has been in a status other than active, or both. For details about the various types of reinstatement applications, see the Bar Rules of Procedure (BRs) 8.1 to 8.5.

Most of the reinstatement applications that the Board of Governors reviews are filed under BR 8.1. These are the applicants who, according to the policy underlying the rules, require a higher level of scrutiny by the board and by the Supreme Court in order to determine whether they meet the qualifications necessary to return to the practice of law. These applicants fall into one of the following categories:

1. Members who voluntarily resigned from the bar more than five years ago;
2. Members who voluntarily transferred to inactive status more than five years ago;
3. Members who were suspended for administrative reasons and did not seek reinstatement for more than five years;
4. Members who were suspended for disciplinary reasons for more than six months, or were suspended for a lesser term but did not seek reinstatement for more than six months;
5. Members who were involuntarily transferred to inactive status (due to mental illness or incapacity, or substance addiction).

2. Staff Investigations and Initial Board Review

Disciplinary Counsel's Office (DCO) is responsible for investigating the merits of each reinstatement application and ultimately reporting our findings to the Board of Governors. BR 8.7(a). We make a variety of due diligence inquiries (criminal records check, credit report, DMV record, disciplinary history check in all jurisdictions, reference checks, litigation report) in all cases and make more extensive inquiries (applicant interviews, examination of tax or medical

records, contact with past employers or opposing counsel, interviews with others) in cases where the applicant's background or circumstances warrant.

Notice that a reinstatement application has been filed under BR 8.1 is published in the *Bar Bulletin* with a request that persons with information relevant to the applicant's qualifications contact the bar.

The Board of Governors also receives notice that a BR 8.1 application has been filed, in the form of a short memo from staff that appears in board agenda materials while the investigation is ongoing. Placing these notices on the board agenda gives board members a preview of the applications that will require final board action at a later date. OSB Bylaw 6.103 provides that the board is not to take final action on an application the first time it comes before the board unless 2/3 of the board waives this "one meeting notice" requirement.

3. Standards to be Applied by the Board

It is important to note that the Board of Governors is not adjudicating the merits of reinstatement applications. You will not hear directly from witnesses, make evidentiary rulings or render a court-like decision concerning applications. Rather, the board reviews DCO's written investigative report in each case, discusses the application and ultimately votes on a recommendation to the Oregon Supreme Court. It is then up to the court to take action on the board's recommendation, after a period of time in which an applicant can contest an adverse recommendation made by the board. In the case of such a contest, a formal contested reinstatement proceeding is initiated and the applicant has the opportunity (and the burden) to prove his or her qualifications before an adjudicative panel appointed by the court. The record of that proceeding then is reviewed by the Supreme Court and, after appellate briefs and argument, the court renders a decision.

The BRs establish the standards that the board must apply in making its recommendation to the Supreme Court. The standards are two-fold:

1. Applicants must show that they possess "good moral character and general fitness to practice law and that the resumption of the practice of law in this state by the applicant will not be detrimental to the administration of justice or the public interest," BR 8.1(b); and
2. Applicants must show that they have "the requisite learning and ability to practice law in this state." BR 8.1(c).

4. Character and Fitness

With most of the reinstatement applications submitted to the board, the applicant's good moral character and fitness to practice law is not in question. If DCO uncovers something in its investigation that suggests otherwise, staff will highlight that issue for board consideration. In many cases, however, the highlighted issue will not be enough to result in an adverse recommendation by the board.

It becomes more difficult analytically when our investigation reveals that there is a significant question about an applicant's character or fitness or when an applicant is seeking to return from a significant disciplinary suspension. For these cases, we look to the Supreme Court for guidance, in court decisions involving both reinstatement and initial admission applications. (The character and fitness standards for admission and reinstatement are similar.) From those decisions, we see a number of factors that may reflect on an applicant's present moral character or fitness to practice law. An applicant must prove that he or she is "in all respects . . . a person who possesses the sense of ethical responsibility and the maturity of character to withstand the many temptations which [the applicant] will confront in the practice of law." *In re Nash*, 317 Or 354, 362, 855 P2d 1112 (1993). We also see that "any substantial doubt about an applicant's character must be resolved in favor of protecting the public by denying the application for reinstatement." *In re Starr*, 330 Or 385, 389, 9 P3d 700 (2000).

a. Factors reflecting on present character or fitness:

1. Has the applicant engaged in criminal conduct in the recent past? *In re Carter*, 334 Or 388, 49 P3d 792 (2002); *In re Parker*, 314 Or 143, 838 P2d 54 (1992); *In re Taylor*, 293 Or 285, 647 P2d 462 (1982).
2. Has the applicant exhibited a lack of candor in dealing with others or in dealing with the bar in the admissions/reinstatement investigation? *In re Starr*, 330 Or 385, 9 P3d 700 (2000); *In re Bernath*, 327 Or 422, 962 P2d 685 (1998); *In re Fine*, 303 Or 314, 736 P2d 183 (1987).
3. Does the applicant have a history of drug or alcohol dependency and, if so, has the applicant demonstrated adequate resolution of those problems? *In re Gunter*, 344 Or 368, 182 P3d 187, *recon* 344 Or 540 (2008); *In re Beers*, 339 Or 215, 118 P3d 784 (2005); *In re Covington*, 334 Or 376, 50 P3d 233 (2002); *In re Rowell*, 305 Or 584, 754 P2d 905 (1988).
4. Has the applicant demonstrated financial responsibility in his or her professional and personal life? Filing for bankruptcy, by itself, is not a reason to deny reinstatement, but the bar may look into the reasons for the bankruptcy to determine if the applicant was financially irresponsible. *In re Gunter*, 344 Or 368, 182 P3d 187, *recon* 344 Or 540 (2008); *In re Scallon*, 327 Or 32, 956 P2d 982 (1998); *In re Taylor*, 293 Or 285, 647 P2d 462 (1982).
5. Does the applicant have a history of mental health conditions that could impair the applicant's ability to practice, or has the applicant exhibited behavior indicative of mental health concerns? *In re Gear*, 342 Or 59, 149 P3d 136 (2006); *In re Zielinski*, 341 Or 559, 146 P3d 323 (2006).

b. Analysis regarding prior discipline:

A lawyer suspended in Oregon for a fixed period for disciplinary reasons is not reinstated automatically when the term of suspension expires. That lawyer has the burden of proving that he or she has the requisite character and fitness (see discussion above) for reinstatement. On the other hand, a suspended lawyer should not be excluded from

consideration for reinstatement simply because his or her past misconduct was very serious.¹ Reformation, while often difficult to prove, is possible. *In re Jolles*, 235 Or 262, 383 P2d 388 (1963). It requires, however, more than the absence of additional misconduct since the date of suspension. *In re Nash*, 317 Or 354, 855 P2d 1112 (1993). The Supreme Court looks to a number of factors in deciding whether an applicant who engaged in past misconduct has reformed:

1. Has the applicant acknowledged the wrongful nature of his or her past misdeeds, or does the applicant minimize or continue to excuse that conduct? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Gortmaker*, 308 Or 482, 782 P2d 421 (1989).
2. Has the applicant resolved the causes or conditions that led to the prior misconduct such that the court can be assured that similar conduct is not likely to recur? *In re Starr*, 330 Or 385, 9 P3d 700 (2000); *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Nash*, 317 Or 354, 855 P2d 1112 (1993).
3. Has the applicant presented character evidence, particularly from people who knew the applicant over a course of time and can speak to the applicant's change in character? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Jaffee*, 319 Or 172, 874 P2d 1299 (1994).
4. Has the applicant made restitution to those who were harmed by his or her prior misconduct? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996); *In re Graham*, 299 Or 511, 703 P2d 970 (1985).
5. Has the applicant engaged in activities for the public good? *In re Griffith*, 323 Or 99, 913 P2d 695 (1996).

Ultimately, the inquiry is whether the applicant has demonstrated by clear and convincing evidence not only that he or she generally is of good moral character, but also that the applicant has overcome and will not again be influenced by the specific character flaw that led to the prior disciplinary action. *Griffith, supra*, 323 Or at 106.

5. Learning and Ability to Practice Law

If the Board of Governors does not believe that an applicant has kept current in the law during a period when he or she was not an active bar member, BR 8.1(c) and OSB Bylaw 6.103 permit the board to recommend to the Supreme Court that, as a condition precedent to reinstatement, the applicant:

1. Retake and pass the Oregon bar examination (something that the board has almost never recommended); or
2. Successfully complete a prescribed course of CLE credits (which is a fairly common board recommendation).

¹ When conduct is so serious as to result in disbarment or involuntary (Form B) resignation, reinstatement is not an option. Disbarment and Form B resignation are permanent in this state. BR 6.1(e); BR 9.4.

There are several factors that the board considers in deciding whether to recommend a prescribed course of CLE credits as a condition of reinstatement. Some are found in BR 8.1(c): the length of time since the applicant was an active bar member; whether and when the applicant ever practiced law in Oregon; whether the applicant practiced law in any other jurisdiction while not active here; whether the applicant participated in CLE activities during the period of non-active status in this state.

Other factors that the board has considered in the past when deciding whether additional CLE credits are a necessary condition of reinstatement include:

1. Whether the applicant is seeking reinstatement from a disciplinary suspension, as opposed to a period of voluntary inactive status or resignation. To the extent that CLE can be remedial, there is a rationale for requiring more CLE from a disciplined lawyer than other applicants;
2. Whether the applicant, regardless of law-related experience, is licensed in another state and has been complying with that state's MCLE requirements;
3. Whether the applicant's law-related experience was substantial and continuous, as opposed to occasional or episodic;
4. Whether the applicant was employed in a governmental or business position that, while not a position as a lawyer or judge, required the applicant to work closely with a wide variety of legal issues;
5. Whether the applicant had a lengthy or substantial legal career before he or she ceased being an active bar member;
6. Whether the applicant's plans for employment upon reinstatement involve the same area of law that the applicant dealt with prior to reinstatement.

As a further guide to how the board has approached this "learning and ability" issue in the past, attached is a chart summarizing board decisions over the past year or so.

6. Temporary Reinstatements

The intervals between Board of Governors meetings and the amount of time necessary to complete a reinstatement investigation can work against an applicant who has a job offer waiting or an Oregon client who needs immediate assistance. For this reason, some applicants request temporary reinstatement under BR 8.7(b). That rule permits the board to reinstate an applicant on a temporary basis pending completion of the investigation. Of course, this should be done only when we are close to finishing our due diligence inquiries and no adverse information has surfaced to date. Under those circumstances, the board has been known to invoke BR 8.7(b) at the first meeting an application is considered. (It is not necessary to waive the one meeting notice requirement to temporarily reinstate an applicant.)

7. Conditional Reinstatements

The Bar Rules permit the board to recommend that an applicant be reinstated subject to certain conditions. BR 8.7(a). (One such condition – completion of MCLE credits, has already been mentioned.) An example in which this may be appropriate is when a lawyer has had an alcohol or drug dependency in the past, has gone through treatment successfully and has demonstrated sustained sobriety. That lawyer may benefit from, and the board may be more comfortable with, a reinstatement that is conditioned on the lawyer being monitored over 1-3 years for continued participation with Alcoholics Anonymous (AA) or the Oregon Attorney Assistance Program (OAAP). The board can make that recommendation to the Supreme Court.²

Note, however, that conditional reinstatement should be used only when the board believes an applicant has demonstrated present good moral character and fitness, but could benefit from additional support to maintain that level of character and fitness over time. It should not be used when the board has substantial doubt about an applicant's present character and fitness, and is tempted to impose conditions as a hedge against the reason for that doubt. The Supreme Court has rejected agreements when it believes the latter circumstance exists.

8. Meeting Assignments

Written material concerning reinstatements that come before the board at any particular meeting is part of the Judicial Proceedings Agenda, exempt from the public meetings law pursuant to ORS 192.690. The table of contents page for that portion of the agenda will reflect that each application is assigned to a board member [name shown in brackets] who leads the discussion at the meeting. A reporting board member should read the staff summary for the application assigned to him or her. The physical reinstatement files also are present at board meetings (in a labeled plastic bin) so that board members can review them prior to the full board discussion. You also will find a reporting protocol in your agenda materials, which essentially is a template designed to focus the discussion on relevant information for the full board.

Feel free to contact me if you have any question about procedure or about a specific reinstatement application that has been assigned to you for discussion.

² In such a case, staff typically negotiates a conditional reinstatement agreement with the applicant, setting forth the specific terms of the treatment and monitoring arrangement, which is then presented to the court with the board's recommendation. Applicants in this position usually are motivated to enter into such an agreement because it is better than an alternative, adverse reinstatement recommendation.

2012 Board Meeting Schedule

Date	Meeting Type	Location	Additional Events
<u>January 6</u>	Committee Meetings	Oregon State Bar Center <i>Tigard</i>	
February 10	Board Meeting <i>Dept Presentation: Member Services</i>	Phoenix Grand <i>Salem</i>	Lunch w/ Supreme Court Local Bar Reception
March 30	Committee Meetings	Oregon State Bar Center <i>Tigard</i>	50-year Luncheon
April 27	Board Meeting <i>Dept Presentation: Legal Publications CLE Seminars</i>	Oregon State Bar Center <i>Tigard</i>	Board Meeting Joint PLF Meeting
May 25	Committee meetings	Oregon State Bar Center <i>Tigard</i>	BOG Alumni Dinner
June 22-23	Board Meeting <i>Dept Presentation: Member & Public Services Public Affairs</i>	Ashland Springs Hotel <i>Ashland</i>	Board Meeting Regional Bar Social
July 27	Committee Meetings	Oregon State Bar Center <i>Tigard</i>	
August 24	Board Meeting <i>Dept Presentation: Facilities & Operations General Counsel</i>	Oregon State Bar Center <i>Tigard</i>	Board Meeting
September 28	Special Board Meeting	Conference Call	Special Board Mtg. to Approve HOD Agenda
October 12	Committee Meetings	Oregon State Bar Center <i>Tigard</i>	MBA Social
November 2	HOD Annual Meeting	Oregon State Bar Center <i>Tigard</i>	HOD Annual Meeting (10:00 am)
November 8-10	Board Meeting <i>Dept Presentation: Regulatory Services OLF / Legal Services</i>	Surfsand Resort <i>Canon Beach</i>	BOG Planning Retreat Regional Bar Social

BOG Committees and Liaison Assignments

Board members serve on BOG committees and also as liaisons and contacts to OSB committees, sections, boards and other groups. Following the retreat, BOG members will be given a form on which to indicate their assignment preferences. The President-Elect will review the preferences and make assignments that will be effective on January 1, 2013.

The different groups and responsibilities are described briefly below. If you have any questions about a group or what is expected of the BOG liaison or contact, feel free to ask any of the current BOG members or the Executive Director.

BOG Standing Committees

Standing committees generally meet immediately prior to every board meeting and at dates set in between the board meeting. The membership on these committees is exclusively BOG members. A senior staff member assigned to assist each committee. Listed below are the current standing committees, but the number and function of committees is subject to change for 2013 based on the needs of the board as identified at the planning session.

Access to Justice

Advises BOG on issues relating to the public's access to justice; works closely with the Campaign for Equal Justice and the OSB Legal Services Program.

Appointments

Reviews volunteer applications and recommends appointments to OSB committees, councils and boards for approval by the BOG.

Budget & Finance

Provides oversight of the bar's financial operations; makes recommendations to the BOG about the annual budgets and assessments; manages OSB reserves and investments; receives biennial audit. Provides guidance on long-range forecasts, operating expenses and capital purchases.

Member Services

Studies and makes recommendations regarding communication, outreach and enhanced services to OSB members.

Policy & Governance

Develops, reviews and recommends policies relating to the structure and organization of the bar, the board, OSB committees, and bar programs.

Public Affairs

Oversees the bar's government relations program, keeps the BOG abreast of legislative developments, makes recommendations regarding legislative priorities and actions.

BOG Special Committees

These committees meet as needed.

Appellate Screening

Interviews candidates for appellate court appointments and makes recommendations to Governor in accordance with established policy; serves as a resource for local bar screening committees. There is at least one appellate screening process each year, which requires one or two days depending on the number of candidates to be interviewed.

Executive Director Evaluation

Conducts annual performance of executive director and makes recommendations to the BOG as to salary and benefits; as needed, serves as the executive director search committee. This committee usually meets two or three times over the course of the years.

Public Member Selection

Reviews applications, interviews candidates and makes recommendations to BOG for public member appointments to BOG, House of Delegates and other groups. Meetings generally take place in the summer in preparation for the regular appointments process. The number and duration of meetings depends on the number of candidates to be interviewed.

Unclaimed Lawyer Trust Accounts

Reviews and makes recommendations to the BOG regarding claims for funds abandoned in lawyer trust accounts and delivered to the bar in accordance with the Unclaimed Property Act. This committee meets only when a claim is received.

Special Assignments

These groups require closer coordination by the BOG liaison because their issues are regularly on the board agenda. Attendance at these meetings (as often as possible) by BOG members assists the BOG when it deliberates recommendations from these bodies. Because of the time commitment required by these liaison assignments, BOG members assigned will usually have fewer other assignments.

Professional Liability Fund (PLF)

The PLF is the mandatory provider of primary malpractice coverage for Oregon lawyers in private practice. The Board is comprised of seven lawyers and two public members appointed by the Board of Governors to serve five-year terms. The PLF Board meets approximately six times and holds an additional 5-10 telephone conferences per year. In addition to the President-Elect, there are two BOG liaisons to the PLF Board, one public member and one lawyer member. The lawyer member serves for two years. BOG liaisons attend only the public (open) portions of the PLF Board meetings.

Client Security Fund Committee

Meets every other month on a Saturday, 9:30 a.m. – noon, at various locations.
Investigate and recommend acceptance or rejection of claims for reimbursement of lawyer misappropriation of client money.

Legal Ethics Committee

Meets every other month on a Saturday, 9:30 a.m. in various locations.
Develop opinions interpreting rules of professional conduct; recommend changes to the rules of professional conduct.

Unlawful Practice of Law Committee

Meets the 2nd Friday of every month, 3:00 – 5:00 p.m. at the OSB.
Investigate complaints of unlawful practice; recommend prosecution where appropriate.

OSB Committees

OSB committees are comprised of bar members and, in some cases, public members. They study and advise the BOG on specific issues within their BOG-developed charges. OSB committees are encouraged to hold some of their meetings away from the Bar Center and participation by conference call is available. The BOG contact serves a communication link between the committee and the BOG. Regular attendance at these meetings is not expected of BOG contacts, although it is helpful if the BOG contact attends one or two meetings per year.

Access to Justice

Meets the 3rd Thursday of the month, once every quarter.
Works to improve the quality of programming for the Access to Justice mandatory MCLE requirement.

Affirmative Action

Meets the 2nd Friday of every month, 3:30 – 5:00 p.m., at the OSB.
Advise Director of Diversity & Inclusion on programs and activities designed to promote a diverse bench and bar.

Federal Practice & Procedure

Meets the 2nd Wednesday of every month, noon – 1:00 p.m., at Sussman Shank LLP.
Liaison between the membership and the federal judiciary.

Judicial Administration

Meets the 1st Thursday of every month, 3:30 – 5:00 p.m., at the OSB.
Advise BOG on judicial selection and administration issues.

Legal Services Program

Meets 3-4 times a year at various times and locations.

Review and report to the Board of Governors on allocation of filing fee funds dedicated to legal aid programs and on compliance with program standards.

Minimum Continuing Legal Education

Meets four times a year on a Friday, noon – 1:30 p.m.

Advise the Administrator and BOG on issues relating to the mandatory continuing legal education requirement for Oregon lawyers, including accreditation of educational programs and sponsors.

New Lawyer Mentoring Committee

Meeting schedule and location TBD

Advise on development and administration of the New Lawyer Mentoring Program, a new requirement for most 1st-year members of the OSB.

Pro Bono

Meets the 1st Tuesday of every month, noon – 1:00 p.m. in Portland.

Assist with expansion and support of free legal services to low-income clients in civil matters.

Procedure & Practice

Meets monthly on a Friday, 3:30 – 4:30 p.m. at the OSB.

Study, monitor, and recommend changes in procedures governing civil cases in Oregon.

Public Service Advisory

Meets quarterly on Saturday, 10:00 a.m. – noon at the OSB.

Advise about and recommend programs and activities designed to increase access to, understanding of and respect for the justice system by adult Oregonians.

Quality of Life

Meets the 2nd Wednesday of every other month, 12:30 – 2:00 p.m. at the OSB.

Educate lawyers and firms about the benefits of balancing personal life and career obligations.

State Lawyers Assistance

Meets on the 4th Thursday every month, 4:00 – 6:00 p.m. at the OSB.

Investigate and resolve complaints about lawyers whose conduct impairs their ability to practice law.

Uniform Civil Jury Instructions

Meets the 3rd Thursday of every month, 6:00 – 9:00 p.m. at the OSB.

Develops uniform jury instructions for use in civil trials.

Uniform Criminal Jury Instructions

Meets monthly either on Saturday morning or a Wednesday evening at the OSB.

Develops uniform jury instructions for use in criminal trials.

OSB Sections

Sections are voluntary membership bodies that provide education and networking opportunities for lawyer in particular areas of the law. Sections are governed by an Executive Committee. BOG contacts for sections are not expected to attend all the Executive Committee meetings, but to serve as a communication link between the section and the BOG. Attendance at one or two meetings each year is helpful; the contact should also be available if special issues or concerns arise. Most section Executive Committees meet in the metro area and allow for participation by conference call. Section names are descriptive of the area of law the group focuses on:

Administrative law	Energy, Telecom & Utility Law
Admiralty	Environmental & Natural Resources
Agricultural law	Estate Planning & Administration
Alternative Dispute Resolution	Family Law
Animal law	Government Law
Antitrust, Trade Regulation	Health law
Appellate Practice	Indian law
Aviation law	Intellectual Property
Business law	International Law
Business Litigation	Juvenile Law
Civil Rights	Labor & Employment
Computer & Internet Law	Litigation
Constitutional Law	Non-Profit Law
Construction Law	Products Liability
Consumer Law	Real Estate & Land Use
Corporate Counsel	Securities Regulation
Criminal Law	Sole and Small Firm Practitioners
Debtor-Creditor	Sustainable Future
Disability Law	Taxation
Diversity	Workers Compensation
Elder Law	

Other OSB Groups

Legal Heritage Interest Group

Meets on Saturday 3-4 times a year, 10:30 a.m. – noon at various locations.
Preserve and communicate the history of the OSB to interested groups.

LRAP Advisory Committee

Meets on various Saturdays, 2-3 times a year at the OSB.
Select participants for the Loan Repayment Assistance Program, amend and set program policy guidelines as needed, and raise funds to achieve programmatic objectives if necessary.

Oregon Law Foundation Board (OLF)

Meets quarterly on Fridays at the OSB.

The Oregon Law Foundation is an independent non-profit organization that makes grants (\$1.4 million in 2011) to programs providing legal aid services to low income Oregonians and other law related charitable programs. OLF's major source of income is the Interest on Lawyers' Trust Accounts (IOLTA) program. The OLF Board is comprised of nine attorneys and two public members selected by the Board of Governors, the Chief Justice of the Supreme Court, the OLF membership, and the OLF Board.

Oregon New Lawyers Division (ONLD)

Executive Committee meets approx. 9 times each year in various locations around the state.

The ONLD is comprised of every Oregon lawyer who has practiced six years or less, or is 36 years old or younger (whichever is later). The division has its own bylaws, budget, programs, executive committee and subcommittees comprised exclusively of ONLD members.

State Professional Responsibility Board (SPRB)

Meets monthly, alternately in person and by telephone conference; in person meetings are held in various locations around the state.

This ten-member board, composed of eight resident attorneys and two members of the public, acts as the grand jury in the discipline system, making probable cause decisions on complaints. The SPRB's workload is substantial and includes considerable reading in preparation for each meeting.

---BOG Calendar of Events

*****SUBJECT TO CHANGE*****

2012

January 4	Multnomah Bar Assoc. Board Meeting	Portland
January 6	BOG Comm. Mtgs. / Staff Appreciation Lunch	OSB Center
January 14	State Professional Responsibility Board	OSB Center
January 16	Dr. Martin Luther King, Jr. Breakfast	Oregon Conv. Ctr.
Jan 31 - Feb 4	NABE/NCBP/NCBF - Midyear Meeting	New Orleans, LA
February 1	Multnomah Bar Assoc. Board Meeting	Portland
February 3	PLF Board of Directors	Tigard
February 8	CEJ 21 st Annual Awards Luncheon**	Governor Hotel, Portland
February 9	Lunch with Supreme Court & Court of Appeals	Jonathan's Downtown - Salem
February 9	Local Bar and Legislative Reception	Salem Conf. Ctr. / Grand Hotel
February 10	Board and Committee Meetings	Salem
February 10	State Professional Responsibility Board	Conference Call
February 16	Partners in Diversity "Say Hey"	Portland Center of the Performing Arts
February 24	Oregon Hispanic Bar Association Dinner**	Hilton Hotel
February 25	MBA Winter Smash 6-9pm	Century Lanes
March 7	Multnomah Bar Assoc. Board Meeting	Portland
March 9	Oregon Women Lawyers Dinner/Auction**	The Nines Ballroom, Portland
March 15-16	ABA Bar Leader Institute	Chicago, IL
March 17	State Professional Responsibility Board	OSB Center
March 21-24	Western States Bar Conference	Las Vegas, NV
March 30	BOG Committee Meetings	OSB Center
March 30	50-Year Luncheon	Tualatin Country Club
March 30	BOG / ONLD Dinner	OSB Center
April 4	Multnomah Bar Assoc. Board Meeting	Portland
April 12	HNBA Legal Education Fund Scholarship Lunch	Governor Hotel
April 13	State Professional Responsibility Board	Conference Call
April 17-19	ABA Day in Washington	Washington, DC
April 24	CLP Legal Citizen of Year Award Dinner**	Governor Hotel
April 26	Basic Rights Oregon Leaders Luncheon	Convention Center
April 26	OSB/PLF Joint Dinner	Nel Centro - Portland
April 27	Board and Committee Meetings + PLF	OSB Center
April 27	PLF Board of Directors	Tigard
April 27	The Asian Reporter Foundation Banquet	Legion Restaurant
May 1-2	Northwest States Bar Meeting	OSB Center
May 2	Multnomah Bar Assoc. Board Meeting	Portland
May 4	Hispanic Metro Chamber Lunch **	Oregon Convention Center
May 8	BOG Candidate Statements Due	For October Election
May 10	New Admittees Swearing In Ceremony**	Smith Auditorium – Willamette University
May 11	Past BOG Presidents & ONLD Chairs Lunch	OSB Center
May 18	Asian American Youth Leadership Conference	Concordia University
May 19	State Professional Responsibility Board	OSB Center
May 21	Multnomah Bar Assoc. Annual Meeting & Dinner**	Marriott
May 24	BOG Committee Meetings	OSB Center
May 24	BOG Alumni Dinner	OSB Center
May 29-31	National Conf. on Prof. Responsibility	Boston, MA

June 8	PLF Board of Directors	Bend
June 15	State Professional Responsibility Board	Conference Call
June 21-23	Board and Committee Meetings	Ashland
July 10-12	HOD Regional Meetings	Per Region
July 21	State Professional Responsibility Board	Conference Call
July 27	BOG Committee Meetings	OSB Center
July 31 - August 4	NABE/NCBP/ABA - Annual Meeting	Chicago, IL
August 2	Oregon Minority Lawyers Assoc. Social/Auction**	World Trade Center
August 10	PLF Board of Directors	Ashland
August 17	State Professional Responsibility Board	Conference Call
August 24	Board and Committee Meetings	OSB Center
September 18	HOD Resolution Deadline	Received by OSB
September 18	Hispanic Heritage Month Breakfast**	Salem Conference Center
September 22	State Professional Responsibility Board	OSB Center
September 28	BOG Special Meeting	Conference Call
October 1	BOG Election Ballots sent	Online voting only
October 1	HOD Agenda Published	Distributed by OSB
October 2	Urban League EOD Dinner**	OR Convention Center
October 4	New Admittees Swearing In Ceremony*	Smith Auditorium – Willamette University
October 5	PLF Board of Directors	Blue River
October 5	Oregon Native American Chamber Gathering**	The Oregon Zoo
October 9-11	HOD Regional Meetings	Per Region
October 10	CEJ Party Under the Stars	Perkins Coie, Portland
October 12	BOG Committee Meetings & Special BOG Mtg.	OSB Center
October 19	State Professional Responsibility Board	Conference Call
October 26	OWLS Workplace Leader Awards	Governor Hotel
October 15	BOG Ballots due to OSB by 5pm	Online voting only
October 25	Pro Bono Fair	World Trade Center
October 27	OGALLA Dinner & Silent Auction**	Vintage Plaza Hotel
November 1	BOG / MBA Social (5:00pm)	MBA Offices
November 2	House of Delegates Meeting	OSB Center
November 8-10	Board & Committee Meetings & Planning Retreat	Cannon Beach
November 17	State Professional Responsibility Board	OSB Center
November 29	OSB Annual Awards Luncheon	Governor Hotel
December 7	PLF Board of Directors / Annual Dinner	Tigard
December 14	State Professional Responsibility Board	Conference Call

BOG Meetings and Committee Meetings are in BOLD type.

Other events announced, as information is available. Events added since last BOG meeting are highlighted in yellow.

* indicates OSB events which OSB Board members are encouraged to attend.

** indicates **sponsored** events which OSB Board members are encouraged to attend.

For more ABA events: http://www.abanet.org/abanet/oc/abatoday/?gnav=global_calendar_lead

---BOG Calendar of Events

*****SUBJECT TO CHANGE*****

2013

January 11	BOG Committee Meetings	OSB Center
February 5-9	ABA Mid-Year Meeting	Dallas, TX
February 20	CEJ 22nd Annual Awards Luncheon**	TBD
February 21	Lunch with Supreme Court & Court of Appeals	Salem
February 21	Local Bar and Legislative Reception	Salem
February 21-22	Board and Committee Meetings	Salem
March 8	Oregon Women Lawyers Dinner/Auction**	The Nines Ballroom, Portland
March 14-15	ABA Bar Leader Institute	Chicago, IL
March 20-23	Western States Bar Conference	Hawaii
March 29	BOG Committee Meetings	OSB Center
March 29	50-Year Luncheon	TBD
March 29	BOG / ONLD Dinner	TBD
April 16-18	ABA Day in Washington, D.C.	Wa, D.C.
May 2	OSB/PLF Joint Dinner	TBD
May 3	Board and Committee Meetings + PLF	OSB Center
May 3	BOG Alumni Dinner	TBD
May 29- June 1	National Conf. on Prof. Responsibility	San Antonio, TX
June 14	BOG Committee Meetings	OSB Center
July 11-13	Board and Committee Meetings	Astoria
August 6-10	ABA Annual Meeting	San Francisco, CA
August 23	BOG Committee Meetings	OSB Center
September 17	HOD Resolution Deadline	Received by OSB
September 27	Board and Committee Meetings	OSB Center
September 27	BOG / MBA Social	TBD
October 11	HOD Agenda Published	Distributed by OSB
Late October	CEJ Laf-Off **	TBD
November 1	BOG Committee Meetings	OSB Center
November 1	House of Delegates Meeting	OSB Center
November 21-23	Board & Committee Meetings & Planning Retreat	Brasada Ranch - Central Oregon

BOG Meetings and Committee Meetings are in BOLD type.

Other events announced, as information is available. Events added since last BOG meeting are highlighted in yellow.

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New BOG Members Orientation

“Finance 101 for BOG Members”

November 2012

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<i>A one-page Balance Sheet of the Oregon State Bar.</i>	
3. Sample Department Statement	3
<i>The one-page financial information for the Admissions Department used as an example to show how all department statements are prepared each month.</i>	
4. Chart – OSB Sources of Revenue	4
<i>A one-page chart showing the sources of the bar’s revenue for the 2012 budget.</i>	
5. Chart – How Member Fees are Spent	5
<i>A one-page chart showing how membership fee revenue is spent in the 2012 budget. The chart reflects the net cost of all programs/departments after the application of any non-dues revenue.</i>	
6. A Lexicon of OSB Financial Terms	6 - 10
<i>Five pages of bar financial terms with description often used in reports throughout the year.</i>	

Reporting of the Bar's Financial Statements

Each Month

Board members receive an email like the one below. Attached to the email is a 2-3 page Word document summarizing that month's financial statements and a link to the full set of statements and related reports (*approximately 90 pages, but easily sorted by department, topic, and page*).

To the Board of Governors:

- The attached file is the 2-page narrative of the OSB September 30, 2012 financial report.
- Here is the link to all the detailed department statements for September 30. The last page (page xx) is the summary of the investment portfolio:

<http://www.osbar.org/docs/financials/12September.pdf>

Included in the link are the following statements:

1. **Narrative Summary** (*2 to 3 pages*)
2. **Statement of Revenue and Expenses**
 - Summary of All Departments/Programs
 - Individual Department/Program Revenue and Expenses
3. **Balance Sheet**
4. **Statement of Changes in Fund Balance**
5. **Investment Portfolio** (*summarized*)
6. **Other financial reports**

Sections

Each month the financial statement of each section is prepared and distributed via email to the sections. The statements are available on the bar's web site at: <http://www.osbar.org/sections/financials.html>

Every two years

About mid-year every other year, board members receive a copy of the **Audit Report** as prepared by the independent auditors. The last report was received by the BOG June 2012 for fiscal 2010 and 2011.

OREGON STATE BAR

Balance Sheet

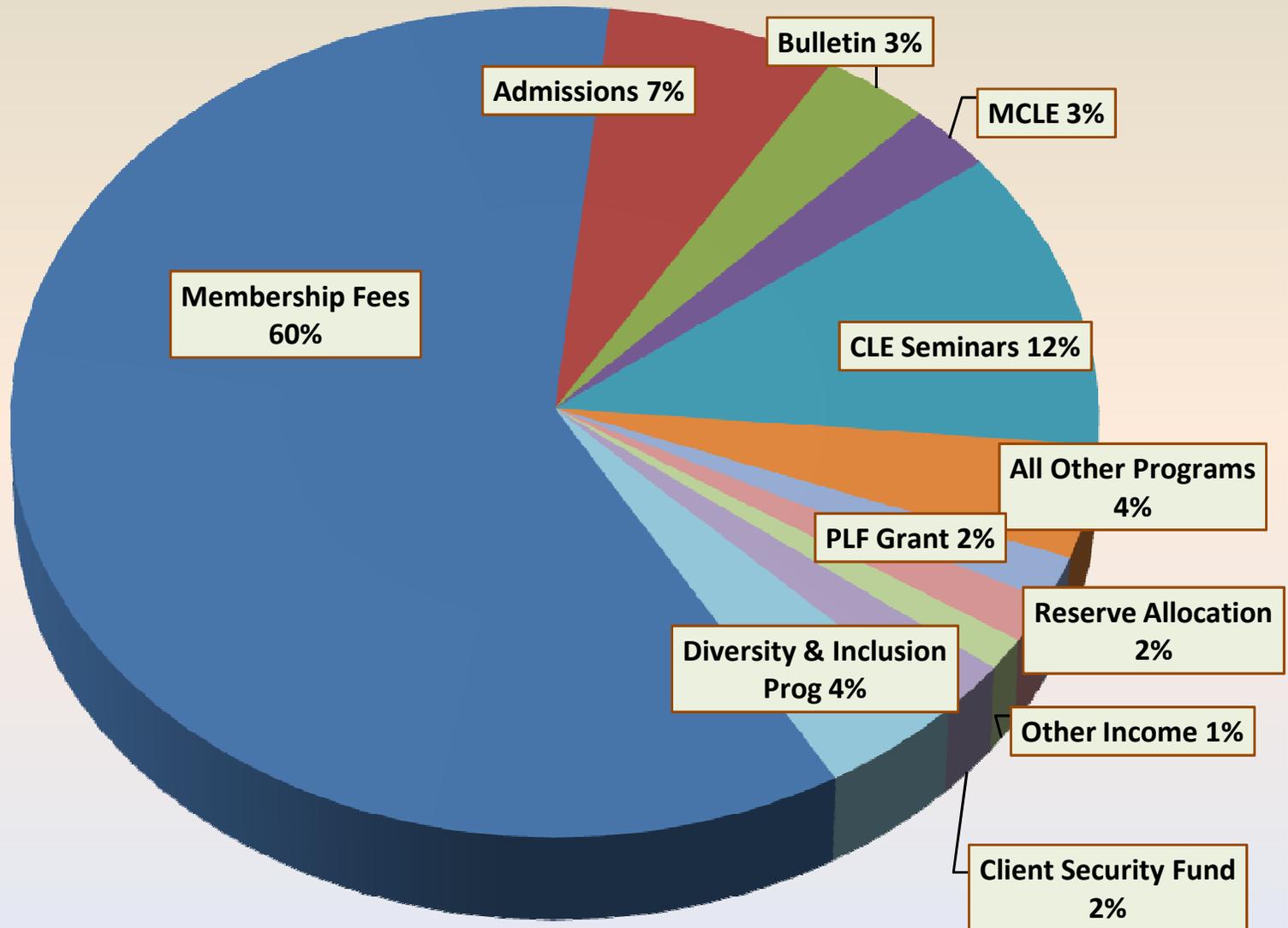
September 30, 2012

	<u>2012</u>	<u>2011</u>
Current Assets		
Cash - Operating Accounts	\$ 132,755	\$ 121,072
Short Term Investments	1,193,644	2,174,840
Accounts Receivable	246,301	155,707
Prepaid Expenses	85,643	54,852
Inventory	214,744	278,632
Total Current Assets	<u>1,873,087</u>	<u>2,785,102</u>
Long Term Assets		
Long Term Investments	3,938,002	3,530,146
Total Long Term Assets	<u>3,938,002</u>	<u>3,530,146</u>
Capital Assets		
Building & Land	20,063,025	19,906,228
Furniture & Equipment	3,452,026	3,350,285
	23,515,051	23,256,513
Less: Accumulated Depreciation	(4,857,209)	(4,076,785)
Total Capital Assets	<u>18,657,843</u>	<u>19,179,728</u>
TOTAL ASSETS	<u>24,468,931</u>	<u>25,494,976</u>
Current Liabilities		
Accounts Payable	610,568	654,359
Unclaimed IOLTA Funds	108,164	162,400
Professionalism Commission	2,527	2,790
Unearned Revenue	1,841,866	1,851,782
Total Current Liabilities	<u>2,563,126</u>	<u>2,671,332</u>
Long Term Liabilities		
Mortgage	12,181,619	12,379,760
Total Long Term Liabilities	<u>12,181,619</u>	<u>12,379,760</u>
Total Liabilities	<u>14,744,745</u>	<u>15,051,092</u>
Fund Balances		
Retained Earnings all depts	8,154,786	8,530,239
Client Security Fund	351,627	634,017
Sections	885,399	904,808
Diversity & Inclusion	141,300	230,853
Loan Repayment Assistance	91,054	100,278
Legal Services	21,772	42,943
IOLTA Unclaimed Funds	78,249	746
Total Fund Balances	<u>9,724,187</u>	<u>10,443,884</u>
TOTAL LIABILITIES & FUND BALANCES:	<u>\$ 24,468,931</u>	<u>\$ 25,494,976</u>

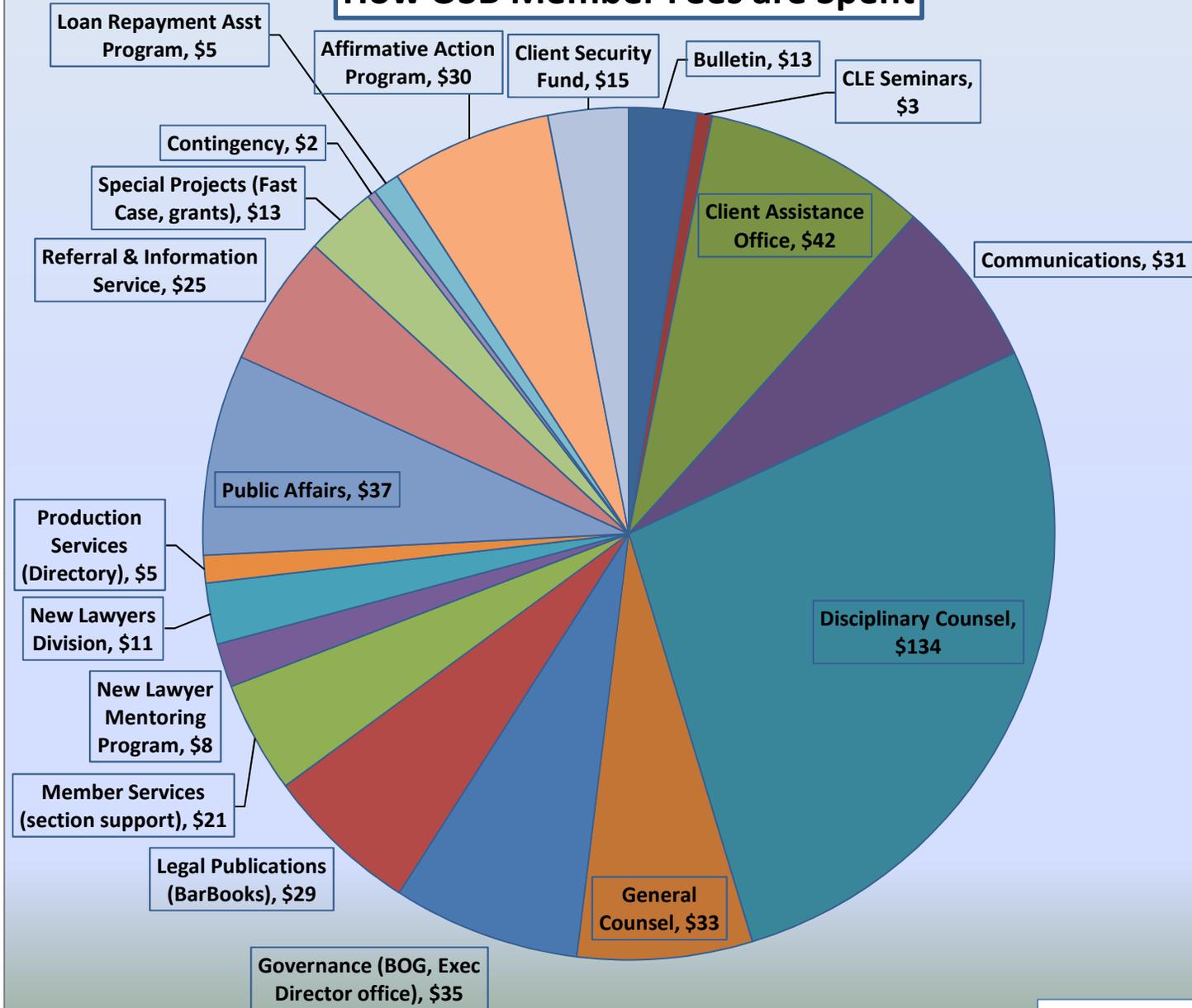
OREGON STATE BAR
Admissions - 101
For the Nine Months Ending September 30, 2012

Description	September 2012	YTD 2012	Budget 2012	% of Budget	September Prior Year	YTD Prior Year	Change v Pr Yr
REVENUE							
Applications	\$11,875	\$523,063	\$651,000	80.3%	\$15,475	\$628,950	-16.8%
Certificates	205	4,090	8,750	46.7%	525	4,640	-11.9%
Investigation Fees	4,275	54,800	78,125	70.1%	5,625	73,171	-25.1%
Late Fees		26,250	36,250	72.4%		34,775	-24.5%
Photocopies	140	1,635	4,375	37.4%	145	2,345	-30.3%
Registration Packets						3,275	-100.0%
Sales		299				4,690	-93.6%
Services		445	250	178.0%	50	250	78.0%
Laptop Fees	22,260	32,393	38,063	85.1%	25,778	38,273	-15.4%
Miscellaneous Income			200				
TOTAL REVENUE	38,755	642,974	817,013	78.7%	47,598	790,369	-18.6%
EXPENSES							
SALARIES & BENEFITS							
Employee Salaries - Regular	11,864	191,918	234,500	81.8%	27,461	184,039	4.3%
Employee Taxes & Benefits - Reg	7,951	67,190	85,700	78.4%	7,773	58,178	15.5%
Employee Salaries - Temporary	164	1,785	6,884	25.9%	863	7,195	-75.2%
Employee Taxes & Benefits - Tem	13	137	688	20.0%	67	556	-75.3%
TOTAL SALARIES & BENEFITS	19,991	261,031	327,772	79.6%	36,163	249,969	4.4%
DIRECT PROGRAM							
Bar Exam Analysis		9,638	17,500	55.1%		15,604	-38.2%
Bar Exam Multistate Fees		64,258	76,620	83.9%		68,326	-6.0%
Bar Exam Special Testing		6,020	750	802.6%			
Bar Exam Laptop Exp - Special Testing		3,315	7,500	44.2%		3,792	-12.6%
Bar Exam Specific expense		11,258	10,000	112.6%		10,631	5.9%
Cards & Certificates						215	-100.0%
Supreme Court Certificates		1,554	2,500	62.2%	218	1,551	0.2%
Contract Services		750	3,000	25.0%			
Facilities		15,315	25,000	61.3%		21,459	-28.6%
Hearings			4,500			400	-100.0%
Investigation/Litigation	59	3,312	3,500	94.6%	10	2,658	24.6%
Maintenance			500				
Travel & Expense	92,215	166,081	135,000	123.0%	94,075	151,085	9.9%
Travel & Expense - Others	4	2,071	2,000	103.5%		1,749	18.4%
TOTAL DIRECT PROGRAM	92,279	283,571	288,370	98.3%	94,303	277,468	2.2%
GENERAL & ADMINISTRATIVE							
Messenger & Delivery Services		42	200	21.0%		15	177.5%
Office Supplies		895	3,000	29.8%		2,105	-57.5%
Photocopying	155	1,506	4,400	34.2%	30	1,681	-10.4%
Postage	313	3,008	6,000	50.1%	609	4,845	-37.9%
Professional Dues		812	1,292	62.8%	40	842	-3.6%
Publications & Subscriptions			300				
Telephone			100				
Training & Education			2,000			151	-100.0%
Staff Travel & Expense	(210)	8,604	5,433	158.4%	(115)	4,592	87.3%
TOTAL G & A	259	14,866	22,725	65.4%	564	14,231	4.5%
TOTAL EXPENSE	112,528	559,468	638,867	87.6%	131,029	541,667	3.3%
NET REVENUE/(EXPENSE)	(73,773)	83,506	178,145		(83,432)	248,702	
Less: Indirect Cost Allocation (ICA)	12,123	109,107	145,478		13,095	117,855	
NET REV (EXP) AFTER ICA	(85,896)	(25,601)	32,667		(96,527)	130,847	
Staff - FTE count		3.00	4.10			4.00	

OSB Revenue Budget 2012



How OSB Member Fees are Spent



from 2012 budget

A Lexicon of OSB Financial Terms

- Budget Development
- Fund Balances
- Reserves
- Contingency Fund
- Landlord Contingency
- PERS Contingency
- Legal Fees Reserve
- LRAP Fund Balance
- Investment Policy
- Fanno Creek Place
- Bar Center Mortgage
- Five-Year Forecast



Budget Development

The bar’s operating budget for 2012 is \$10.883 million. The aggregate bar budget consists of several other activities (greater of revenue or expenses):

	Budget <i>(in millions)</i>
General Operations	\$10.883
Fanno Creek Place	1.651
Affirmative Action Program	.543
Client Security Fund	.259
Legal Services	<u>6.086</u>
Total	\$19.422

In addition, the bar manages 40 section budgets which total \$872,070.

The annual budget process involves:

- ▶ **March-May**
The Budget & Finance Committee identifies any board and HOD actions and new matters since the previous year’s budget that may have fiscal implication on the next year’s budget.
- ▶ **June-July**
The Budget & Finance Committee reviews and the BOG approves an *Executive Summary Budget*. This budget incorporates all policy or operating changes approved by the BOG or HOD. The summary includes a five-year financial forecast and membership fee projection.
- ▶ **August-September**
Bar staff with budget responsibilities prepare the 22 program and department line item budgets.
- ▶ **October**
The Budget & Finance Committee reviews the budget report which includes the line item budgets.
- ▶ **November**
The BOG acts on the next year’s budget.

Fund Balances

Definition: A fund balance is the excess of the assets over the liabilities. In for-profit accounting, this is Retained Earnings, Equity, or Net Equity. The bar maintains these fund balances:

<u>Fund</u>	<u>Balances, January 1, 2012</u>
General Fund	\$8,481,886
Diversity & Inclusion Program	155,712
Client Security Fund	607,132
Legal Services	25,478
Loan Repayment Assistance Program	59,781
Sections	694,092
IOLTA Unclaimed Funds	1,090

At the end of each fiscal year, the Net Revenue or Net Expense of each fund is transferred into its respective fund balance

Reserves

Bar Bylaw 7.3. The reserve policy was established in 1993 by Board of Governors. The policy has been amended since, most recently in July 1999. The reserve policy consists of two separate reserves - the *general operating reserve* and the *capital reserve fund*.

Operating Reserve

- ▶ The **operating reserve** is intended “to assure continued operation of the bar in the event of a nondues revenue reversal or a catastrophic event.”
- ▶ Currently the operating reserve is a fixed amount of \$500,000 and is included in the General Fund Balance.

Capital Reserve

- The **capital reserve** is intended for anticipated capital needs to replace or replenish capital assets or improvements which are made infrequently, or to maintain building standards or make major improvements. This amount is determined annually by the Board of Governors in the normal budget development process.
- In 2012, the capital reserve is \$500,000 and is included in the General Fund Balance.

Contingency Fund

Bar Bylaw 7.201. In 1994, the Board of Governors established a “Contingency” account as part of the annual budget development process. The contingency through 2003 had been 1% of the annual expenditure budget. In the 2004 budget development, the contingency was reduced to \$50,000, and with the 2009 budget the contingency was dropped to the existing \$25,000.

- The contingency is a “one-time only” expenditure and must be approved by the board. The contingency has been infrequently used in the past few fiscal years.
- The purpose of the contingency is for these purposes:
 1. unanticipated expenditures that could not be identified in the normal budget process and are necessary to fulfill a court or legislative mandate, or can be demonstrated to result in significant administrative or programmatic efficiencies;
 2. emergency situations which, if left unattended, will create safety issues or jeopardize operations;
 3. expenditures which cannot be accommodated by the existing department or program budget.

Landlord Contingency

Established by Board of Governors action. The fund originally was established as the “mortgage prepayment fund” and was intended to prepay the mortgage on the former bar center once the loan agreement allowed for the prepayment. The funds originated from the proceeds from the sale of a bar-owned 1.5 acre site on I-5 north of the 217 junction which was the site originally intended for the bar center prior to the move to Lake Oswego.

- ▶ In April 1995, the vacant land was sold. The net proceeds were \$341,445. In June 1995, the Board of Governors resolved to: *invest the proceeds from the sale of the OSB land in a “permanent mortgage reserve fund” to apply toward repaying the OSB Center mortgage in the year 2001.*
- ▶ The funds never were used to prepay the mortgage. With the sale of the former building, the board stated the funds are to be used for extraordinary vacancies or tenant improvements in the space leased to third-parties. The fund then was re-titled the “landlord contingency.”
- ▶ At January 1, 2012, the “landlord contingency” is \$415,333. The contingency is included in the bar’s general fund balance for financial statement reporting purposes.

PERS Contingency

Established by Board of Governors action in July 2003. The purpose of the contingency is to set aside funds to pay for extraordinary increases in the employer’s contribution rates to PERS for participating bar employees. Since 2003, legislation and unfunded liabilities have contributed a volatile fluctuation of employer rates.

- ▶ The bar joined with the State in its payment of a lump sum for the unfunded actuarial liability (UAL) in late 2004, which mitigated the need to further fund the contingency.
- ▶ The balance of the contingency has declined in periods of lower rates (2009 to 2011), but due of the losses to PERS from the 2008 stock market decline, the employer’s rate for PERS increased substantially with the two-year cycles beginning July 1, 2011 and 2013.
- ▶ The contingency balance at September 30, 2012 is \$264,430 and is included in the bar’s general fund balance for financial statement reporting purposes.

Contract Legal Fees Reserve

Established with approval of the 2006 budget. The budget for legal fees was set at \$100,000 for 2006 and any amount expended less than \$100,000 would be rolled into a reserve for future years' services for outside legal counsel in extraordinary events. Since 2010, the budget has been reduced to \$50,000.

- ▶ The Legal Fees Reserve at January 1, 2012 is \$250,542, although \$100,000 has been designated for transfer to the operating budget in 2013. This reserve also is included in the bar's general fund balance for financial statement reporting purposes.

Loan Repayment Assistance Program (LRAP) Fund Balance

Established by Board of Governors action in May 2006. Five dollars of each members fee is allocated to LRAP. After administrative expenses, the amount of any unused funds is rolled over into an accumulating fund balance for distributions in accordance with program policy. Interest earnings also accrue to the fund balance.

- ▶ The LRAP fund balance at January 1, 2012 is \$59,781.

Investment Policy

Bar Bylaw 7.4. The bar's investment objectives are: safety of the assets, sufficient liquidity, and highest possible rate of return. The funds of all bar programs and operations, including the Client Security Fund and the Diversity & Inclusion program are commingled for investing purposes.



- ▶ In June 1999, the BOG approved a major revision to the investment policy to permit investments in mutual funds of U.S. and foreign equities.
- ▶ In 2009, the Board of Governors after thorough review and evaluation by the Budget & Finance Committee revised the investment policy and agreed to engage two investment management firms to manage one-half each of the bar's long-term investment portfolio.
- ▶ The revised policy also added objectives for short-term and long-term investments, added conditions for the management and monitoring of the portfolio performance, and expanded the list of approved investments including adding individual publically traded stocks.
- ▶ In late 2009-early 2010, the bar transferred \$1,825,791.01 each to Becker Capital Management and Washington Trust Bank for the investment of the bar's long-term investments which consist primarily of the bar's restricted funds, contingencies, and reserves.
- ▶ At September 30, 2012, the market value of the long-term investment portfolio was \$4,302,140.

Fanno Creek Place

Fanno Creek Place (FCP) is the approximately six acre site on which the bar center and two adjacent buildings are located. The Oregon State Bar Center is Building A of Fanno Creek Place and the bar is responsible for the common areas expenses of FCP.

- ▶ The bar center was built in 2007 and the bar moved into the facility on January 26, 2008. The building is 68,525 rsf and cost approximately \$20.117 million. The building was built and developed by Opus Northwest and sold to the bar on September 15, 2008.
- ▶ The building was constructed to allow expansion or contraction of bar services and staff. The bar occupies 37,020 rsf, or 54% of the building. The original agreement included the PLF moving into the bar center and it occupies 19,060, or 28% of the building.
- ▶ There are three non-bar related tenants on the first floor occupying 9,153 rsf and approximately 3,000 rsf is vacant and available to lease. At the time of the bar's occupancy, the entire building either was occupied or generating rental income for the bar.



Bar Center Mortgage

The bar center building was financed with the proceeds from the sale of the former bar center and a \$13 million loan from Thrivent Financial, Minneapolis, MN.

- ▶ The loan is amortized over 30 years with a balloon payment in 15 years. The interest rate is 5.99% and the monthly payments are \$77,859. The first payment was due March 15, 2008.
- ▶ At September 30, 2012, the mortgage balance was \$12,181,619.

Five-Year Forecast

This term surfaces with the development of the bar's annual budget. The forecast is a three-page spreadsheet to project the bar's financial operations for the five years after the current year budget. The forecast is built with various assumptions, trends, and percentages based on known information or historical performance.

- ▶ The forecast objectives are to indicate the implications of current year budgeting on future budgets, the current and future impact on the bar's reserves, and the anticipated need for an increase in membership fees, increase in other revenue or decrease in expenditures.

COMMONLY USED ABBREVIATIONS

AAP	Affirmative Action Program
ABA	American Bar Association
ACLEA	[ACK-lee-uh] Assoc. of Continuing Legal Education Administrators
ACLU	American Civil Liberties Union
ADR	Alternative Dispute Resolution
AJS	American Judicature Society
A2J (ATJ)	Access to Justice
BBX	Board of Bar Examiners
B&F	Budget & Finance Committee
BOG	Board of Governors
BOLI	Bureau of Labor & Industries
CAO	Client Assistance Office
CCP	Council on Court Procedures
CEJ	Campaign for Equal Justice (“the Campaign”)
CLE	Continuing Legal Education
CLP	Classroom Law Project
CSF	Client Security Fund
DOJ	Department of Justice
DRs	Disciplinary Rules (now the Oregon RPCs)
FLAC	[flak] Family Law Advisory Committee (state and local groups)
HOD	[hod] House of Delegates
IOLTA	[eye-ole-tuh] Interest on Lawyer Trust Accounts
JAC	Judicial Administration Committee
J.D.	Juris Doctor (law degree)
LASO	[LASS-oh] Legal Aid Services of Oregon
LLC	Limited Liability Company
LLP	Limited Liability Partnership
LPRC	Local Professional Responsibility Committee
LRAP	Loan Repayment Assistance Program
LRE	Law Related Education
LRS	Lawyer Referral Service
MBA	Multnomah Bar Association
MBA-YLS	Multnomah Bar Association-Young Lawyers Section
MBE	Multistate Bar Exam

MPREMultistate Professional Responsibility Exam
MCLE.....Minimum Continuing Legal Education
NABE.....[NAB-ee] National Association of Bar Executives
NCBPNational Conference of Bar Presidents
NLADANational Legal Aid & Defenders Association
NLMPNew Lawyer Mentoring Program
OAAPOregon Attorney Assistance Program (a PLF program)
OADCOregon Association of Defense Counsel
OCDLA.....Oregon Criminal Defense Lawyers Association
OCLEABOregon Council on Legal Education & Admission to the Bar
OGALLA.....[oh-gah-lah] Oregon Gay & Lesbian Lawyers Association
OJDOregon Judicial Department
OLF.....Oregon Law Foundation (administers IOLTA grants)
OLI[oh-ell-eye] Oregon Law Institute (CLE provider)
OLIO.....[OH-lee-oh] Opportunities for Law in Oregon (AAP Program)
OMLA.....Oregon Minority Lawyers Association
ONLDOregon New Lawyers Division
ORSOregon Revised Statutes
OTLA[OAT-lah] Oregon Trial Lawyers Association
OWLSOregon Women Lawyers (Portland chapter = Queen’s Bench)
PACPublic Affairs Committee
P&GPolicy & Governance Committee
P.C.Professional Corporation
P.I.....Personal Injury
PIP.....Personal Injury Protection (a type of insurance)
PLFProfessional Liability Fund
RPCs.....Rules of Professional Conduct (also Oregon RPC)
SLAC.....[slack] State Lawyers Assistance Committee
SLRsSupplemental Local Rules
SPRBState Professional Responsibility Board
UPLUnlawful Practice of Law
UCJI (Civ).....Uniform Civil Jury Instructions
UCJI (Crim)Uniform Criminal Jury Instructions
UTCrsUniform Trial Court Rules

The changing profession:

1. Globalization
 - a. Outsourcing
 - b. Multinational practice/GATS
 - c. Changing nature of law firm ownership
 - d. Borderless practice and portable licenses (UBE)
 - e. Increased competition for fees
2. Technology
 - a. Social media
 - b. Changing client expectations (speed, value)
 - c. Small firms can compete on large transactions/complex litigation
 - d. Everyone has access to same information (including clients)
 - e. E-law firms
3. Demographics
 - a. 55% of lawyers are baby boomers
 - b. Too many law schools & too many new lawyers (43,000+/year)
 - c. Contracting market for legal services
 - d. Mobility
4. Law Firm Business Model
 - a. Consolidation of firm; increasing # of solos
 - b. Call for end of billable hour/increasing demand for alternative fee arrangements
 - c. New lawyers demanding work/life balance
 - d. New lawyers facing staggering debt

Challenges for the Bar:

1. The search for relevance: identifying the ephemeral and the tangible elements that make the organization indispensable to members.
2. The search for funding: looking for innovative ways to make the best use of resources.
3. The search for responsiveness: responding quickly and effectively to trends and changes within the profession and evolving member needs.
4. The search for collaboration: identifying ways to maximize efficacy through collaborative relationships between staff and volunteer leaders; between the bar and the community; and between the bench, bar and community.
5. The search for balance: effectively allocating resources to serve both member needs and the bar's public responsibility.
6. The search for meaning: exploring how to provide volunteer leaders and member with a meaningful experience that rewards their investment of time and energy.

From: Camille Greene

Sent: Friday, August 19, 2011 8:13 AM

To: BOG 2011

Cc: Amber Hollister; Helen Hierschbiel; Jeff Sapiro; Rod Wegener; Susan Grabe; Sylvia Stevens; Vickie Hansen; Kay Pulju; Anna Zanolli; 'Corriedawn Greiling-Fritsch'

Subject: OSB Board of Governors Agenda - August 26, 2011

Dear Board of Governors,

The meeting SCHEDULE with links to the August 26 board and committee meetings is posted at [Board of Governors Meeting Schedule](#).

The password for the CLOSED agenda and the ULTA Special Committee agenda is

OSBBOG110826. Please **do not share** this password.

If you have told me you are calling in rather than attending in person, the number is **1-866-910-4857 passcode: 671660**.

The OSB Regulatory Services Dept will be contacting you if you are responsible for presenting one of the reinstatement cases on the closed agenda.

The entire schedule for the bus ride, local bar social, etc. is posted at [August 25-26 SCHEDULE](#) .

You have the option to **bring movies to watch on the bus ride** to Pendleton. IF you have a favorite DVD to share, bring it!

If you have any questions about the schedule or trouble opening the agendas, please let me know immediately. **This agenda may take some time to download**. We will have all files on USB drives for your convenience at the meetings.

Thank you!



Camille Greene, Executive Assistant

PO Box 231935, Tigard, OR 97281-1935

Voice: 503-431-6386/Fax: 503-598-6986

www.osbar.org

Firefox Board of Governors Meeting Schedule +
 www.osbar.org/leadership/bog/bog_mtg.html

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Regulatory Functions
 Admissions
 Discipline
 MCLE
 OSB Legal Services Program
 Status Change Forms
 IOLTA Certification
 Unlawful Practice of Law

Member Resources
 Bar Publications
 Fastcase Legal Research
 Career Center
 Forms Library
 Ethics Opinions
 Judicial Vacancies
 Member Fee FAQ
 Member Fee Payment
 New Lawyer Mentoring Program
 Online Event Registration
 Online Resources
 OSB Events
 OSB Group Listings
 Performance Standards
 Products & Services
 Rules Regulations and Policies
 Surveys and Research

Membership Services
 Affirmative Action Program
 CLE Seminars
 Legislative/Public Affairs
 Loan Repayment Assistance Program
 Oregon Law Foundation
 OSB Legal Publications
 Pro Bono Information
 Professional Liability Fund

Board of Governors Meeting Schedule
[Meetings & Agendas](#) [BOG Members](#) [BOG Contacts](#) [BOG Committees](#) [BOG Handbook](#)

[Agenda Archive](#) [Minutes Archive](#) [BOG Calendar of Events](#)

2011 Board Meeting Schedule

Date	Board Meeting Type	Location	Additional Events
January 7	Committee meetings	Oregon State Bar Center Tigard	
February 17-18	Board Meeting <i>Dept Presentation: Member & Public Services</i>	Phoenix Grand Salem	Lunch w/ Supreme Court Local Bar and Legislative Reception
March 18	Committee meetings	Oregon State Bar Center Tigard	50-year Luncheon ONLD Dinner
April 22	Board Meeting <i>Dept Presentation: Legal Publications CLE Seminars</i>	Oregon State Bar Center Tigard	Board Meeting Joint PLF Meeting
May 20	Committee meetings and Special Board Mtg.	Oregon State Bar Center Tigard	
June 24	Board Meeting <i>Dept Presentation: Public Affairs</i>	Oregon State Bar Center Tigard	Board Meeting BOG Alumni Dinner
July 29	Committee meetings Special BOG Meeting	Oregon State Bar Center Tigard	
August 25-26	Board Meeting <i>Dept Presentation: Facilities & Operations General Counsel</i>	Red Lion Pendleton	Board Meeting Regional Bar Social
September 23	Committee meetings and Special Board Meeting	Oregon State Bar Center Tigard	Special Board Mtg. to Approve HOD Agenda
October 13	Special Board Meeting	Conference Call	Special Board Mtg. to Approve PLF Rates
October 28	HOD Annual Meeting	Oregon State Bar Center Tigard	HOD Annual Meeting (10:00 a.m.)

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AGENDA

BOG Budget & Finance Committee

Meeting Date: August 26, 2011
Location: Pendleton, Oregon
Chair: Chris Kent
Vice-Chair: Steve Larson
Members: Hunter Emerick, Michelle Garcia, Mike Haglund, David Wade, Mitzi Naucner. Staff Liaison: Rod Wegener

ACTION ITEMS

<p>1. Minutes – July 29, 2011 Meeting</p> <p>Action: Approve the July 29, 2011 meeting minutes.</p>	Exhibit
<p>2. Selection of Auditor for Audit of OSB 2010 and 2011 Financial Statements</p> <p>At its July 29 meeting the Committee recommended the selection of Moss Adams and that recommendation is on the BOG agenda.</p> <p>Action: Decision by Board of Governors</p>	Exhibit
<p>3. 2012 Executive Summary Budget</p> <p>At its July 29 meeting the Committee reviewed the summary report and the updated report is on the BOG agenda.</p> <p>The report on the BOG agenda is updated with the discussion and recommendations from the Committee's last meeting. Here are the most significant changes or additions to the report since that meeting:</p> <ul style="list-style-type: none"> • The \$400,000 reserves are transferred from the 2011 revenue budget to 2012 revenue. 	Exhibit

Oregon State Bar
Meeting of the Board of Governors
August 26, 2011
Red Lion Hotel Pendleton
304 SE Nye Avenue
Pendleton, OR 97801
Open Session Agenda

The Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00 p.m. on August 26, 2011.

Friday, August 26, 2011, 1:00 p.m.

- 1. Call to Order/Finalization of the Agenda**
- 2. Department Presentations**
 - A. General Counsel [Ms. Hierschbiel]
 - B. Facilities and Operations [Mr. Wegener]
- 3. Report of Officers**
 - A. Report of the President [Mr. Piucci] Written Exhibit
 - B. Report of the President-elect [Ms. Naucler] Written Exhibit
 - C. Report of the Executive Director [Ms. Stevens] Inform Exhibit
 - D. Director of Diversity & Inclusion [Ms. Hyland] Inform
 - E. MBA Liaison Report [Mr. Knight] Inform
- 4. Professional Liability Fund [Mr. Zarov] Inform**
 - A. General Update
 - B. Financial Report Inform Exhibit
 - C. Retirements and Hiring
 - D. Board Selection
 - E. Preview of Action Items for Next Board Meeting
 1. Budget
 2. Coverage Plan Changes
- 5. Professionalism Commission Request [Ms. Stevens]**
 - A. Proposed Amendment to Statement of Professionalism Action Exhibit

6. Rules and Ethics Opinions

A. Legal Ethics Committee

- | | | | |
|----|--|--------|---------|
| 1. | FORMAL OPINION NO. 2011-XXX | Action | Exhibit |
| a. | Competency: Disclosure of Metadata | | |
| 2. | FORMAL OPINION NO. 2011-XXX | Action | Exhibit |
| a. | Withdrawal from Litigation: Client Confidences | | |

7. OSB Committees, Sections, Councils and Divisions

- | | | | |
|-----------|--|---------|---------|
| A. | Oregon New Lawyers Division Report | Written | Exhibit |
| B. | Accept UPL Task Force Report and Adopt Recommendations | Action | Exhibit |

8. BOG Committees, Special Committees, Task Forces and Study Groups

A. Budget and Finance Committee [Mr. Kent]

- | | | | |
|----|--|--------|---------|
| 1. | 2012 Executive Summary Budget Report | Action | Exhibit |
| 2. | Selection of Auditors for 2010-2011 Financial Statements | Action | Exhibit |

B. Member Services Committee [Ms. Johnnie]

- | | | | |
|----|--|--------|---------|
| 1. | 2011 OSB President's Awards and Award of Merit | Action | Handout |
| 2. | Waiver of Section Administrative Assessments | Action | Exhibit |

C. Policy and Governance Committee [Ms. Naucler]

- | | | | |
|----|--|--------|---------|
| 1. | Changes to Bylaw 16.200 - Scope of Complimentary CLE | Action | Exhibit |
| 2. | Changes to Election Bylaws Article 9 | Action | Exhibit |

9. Consent Agenda

A. Approve Minutes of Prior BOG Meetings

- | | | | |
|----|--------------------------------------|--------|---------|
| 1. | Open Session – June 24, 2011 | Action | Exhibit |
| 2. | Judicial Proceedings – June 24, 2011 | Action | Exhibit |
| 3. | Executive Session – June 24, 2011 | Action | Exhibit |
| 4. | Special Meeting – July 29, 2011 | Action | Exhibit |

B. Appointments Committee

- | | | | |
|----|--|--------|---------|
| 1. | Appointments to Various Bar Committees,
Boards and Councils | Action | Handout |
|----|--|--------|---------|

- C. Policy and Governance Committee
 - 1. Fee Arbitration Rule Establishing Advisory Committee Action Exhibit
- D. Client Security Fund Claims Recommended for Payment Action Exhibit
 - 1. No. 2010-38 HAYES (Guerrero) \$2,000.00

10. Default Agenda

- A. Minutes of Interim Committee Meetings
 - 1. Access to Justice Committee
 - a. July 29, 2011 Exhibit
 - 2. Budget and Finance Committee
 - a. June 24, 2011 Exhibit
 - b. July 29, 2011 Exhibit
 - 3. Member Services Committee
 - a. June 24, 2011 Exhibit
 - b. July 29, 2011 Exhibit
 - 4. Policy and Governance Committee
 - a. June 24, 2011 Exhibit
 - b. July 29, 2011 Exhibit
 - 5. Public Affairs Committee
 - a. June 24, 2011 Exhibit
 - b. July 29, 2011 Exhibit
 - 6. Unclaimed Lawyer Trust Account Special Committee
 - a. June 24, 2011 Exhibit
- B. CSF Claims Financial Report Exhibit
- C. Affidavits for PLF Covered Claim
 - 1. David Lokting and Steve Larson (00306190) Exhibit
 - 2. David Wade and Scott McCleery Exhibit
- D. Campaign for Equal Justice Audit and Annual Report Exhibit

11. Closed Sessions ([Click here to access the Closed Session Agenda](#))

- A. Judicial Session (pursuant to ORS 192.690(1) – Reinstatements
- B. Executive Session (pursuant to ORS 192.660(1)(f) and (h)

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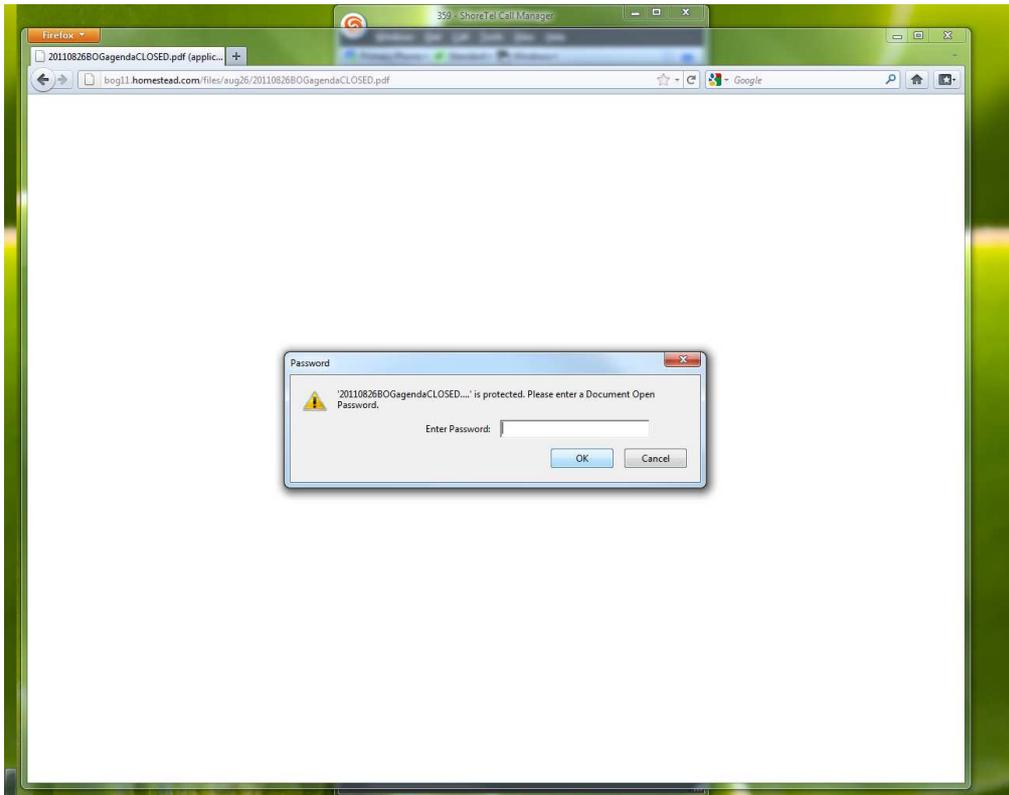
**Oregon State Bar
Meeting of the Board of Governors**
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C. Report of the Executive Director [Ms. Stevens]	Inform	Exhibit
D. Director of Diversity & Inclusion [Ms. Hyland]	Inform	
E. MBA Liaison Report [Mr. Knight]	Inform	
- 4. Professional Liability Fund [Mr. Zarov]**
 - A. General Update



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- 11A1 Judicial Proceedings Agenda
 - Alexander Gordon
 - Amy P. Grant
 - Niamh M. Lewis
 - Amy L. Muenchrath
 - John W. Walker
 - Jo Ellen Zucker
- 11B Executive Session Agenda

[Back to SCHEDULE](#)

Oregon State Bar Board of Governors Meeting August 26, 2011 Judicial Proceedings Agenda

Reinstatements and disciplinary proceedings are judicial proceedings and are not public meetings (ORS 192.690). This portion of the BOG meeting is open only to board members, staff, and any other person the board may wish to include. This portion is closed to the media. The report of the final actions taken in judicial proceedings is a public record.

A. Reinstatements.

1.	Alexander Gordon - 822671 BR 8.1 & 8.7 received 6/27/11 [Mr. Mitchell-Phillips]	Inform/ Action
2.	Amy P. Grant - 992716 BR 8.1 received 7/27/11 [Mr. Kent]	Inform
3.	Niamh M. Lewis - 003172 BR 8.1 received 8/11/11 [Ms. Fisher]	Inform
4.	Amy L. Muenchrath - 973463 BR 8.1 received 5/9/11 [Ms. Johnnie]	Action
5.	John W. Walker - 733145 BR 8.1 received 5/9/11 [Ms. Naucler]	Action
6.	Jo Ellen Zucker - 883371 BR 8.1 & 8.7 received 7/8/11 [Mr. Emerick]	Inform/ Action

AGENDA

BOG Policy and Governance Committee

Meeting Date: January 6, 2012
Location: OSB Center, Tigard, Oregon
Chair: Ann Fisher
Vice-Chair: David Wade
Members: Jenifer Billman, Barbara Dilaconi, Tom Kranovich, Travis Prestwich, Richard Spier

ACTION ITEMS

1. Approve minutes of November 18, 2011 meeting.	Exhibit
2. Sunsetting the OSB Standing Committee on Access to Justice. The committee is asked to recommend sunsetting the Access to Justice Committee on the ground that it has served its original purpose.	Exhibit
3. Joint Statements of Principles. The committee is asked to consider what, if anything, should be done with the Joint Statements from joint committees that no longer exist.	Exhibit
4. Electronic Membership Voting on Bar Issues. The committee is asked to consider whether bar governance issues should all be submitted to a membership vote via e-mail or other electronic method.	Exhibit
5. Proposed Amendment to RPC 1.8(e). The committee is asked to consider a proposal to amend RPC 1.8(e) to conform to the ABA Model Rule so as to allow for contingent costs in contingent fee matters.	Exhibit
6. LRS Business Model Update. The committee will receive an oral report on the status of the Public Service Advisory Committee's work toward a percentage fee model for LRS	
7. Bylaw Housekeeping Changes. The committee will consider several minor amendments to the Bylaws to correct errors and conform the bylaws to recent changes in the Bar Act.	Exhibit
8. Committee Goals for 2012. Ms. Fisher will lead a discussion about the committee's goals and objectives for 2012.	

ORS Chapter 9
2011 Edition

OREGON STATE BAR

- 9.005 Definitions for ORS 9.005 to 9.755
- 9.010 Status of attorney and Oregon State Bar; applicability of statutes
- 9.025 Board of governors; number; eligibility; term; effect of membership
- 9.030 Voting rights; eligibility of members for board of governors and house of delegates
- 9.040 Election of governors; rules; vacancies
- 9.042 Determination of eligibility of candidate for board of governors; procedure; review by Supreme Court
- 9.050 Recall of governors
- 9.060 Officers; election; vacancies
- 9.070 Duties of officers; deposit and disbursement of fees
- 9.080 Duties of board of governors; professional liability fund; quorum; status of employees of bar
- 9.090 Appropriation and disbursement of funds
- 9.100 Statement of financial condition
- 9.110 Board of governors to formulate rules
- 9.112 Board of governors to establish minimum continuing legal education requirements
- 9.114 Mandatory training on duties relating to reporting child abuse

HOUSE OF DELEGATES

- 9.136 House of delegates created; membership; terms
- 9.139 Powers of house of delegates
- 9.142 Rules for conduct of business; meetings
- 9.145 Public members
- 9.148 Participation by nondelegates; referral of question for mail vote; petition for consideration or mail vote
- 9.150 Termination of delegate's term
- 9.152 Election of delegates; rules
- 9.155 Recall of delegate

PRACTICE OF LAW; MEMBERSHIP IN THE BAR

- 9.160 Bar membership required to practice law; exceptions
- 9.162 Definitions for ORS 9.160 to 9.166
- 9.164 Investigation of alleged violation of ORS 9.160
- 9.166 Enjoining practicing law without a license; restitution to victim
- 9.180 Classes of membership
- 9.191 Annual membership fees; professional liability assessments
- 9.200 Effect of failure to pay membership fees; reinstatement
- 9.210 Board of bar examiners; fees of applicants for admission to bar

- 9.220 General requirements for admission
- 9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee
- 9.242 Advice on law of foreign jurisdiction; rules
- 9.250 Order for admission; oath of qualified applicant
- 9.261 Resignation of attorney
- 9.280 Prohibition on acting as immigration consultant; definitions; exception

ATTORNEY AND CLIENT RELATIONSHIP

- 9.310 Attorney defined; counsel
- 9.320 Necessity for employment of attorney; effect of employment
- 9.330 Authority of attorney
- 9.340 Challenge by party of attorney's authority to appear for party
- 9.350 Challenge of attorney's authority to appear for adverse party
- 9.360 Compelling delivery by attorney of money or papers
- 9.370 Compelling delivery when attorney claims lien
- 9.380 Changing attorneys and terminating attorney-client relationship
- 9.390 Notice of change or termination

PROFESSIONAL CONDUCT

- 9.460 Duties of attorneys
- 9.490 Formulation of rules of professional conduct; prohibition on certain sanctions for violation of rule

PROHIBITED CONDUCT

- 9.500 Solicitation of personal injury business by nonlawyer
 - 9.505 Payment for referring claims resulting from personal injury or death
 - 9.510 Solicitation by attorneys
 - 9.515 Referral of claims, suits or actions between attorneys; division of fees
 - 9.520 Acceptance and prosecution of solicited claims
- BAR DISCIPLINARY PROCEEDINGS
- 9.527 Grounds for disbarment, suspension or reprimand
 - 9.528 Advice on conducting covert operations; participation in covert operations
 - 9.529 Status of proceedings relating to discipline, admission or reinstatement
 - 9.532 Local professional responsibility committees; state professional responsibility board; powers; witnesses, subpoenas; oaths
 - 9.534 Disciplinary board; procedure before board; oaths; subpoenas; hearing; record
 - 9.536 Disciplinary board decision; appeal to Supreme Court; review; costs

ORS Chapter 9
2011 Edition

- 9.537 Civil immunity of witnesses, bar officials and employees
- 9.539 Application to admission and reinstatement proceedings
- 9.542 Rules for investigation of attorneys and applicants; authority of board of governors to require fingerprints
- 9.555 Copy of complaint or notice to Attorney General when bar is plaintiff or defendant; exceptions
- 9.565 Tax return information from Department of Revenue; use

ATTORNEY ASSISTANCE

- 9.568 State lawyers assistance committee; personal and practice management assistance committees; rules; confidentiality; civil immunity

LEGAL SERVICES PROGRAM

- 9.572 Bar to establish Legal Services Program; director; advisory and technical committees
- 9.576 Review of providers; mediation; hearing; suspension of funding
- 9.577 Legal Aid Account
- 9.578 Other funding sources

CLIENT SECURITY FUND

- 9.615 Definition for ORS 9.615 to 9.665
- 9.625 Plan to relieve client losses; rules
- 9.635 Sources of client security fund
- 9.645 Annual payment by state bar members
- 9.655 Investigation of claim of loss; subpoena
- 9.657 Immunity from civil liability
- 9.665 Authority for reimbursement of client; waiver of conditions; subrogation for amount paid

LAWYER TRUST ACCOUNTS

- 9.675 Mandatory certification and disclosures for lawyer trust accounts
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SEARCH OR SEIZURE OF LAWYER FILES OR PREMISES

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OREGON STATE BAR

9.005 Definitions for ORS 9.005 to 9.755. As used in ORS 9.005 to 9.755, unless the context or subject matter requires otherwise:

- (1) "Attorney" and "member" mean a member of the bar.
- (2) "Board" and "board of governors" mean the board of governors of the bar.
- (3) "Delegate" means a delegate of the house of delegates of the Oregon State Bar.
- (4) "Executive director" means the chief administrative employee of the bar, appointed by the board. The executive director may, but need not be, a member of the bar; and the executive director shall serve at the board's discretion and shall perform such duties as the board shall prescribe.
- (5) "Governor" means a member of the board of governors of the bar.
- (6) "House" and "house of delegates" mean the house of delegates of the Oregon State Bar.
- (7) "Oregon State Bar," "state bar" and "bar" mean the Oregon State Bar created by the State Bar Act set forth in ORS 9.005 to 9.755.
- (8) "Rules of procedure" means the rules of procedure relative to admission, discipline, resignation and reinstatement of members of the bar adopted by the board and approved by the Supreme Court. [1975 c.641 §2; 1979 c.252 §14; 1995 c.302 §15; 1997 c.249 §5]

9.010 Status of attorney and Oregon State Bar; applicability of statutes. (1) An attorney, admitted to practice in this state, is an officer of the court.

(2) The Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon. The bar is authorized to carry out the provisions of ORS 9.005 to 9.755.

(3) The bar is subject to the following statutes applicable to public bodies:

- (a) ORS 30.210 to 30.250.
- (b) ORS 30.260 to 30.300.
- (c) ORS 30.310, 30.312, 30.390 and 30.400.
- (d) The Oregon Rules of Civil Procedure.
- (e) ORS 192.410 to 192.505.
- (f) ORS 192.610 to 192.690.
- (g) ORS 243.401 to 243.507.
- (h) ORS 244.010 to 244.040.
- (i) ORS 297.110 to 297.230.
- (j) ORS chapters 307, 308 and 311.
- (k) ORS 731.036 and 737.600.

(4) Except as provided in subsection (3) of this section, the bar is not subject to any statute applicable to a state agency, department, board or commission or public body unless the statute expressly provides that it is applicable to the Oregon State Bar.

(5) The Oregon State Bar has perpetual succession and a seal, and may sue and be sued. Notwithstanding the provisions of ORS 270.020 and 279.835 to 279.855 and ORS chapters 278, 279A, 279B and 279C, the bar may, in its own name, for the purpose of carrying into effect and promoting its objectives, enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

(6) No obligation of any kind incurred or created under this section shall be, or be considered, an indebtedness or obligation of the State of Oregon. [Amended by 1955 c.463 §1; 1965 c.461 §1; 1985 c.446 §1; 1997 c.249 §6; 2003 c.794 §194; 2007 c.60 §1]

9.025 Board of governors; number; eligibility; term; effect of membership. (1) The Oregon State Bar shall be governed by a board of governors consisting of 18 members. Fourteen of the members shall be active members of the Oregon State Bar, who at the time of appointment, at the time of filing a statement of candidacy, at the time of election, and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices. Four of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and may not be active or inactive members of the Oregon State Bar. A person charged with official duties under the executive and legislative departments of state government, including but not limited to elected officers of state government, may not serve on the board of governors. Any other person in the executive or

legislative department of state government who is otherwise qualified may serve on the board of governors.

(2) The board of governors shall divide the State of Oregon into regions for the purpose of determining eligibility to be a candidate for the board of governors, eligibility to be elected or appointed to the board of governors, and eligibility to vote in board of governors elections. The regions shall be based on the number of attorneys who have their principal offices in the region. To the extent that it is reasonably possible, the regions shall be configured by the board so that the representation of board members to attorney population in each region is equal to the representation provided in other regions. At least once every 10 years the board shall review the number of attorneys in the regions and shall alter or add regions as the board determines is appropriate in seeking to attain the goal of equal representation.

(3) Members of the board of governors may be elected only by the active members of the Oregon State Bar who maintain their principal offices in the regions established by the board. The regular term of a member of the board is four years. The board may establish special terms for positions that are shorter than four years for the purpose of staggering the terms of members of the board. The board must identify a position with a special term before accepting statements of candidacy for the region in which the position is located. The board shall establish rules for determining which of the elected members for a region is assigned to the position with a special term.

(4) No judge of a municipal, state or federal court or any other full-time judicial officer, shall be eligible for appointment or election to the board of governors.

(5) The term of any member of the board of governors shall terminate on the date of the death or resignation of the member, or if the member of the board is required to be a member of the Oregon State Bar, the term terminates on the date:

(a) Of the termination of active membership in the Oregon State Bar for any reason;

(b) When the member discontinues to maintain the principal office of law practice in the region in which it was maintained at the time of the appointment or election of the member; or

(c) When the member assumes office as a judge of a municipal, state or federal court, or fills a full-time judicial office.

(6) No member of the board of governors shall be eligible, during the term of office, for service pro

tempore as a judge of any municipal, state or federal court. [1973 c.114 §1; 1981 c.193 §3; 1993 c.307 §1; 1995 c.302 §1; 2009 c.218 §1; 2011 c.303 §1]

9.030 Voting rights; eligibility of members for board of governors and house of delegates. (1) An active member of the Oregon State Bar shall vote for members of the board of governors and house of delegates representing the region in which the bar member maintains the member's principal office.

(2) An active member of the Oregon State Bar is eligible to be a candidate for, and to be appointed or elected to, the board of governors or house of delegates to represent the region in which the bar member maintains the member's principal office. [Amended by 1971 c.103 §2; 1973 c.114 §2; 1995 c.302 §16; 2011 c.303 §2]

9.040 Election of governors; rules; vacancies.

(1) The election of governors shall be held annually on a date set by the board of governors. The election shall be by ballot. Any member of the Oregon State Bar who is eligible to serve as a governor for a region may file a signed statement of candidacy for the region. Statements of candidacy must be filed with the executive director of the bar. The board shall establish a deadline for filing statements of candidacy.

(2)(a) The executive director shall mail ballots containing the names of the candidates for the office of governor in each region to every active member in the region. Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director on or before the day of the election. The executive director shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections in lieu of using mailed ballots under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall be conducted so that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

(4) Notwithstanding subsection (1) of this section, the board may not conduct an election for a region if the number of candidates for the region is equal to or less than the number of open positions for the region. If the number of candidates for the region is equal to or less than the number of open positions for the region, the board shall declare the candidate or candidates elected on a date specified by the board.

(5) A vacancy in the office of elective member of the board of governors that occurs more than 24 months before the expiration of the term shall be filled for the remainder of the term by a governor elected at a special election held in the manner provided in this section as soon as possible after the occurrence of the vacancy, or as provided in subsection (4) of this section if there is only one candidate. The vacancy may be filled for the period between the occurrence of the vacancy and the election of a new governor by a person appointed by the board. A vacancy in the office of elective member that occurs 24 months or less before the expiration of the term shall be filled for the remainder of the term by a person appointed by the board.

(6) A vacancy in the office of public member of the board of governors shall be filled for the remainder of the term by a governor appointed by the board. [Amended by 1973 c.114 §3; 1979 c.252 §15; 1985 c.512 §1; 1995 c.302 §2; 2001 c.297 §1; 2003 c.192 §1; 2005 c.347 §1; 2011 c.303 §3]

9.042 Determination of eligibility of candidate for board of governors; procedure; review by Supreme Court.

(1) Upon the written request of any member of the bar, or upon the board's own motion, the board of governors shall determine the eligibility of a candidate for the board. A request under this section must be filed with the executive director within 30 days after the final day on which statements of candidacy are required to be filed. The board shall give written notice of the request to the candidate whose eligibility will be determined. The board shall provide an opportunity to the candidate to respond on the issue of the candidate's eligibility.

(2) The board shall give written notice to the candidate, and to any member of the bar who has requested a determination on the eligibility of the candidate under the provisions of this section, of the board's determination on the candidate's eligibility. The notice must be given not later than 75 days after the final day on which statements of candidacy are required to be filed. The notice shall state the specific grounds for the board's determination.

(3) A candidate, or a member of the bar who has requested a determination on the eligibility of a candidate under the provisions of this section, may file a petition for review of the board's determination with the Supreme Court. The petition for review must be filed within 15 days only after notice is given to a candidate or member under subsection (2) of this section.

(4) Upon the timely filing of a petition for review under subsection (3) of this section, the Supreme Court has jurisdiction to resolve all issues arising under the Oregon Constitution, state statutes, rules of the court and rules of the board that are related to the eligibility of candidates for the board.

(5) The board of governors shall establish procedures for the implementation of subsections (1) and (2) of this section. The procedures shall be designed to ensure that there will be a final determination on the eligibility of a candidate for the board no later than 10 days before the mailing of the ballots to members of the bar in the election that is affected by the determination.

(6) This section provides the exclusive procedure for challenging the eligibility of a candidate for the board. No other administrative or judicial proceeding may be brought to challenge the eligibility of a candidate for the board. [1993 c.307 §3; 2011 c.303 §4]

9.050 Recall of governors. (1) On petition signed by 25 percent of the members in any region for the recall of any governor elected from that region, the executive director shall serve notice as soon as possible on the governor informing the governor that the petition has been filed. If the governor does not resign within 10 days after the date the notice is served, the executive director shall mail ballots to each active member of the bar within the region eligible to vote, submitting the question whether the governor shall be recalled. If a majority of the members voting at the election vote in favor of the recall, the governor is recalled.

(2) On the affirmative vote of two-thirds of the entire membership of the board of governors, the board shall refer the question of the recall of any governor from any region to a vote of the members of that region. The executive director shall serve notice as soon as possible on the governor informing the governor that the board has approved a recall election. If the governor does not resign within 10 days after the notice is served, the executive director shall mail ballots to each active member of the bar within the region eligible to vote, submitting the question whether the governor shall be recalled. If a majority of the members voting at the

election vote in favor of the recall, the governor is recalled.

(3) The board of governors shall approve the ballot and any information submitted to the members in connection with a recall vote. [Amended by 1973 c.114 §4; 1979 c.252 §16; 2003 c.14 §8; 2005 c.347 §2]

9.060 Officers; election; vacancies. A president, president-elect and two vice presidents shall be elected by the governors each year immediately following the annual election of governors and before the newly elected governors have qualified. The president, president-elect and vice presidents shall be elected from among the attorney board members. All officers shall continue in office until their successors are elected and qualify. Vacancies in any of the offices shall be filled by the board by appointment for the remainder of the term. All officers shall take office as provided by the bar bylaws. [Amended by 1985 c.512 §2; 1991 c.726 §1; 1995 c.302 §3]

9.070 Duties of officers; deposit and disbursement of fees. (1) The president shall preside at all meetings of the house of delegates and of the board of governors, and in the president's absence or inability to act, the president shall designate another officer to preside. Other duties of the president, president-elect and vice presidents shall be such as the board of governors may prescribe.

(2) All fees shall be paid into the treasury of the state bar, and when so paid shall become part of its funds and shall be disbursed only on order of the board of governors. [Amended by 1981 c.193 §4; 1991 c.331 §1; 1995 c.302 §4]

9.080 Duties of board of governors; professional liability fund; quorum; status of employees of bar. (1) The state bar shall be governed by the board of governors, except as provided in ORS 9.136 to 9.155. The board is charged with the executive functions of the state bar and shall at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It shall have the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not inconsistent with law.

(2)(a) The board shall have the authority to require all active members of the state bar engaged in the private practice of law whose principal offices are in Oregon to carry professional liability insurance and shall

be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of active members of the state bar engaged in the private practice of law whose principal offices are in Oregon, all sums as may be provided under such plan which any such member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible. The board shall have the authority to assess each active member of the state bar engaged in the private practice of law whose principal office is in Oregon for contributions to such fund, to establish definitions of coverage to be provided by such fund and to retain or employ legal counsel to represent such fund and defend and control the defense against any covered claim made against such member. The board shall have the further authority to offer optional professional liability coverage on an underwritten basis above the minimum required coverage limits provided under such fund, either through such fund, through a separate fund or through any insurance organization authorized under the laws of the State of Oregon, and may do whatever is necessary and convenient to implement this provision. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.505.

(b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private practice of law if the attorney is a full-time employee of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, an attorney who practices law outside of the attorney's full-time employment is engaged in the private practice of law.

(c) For the purposes of paragraph (a) of this subsection, the principal office of an attorney is considered to be the location where the attorney engages in the private practice of law more than 50 percent of the time engaged in that practice. In the case of an attorney in a branch office outside Oregon and the

main office to which the branch office is connected is in Oregon, the principal office of the attorney is not considered to be in Oregon unless the attorney engages in the private practice of law in Oregon more than 50 percent of the time engaged in the private practice of law.

(3) The board may appoint such committees, officers and employees as it deems necessary or proper and fix and pay their compensation and necessary expenses. At any meeting of the board, two-thirds of the total number of members then in office shall constitute a quorum. It shall promote and encourage voluntary county or other local bar associations.

(4) Except as provided in this subsection, an employee of the state bar shall not be considered an "employee" as the term is defined in the public employees' retirement laws. However, an employee of the state bar may, at the option of the employee, for the purpose of becoming a member of the Public Employees Retirement System, be considered an "employee" as the term is defined in the public employees' retirement laws. The option, once exercised by written notification directed to the Public Employees Retirement Board, may not be revoked subsequently, except as may otherwise be provided by law. Upon receipt of such notification by the Public Employees Retirement Board, an employee of the state bar who would otherwise, but for the exemption provided in this subsection, be considered an "employee," as the term is defined in the public employees' retirement laws, shall be so considered. The state bar and its employees shall be exempt from the provisions of the State Personnel Relations Law. No member of the state bar shall be considered an "employee" as the term is defined in the public employees' retirement laws, the unemployment compensation laws and the State Personnel Relations Law solely by reason of membership in the state bar. [Amended by 1955 c.463 §2; 1975 c.641 §3; 1977 c.527 §1; 1979 c.508 §1; 1983 c.128 §2; 1985 c.486 §1; 1989 c.1052 §5; 1995 c.302 §17]

9.090 Appropriation and disbursement of funds. The board may make appropriations and disbursements from the funds of the bar and pay all necessary expenses. [Amended by 1969 c.314 §5; 1979 c.252 §17]

9.100 Statement of financial condition. The board shall have prepared annually a statement explaining the financial condition of the state bar for the 12 months preceding. Such statement shall be submitted

by the executive director promptly to the Chief Justice of the Supreme Court. [Amended by 1991 c.726 §2]

9.110 Board of governors to formulate rules.

The board of governors may formulate and declare rules for carrying out the functions of the state bar. [Amended by 1975 c.641 §4; 1981 c.193 §5; 1995 c.302 §5]

9.112 Board of governors to establish minimum continuing legal education requirements. The board of governors shall by rule establish minimum continuing legal education requirements for all active members of the Oregon State Bar. Rules adopted by the board of governors are subject to review by the Supreme Court. [1999 c.953 §3]

9.114 Mandatory training on duties relating to reporting child abuse. The Oregon State Bar shall require that attorneys complete one hour of training every three years designed to provide education on the duties of attorneys under ORS 419B.010. All training under this section shall be applied by the bar against the hours of continuing legal education required of attorneys as a condition of membership in the bar or as a condition to the practice of law in this state. Credit acquired under this section shall be applied first against any requirement of continuing legal education relating to ethics. [1999 c.953 §2]

HOUSE OF DELEGATES

9.136 House of delegates created; membership; terms. (1) The house of delegates of the Oregon State Bar is created. The house consists of elected and ex officio voting delegates. All delegates must be active members of the state bar except for the public members of the board of governors and the public members appointed by the board pursuant to ORS 9.145.

(2) The members of the board of governors of the Oregon State Bar are ex officio voting delegates.

(3) The chairperson of each Oregon State Bar section is an ex officio voting delegate.

(4) The elected president of each county bar association is an ex officio voting delegate. Not more than one county bar association from each county may be represented by a delegate under this subsection.

(5) Elected delegates shall be elected from the regions established by ORS 9.025 and an additional region composed of all areas not located in this state. Only active members of the bar may vote for delegates. A member who maintains a principal office in one of the

regions established by ORS 9.025 may vote for delegates from the region where the member maintains the office. A member who does not maintain a principal office in this state but who has an address on file with the bar may vote for delegates from the region composed of all areas not located in this state.

(6) Each region shall elect at least five delegates. If more than 550 active members maintain their principal offices in the region, the members shall elect delegates as follows:

(a) The members shall elect one delegate for each 100 members who maintain their principal offices in the region.

(b) The members shall elect one additional delegate if more than 50 members who maintain their principal offices in the region are not accounted for after the allocation provided for in paragraph (a) of this subsection.

(7) Elected delegates shall serve for terms of three years. A vacancy in the office of an elected delegate shall be filled for the remainder of the term by a delegate appointed by the board of governors.

(8) An elected delegate may not serve as a member of the board of governors, as a section chairperson or as a county bar association president during the delegate's term.

(9) For the purposes of this section, "county bar association" means a general purpose bar association established by the lawyers of one or more counties for the purpose of maintaining good professional relations between members of the bench and of the bar in the county or counties, and for the purpose of improving the administration of justice in the county or counties. [1995 c.302 §7; 2001 c.297 §2]

9.139 Powers of house of delegates. (1) The delegates at a meeting of the house of delegates may, by a vote of the majority of the delegates attending the meeting, do either of the following:

(a) Modify or rescind an action or decision of the board of governors.

(b) Direct the board of governors as to future action.

(2) The board of governors is bound by a decision of the house of delegates made in the manner prescribed by subsection (1) of this section.

(3) The power of the house of delegates to direct, modify or rescind an action or decision of the board of governors under subsection (1) of this section does not include the power:

(a) To invalidate payments previously made at the direction of the board;

(b) To direct, modify or rescind any assessment by the board for contributions to a professional liability fund established under ORS 9.080; or

(c) To direct, modify or rescind any other action or decision by the board that is subject to control, approval or review by the Supreme Court.

(4) Subsection (3)(c) of this section does not affect the ability of the house of delegates to formulate disciplinary rules under ORS 9.490. [1995 c.302 §8]

9.142 Rules for conduct of business; meetings.

(1) The board of governors shall formulate rules for the conduct of the business of the house of delegates. Rules adopted by the board become effective upon the adoption of the rules by the house of delegates. The president of the Oregon State Bar may call special meetings of the house. The president shall call a special meeting of the house if 25 or more delegates make a written request for a special meeting. A majority of the total number of delegates constitutes a quorum for any regular or special meeting of the house.

(2) The board of governors shall set a time and place for the annual meeting of the house of delegates. At the annual meeting, the board of governors shall submit to the house of delegates reports of the proceedings by the board since the last meeting of the house, reports of the officers and committees of the state bar and recommendations of the board. [1995 c.302 §9]

9.145 Public members. The board of governors shall appoint a public member delegate for each region established by ORS 9.025. A public member delegate shall serve a three-year term. A vacant public member delegate position shall be filled for the remainder of the term by a delegate appointed by the board of governors. The appointment of public member delegates shall be made by the board before the time set for the election of delegates under ORS 9.152. The term of a public member delegate shall commence on the same date that the term of an elected delegate commences. [1995 c.302 §10; 2001 c.297 §3]

9.148 Participation by nondelegates; referral of question for mail vote; petition for consideration or mail vote. (1) Active members of the Oregon State Bar may participate in the discussion of matters before the house of delegates, but only delegates may vote. The house of delegates may by rule impose restrictions on

participation by members of the state bar who are not delegates.

(2) The board of governors or the house of delegates, acting on its own motion, may refer to the members of the bar by mail ballot any question or measure considered by the board or house to be appropriate for submission to a vote of the members. Referral may be made under this subsection at any time.

(3) Active members of the state bar, by written petition signed by at least two percent of all active members, may have placed on the agenda of a meeting of the house of delegates any question or measure appropriate for a vote of the house. The petition shall contain the full text of the question or measure proposed. The petition must be filed with the executive director at least 45 days before the annual or special meeting of the house specified in the petition at the meeting when the petitioners seek to have the question or measure considered.

(4) Active members of the state bar, by written petition signed by no fewer than five percent of all active members, may request that the board of governors submit to a vote of the members any question or measure. The board of governors shall submit the question or measure to a vote of the members of the bar if the question or measure is appropriate for a vote of the members. The initiative petition must contain the full text of the question or measure proposed. [1995 c.302 §11]

9.150 Termination of delegate's term. The term of service of any delegate shall end upon the death or resignation of the delegate. If the delegate is an attorney delegate, the term of service shall end on the date that the delegate:

(1) Terminates the delegate's active membership in the Oregon State Bar for any reason;

(2) Ceases to maintain the delegate's principal office in the region the delegate was appointed or elected to represent;

(3) Takes office as a member of the board of governors, as a chairperson of a state bar section or as a county bar association president; or

(4) Is recalled pursuant to ORS 9.155. [1995 c.302 §12; 2001 c.297 §4]

9.152 Election of delegates; rules. (1) The election of delegates to the house of delegates shall be held annually on a date set by the board of governors. The election shall be by ballot. Any member of the Oregon State Bar who is eligible to serve as a member for

a region may file a signed statement of candidacy for the region. Statements of candidacy must be filed with the executive director of the state bar at least 30 days before the election.

(2)(a) The executive director shall mail ballots containing the names of the candidates for the office of delegate in each region to every active member in the region. Ballots may be delivered in person or by mail to the executive director, but must be received by the executive director on or before the day of the election. The executive director shall canvass the votes and record the results of the election.

(b) The board by rule may provide for electronic elections in lieu of using mailed ballots under paragraph (a) of this subsection. Rules adopted under this paragraph may provide for electronic distribution of election materials and electronic tabulation of votes.

(3) In a region in which only one position is to be filled, the candidate receiving the highest vote shall be declared elected. If a region has more than one position to be filled, the candidate with the most votes received shall be declared elected, the candidate with the next highest number of votes received shall then be declared elected, and so on until all positions are filled. The balloting shall be conducted so that only eligible active members can vote, and the secrecy of the ballot shall be preserved.

(4) Notwithstanding subsection (1) of this section, the board may not conduct an election for a region if the number of candidates for the region is equal to or less than the number of open positions for the region. If the number of candidates for the region is equal to or less than the number of open positions for the region, the board shall declare the candidate or candidates elected on a date specified by the board. [1995 c.302 §13; 2001 c.297 §5; 2003 c.192 §2; 2011 c.303 §5]

9.155 Recall of delegate. Upon the filing of a petition with the Oregon State Bar signed by 25 percent of the members of the bar from a region for the recall of a delegate elected from that region, the executive director shall serve notice on the delegate of the filing of the petition. If the delegate does not resign within 15 days after the date that the notice is served, the executive director shall mail ballots to each member of the bar within the region. The ballots shall submit the question of whether the delegate should be recalled. If a majority of the members voting in the election vote in favor of the recall, the delegate is recalled and the position held by the delegate becomes vacant upon the

executive director's declaration of the results of the election. [1995 c.302 §14; 2001 c.297 §6]

PRACTICE OF LAW; MEMBERSHIP IN THE BAR

9.160 Bar membership required to practice law; exceptions. (1) Except as provided in this section, a person may not practice law in this state, or represent that the person is qualified to practice law in this state, unless the person is an active member of the Oregon State Bar.

(2) Subsection (1) of this section does not affect the right to prosecute or defend a cause in person as provided in ORS 9.320.

(3) An individual licensed under ORS 696.022 acting in the scope of the individual's license to arrange a real estate transaction, including the sale, purchase, exchange, option or lease coupled with an option to purchase, lease for a term of one year or longer or rental of real property, is not engaged in the practice of law in this state in violation of subsection (1) of this section.

(4) A title insurer authorized to do business in this state, a title insurance agent licensed under the laws of this state or an escrow agent licensed under the laws of this state is not engaged in the practice of law in this state in violation of subsection (1) of this section if, for the purposes of a transaction in which the insurer or agent provides title insurance or escrow services, the insurer or agent:

(a) Prepares any satisfaction, reconveyance, release, discharge, termination or cancellation of a lien, encumbrance or obligation;

(b) Acts pursuant to the instructions of the principals to the transaction as scrivener to fill in blanks in any document selected by the principals;

(c) Presents to the principals to the transaction for their selection any blank form prescribed by statute, rule, ordinance or other law; or

(d) Presents to the principals to the transaction for their selection a blank form prepared or approved by a lawyer licensed to practice law in this state for one or more of the following:

(A) A mortgage.

(B) A trust deed.

(C) A promissory note.

(D) An assignment of a mortgagee's interest under a mortgage.

(E) An assignment of a beneficial interest under a trust deed.

(F) An assignment of a seller's or buyer's interest under a land sale contract.

(G) A power of attorney.

(H) A subordination agreement.

(I) A memorandum of an instrument that is to be recorded in place of the instrument that is the subject of the memorandum.

(5) In performing the services permitted in subsection (4) of this section, a title insurer, a title insurance agent or an escrow agent may not draft, select or give advice regarding any real estate document if those activities require the exercise of informed or trained discretion.

(6) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section unless the escrow agent provides to the principals to the transaction a notice in at least 12-point type as follows:

YOU WILL BE REVIEWING, APPROVING AND SIGNING IMPORTANT DOCUMENTS AT CLOSING. LEGAL CONSEQUENCES FOLLOW FROM THE SELECTION AND USE OF THESE DOCUMENTS. THESE CONSEQUENCES AFFECT YOUR RIGHTS AND OBLIGATIONS. YOU MAY CONSULT AN ATTORNEY ABOUT THESE DOCUMENTS. YOU SHOULD CONSULT AN ATTORNEY IF YOU HAVE QUESTIONS OR CONCERNS ABOUT THE TRANSACTION OR ABOUT THE DOCUMENTS. IF YOU WISH TO REVIEW TRANSACTION DOCUMENTS THAT YOU HAVE NOT YET SEEN, PLEASE CONTACT THE ESCROW AGENT.

(7) The exemption provided by subsection (4) of this section does not apply to any acts relating to a document or form that are performed by an escrow agent under subsection (4)(b), (c) or (d) of this section for a real estate sale and purchase transaction in which all or part of the purchase price consists of deferred payments by the buyer to the seller unless the escrow agent provides to the principals to the transaction:

(a) A copy of any proposed instrument of conveyance between the buyer and seller to be used in the transaction;

(b) A copy of any proposed deferred payment security instrument between the buyer and seller to be used in the transaction; and

(c) A copy of any proposed promissory note or other evidence of indebtedness between the buyer and seller to be used in the transaction.

(8) The notice and copies of documents that must be provided under subsections (6) and (7) of this section must be delivered in the manner most likely to ensure receipt by the principals to the transaction at least three days before completion of the transaction. If copies of documents have been provided under subsection (7) of this section and are subsequently amended, copies of the amended documents must be provided before completion of the transaction.

(9) Failure of any person to comply with the requirements of subsections (3) to (8) of this section does not affect the validity of any transaction and may not be used as a basis to challenge any transaction. [Amended by 2003 c.260 §1; 2007 c.319 §24; 2009 c.218 §4]

9.162 Definitions for ORS 9.160 to 9.166. As used in ORS 9.160 to 9.166 and 9.280, unless the context or subject matter requires otherwise:

(1) "Person" means a human being, a public body as defined by ORS 174.109, a public or private corporation, an unincorporated association, a partnership, a limited liability company or any other business entity created under law.

(2) "Restitution" means full, partial or nominal payment of pecuniary damages to a victim.

(3) "Victim" means any person who the court determines has suffered pecuniary damages as a result of any other person's violation of ORS 9.160. [1987 c.860 §2; 2009 c.218 §3]

9.164 Investigation of alleged violation of ORS 9.160. Upon written complaint of any person or upon its own initiative, the Board of Governors of the Oregon State Bar shall investigate any alleged violation of ORS 9.160. [1987 c.860 §3]

9.166 Enjoining practicing law without a license; restitution to victim. If the board has reason to believe that a person is practicing law without a license, the board may maintain a suit for injunctive relief in the name of the Oregon State Bar against any person violating ORS 9.160. The court shall enjoin any person violating ORS 9.160 from practicing law without a license. Any person who has been so enjoined may be punished for contempt by the court issuing the injunction. An injunction may be issued without proof of actual damage sustained by any person. The court shall order restitution to any victim of any person violating ORS 9.160. The prevailing party may recover its costs and attorney fees in any suit for injunctive relief brought under this section

in which the board is the plaintiff. [1987 c.860 §4; 2001 c.300 §57; 2003 c.260 §3; 2003 c.670 §6]

9.180 Classes of membership. All persons admitted to practice law in this state thereby shall become active members of the bar. Every member shall be an active member unless, at the member's request, or for reasons prescribed by statute, the rules of the Supreme Court, or the rules of procedure, the member is enrolled as an inactive member. An inactive member may, on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees, again become an active member. Inactive members shall not hold office or vote, but they shall have such other privileges as the board may provide. [Amended by 1961 c.499 §1; 1979 c.252 §18]

9.191 Annual membership fees; professional liability assessments. (1) Except as provided in subsection (2) of this section, the annual membership fees to be paid by members of the Oregon State Bar shall be established by the Board of Governors of the Oregon State Bar, and each year notice of the proposed fees for the coming year shall be published and distributed to the membership not later than 20 days before the annual meeting of the house of delegates. Any increase in annual membership fees over the amount established for the preceding year must be approved by a majority of delegates of the house of delegates voting thereon at the annual meeting of the house of delegates. The board shall establish the date by which annual membership fees must be paid.

(2) The board shall establish prorated membership fees payable for the year that a member is admitted to the practice of law in this state. If the new member is admitted on or before the date established by the board for the payment of annual membership fees under subsection (1) of this section, the new member must pay the full annual membership fees established under subsection (1) of this section.

(3) In establishing annual membership fees, the board shall consider and be guided by the anticipated financial needs of the state bar for the year for which the fees are established, time periods of membership and active or inactive status of members. Annual membership fees may include any amount assessed under any plan for professional liability insurance for active members engaged in the private practice of law whose principal offices are in Oregon as provided in ORS 9.080 (2). The board may not require that a member who has been admitted to practice law in Oregon for 50 years

or more pay membership fees, assessments or any amount under ORS 9.645, except that the member shall be required to pay any amount assessed under any plan for professional liability insurance if the member is engaged in the private practice of law and the member's principal office is in Oregon. [1969 c.602 §2 (enacted in lieu of 9.190); 1973 c.21 §1; 1975 c.641 §5; 1977 c.527 §2; 1979 c.508 §3; 1985 c.486 §2; 1985 c.512 §3; 1995 c.302 §18; 1999 c.171 §7; 2001 c.104 §2; 2003 c.192 §3]

9.200 Effect of failure to pay membership fees; reinstatement. (1) Any member in default in payment of membership fees established under ORS 9.191 (1) for a period of 90 days, or any person in default in payment of membership fees established under ORS 9.191 (2) for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The notice of delinquency shall be sent by the executive director, by registered or certified mail, to the member in default at the last-known post-office address of the member. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member. The names of all members suspended from membership for nonpayment of fees or contributions shall be certified by the executive director to the State Court Administrator and to each of the judges of the Court of Appeals, circuit and tax courts of the state.

(2) An active member delinquent in the payment of such fees or contributions shall not be entitled to vote.

(3) A member suspended for delinquency in payment of such fees or contributions shall be reinstated only on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees or contributions. [Amended by 1957 c.271 §1; 1961 c.499 §2; subsection (2) formerly part of 9.190; 1979 c.508 §4a]

9.210 Board of bar examiners; fees of applicants for admission to bar. The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar examiners. The Supreme Court shall also appoint two public members to the board who are not active or inactive members of the Oregon State Bar. The board shall examine applicants and recommend to the Supreme Court for admission to practice law those who fulfill the

requirements prescribed by law and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the bar. [Amended by 1979 c.252 §20; 1981 c.193 §6]

9.220 General requirements for admission. An applicant for admission as attorney must apply to the Supreme Court and show that the applicant:

(1) Is at least 18 years old, which proof may be made by the applicant's affidavit.

(2)(a) Is a person of good moral character and fit to practice law.

(b) For purposes of this section and ORS 9.025, 9.070, 9.110, 9.210, 9.250 and 9.527, the lack of "good moral character" may be established by reference to acts or conduct that reflect moral turpitude or to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice law.

(3) Has the requisite learning and ability, which must be shown by the examination of the applicant, by the judges or under their direction. However, no rule shall establish any maximum on the number of times an applicant may apply for and take the bar examination whenever presented if the reason for refusing admission to practice law is failure to pass the bar examination. [Amended by 1973 c.827 §2; 1981 c.193 §7; 1983 c.373 §2; 1985 c.599 §1; 1991 c.726 §3; 1995 c.302 §21; 1999 c.171 §3]

9.241 Practice of law by attorneys licensed in other jurisdictions; rules; fee. (1) Notwithstanding ORS 9.160, the Supreme Court may adopt rules to govern the appearance in judicial and administrative proceedings by attorneys who have not been admitted to practice law in this state. Subject to those rules, an attorney who has not been admitted to practice law in this state may appear as counsel for a party in an action or proceeding before a court, or may appear as counsel for a party in an administrative proceeding, if the attorney is associated with an active member of the Oregon State Bar.

(2) Notwithstanding ORS 9.160, the Supreme Court may adopt rules pursuant to the procedures established by ORS 9.490 that allow attorneys who have not been admitted to practice law in this state to practice

law in Oregon on a temporary basis, including performing transactional or prelitigation work.

(3) The Supreme Court may by rule require the payment of a fee by an attorney appearing as counsel for a party in an action or proceeding before a court under the provisions of subsection (1) of this section. All amounts collected from any fee imposed by the Supreme Court under the provisions of this subsection shall be deposited with the Oregon State Bar and are continuously appropriated to the Oregon State Bar. Amounts appropriated to the Oregon State Bar under this subsection may be used only for the funding of legal services provided through the Legal Services Program established under ORS 9.572 and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program and in collecting fees imposed under this subsection. [1993 c.213 §1; 2001 c.223 §1; 2003 c.260 §5]

9.242 Advice on law of foreign jurisdiction; rules. (1) The Supreme Court may adopt rules permitting a person licensed to practice law in a foreign jurisdiction to advise on the law of that foreign jurisdiction in Oregon without the necessity of compliance with ORS 9.160.

(2) As used in this section, "foreign jurisdiction" means any nation, country, state, political or other entity other than any state of the United States, the District of Columbia, Puerto Rico or a United States Territory or possession. [1989 c.1052 §2]

9.250 Order for admission; oath of qualified applicant. (1) If the Supreme Court finds that an applicant for admission as an attorney is 18 years of age or more, is of good moral character and fit to practice law, and possesses the requisite learning and ability to practice as an attorney in all the courts of this state, the court shall enter an order that the applicant be admitted to practice as an attorney. The order shall specify that admission take effect upon the applicant taking the oath required by subsection (2) of this section.

(2) The applicant shall execute a written oath that in the practice of law the applicant will support the Constitution and laws of the United States and of this state, and be of faithful and honest demeanor in office. The applicant is entitled to practice as an attorney after the State Court Administrator has received the oath executed under this subsection. [Amended by 1973 c.827 §3; 1981 c.193 §8; 1989 c.1052 §6; 1991 c.726 §4; 1997 c.388 §3]

9.261 Resignation of attorney. (1) An attorney may resign from membership in the bar pursuant to rules adopted by the board under ORS 9.542. After acceptance of the resignation by the Supreme Court, the attorney shall not be entitled to the rights nor subject to the disabilities or prohibitions incident to membership, except that the attorney is still subject to the power of the court in respect to matters arising prior to the resignation.

(2) An attorney who has resigned may be readmitted to practice only in compliance with rules adopted pursuant to ORS 9.542. [1989 c.1052 §8 (enacted in lieu of 9.260)]

9.280 Prohibition on acting as immigration consultant; definitions; exception. (1) It shall be a violation of ORS 9.160 for any person to engage in the business or act in the capacity of an immigration consultant in this state, for compensation, unless the person is an active member of the Oregon State Bar.

(2) As used in this section, unless the context or subject matter requires otherwise:

(a) "Immigration consultant" means any person who gives advice on an immigration matter, including but not limited to drafting an application, brief, document, petition or other paper or completing a form provided by a federal or state agency in an immigration matter.

(b) "Immigration matter" means any proceeding, filing or action affecting the immigration or citizenship status of any person which arises under immigration and naturalization law, executive order or presidential proclamation, or action of the United States Department of Homeland Security, the United States Department of Justice, the United States Department of State or the United States Department of Labor.

(3) This section does not apply to any person or qualified designated entity authorized by federal law to represent persons before the United States Department of Homeland Security or the United States Department of Justice. [1987 c.860 §5; 2007 c.61 §1]

ATTORNEY AND CLIENT RELATIONSHIP

9.310 Attorney defined; counsel. An attorney is a person authorized to represent a party in the written proceedings in any action, suit or proceeding, in any stage thereof. An attorney, other than the one who represents the party in the written proceedings, may also represent a party in court, or before a judicial officer, in which case the attorney is known as counsel, and the

authority of the attorney is limited to the matters that transpire in the court or before such officer at the time.

9.320 Necessity for employment of attorney; effect of employment. Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, unless otherwise specifically provided by law. Where a party appears by attorney, the written proceedings must be in the name of the attorney, who is the sole representative of the client of the attorney as between the client and the adverse party, except as provided in ORS 9.310. [Amended by 1975 c.451 §171]

9.330 Authority of attorney. An attorney has authority to bind the attorney's client in any of the proceedings in an action, suit or proceeding, by the attorney and client agreement, filed with the clerk or entered in the appropriate record of the court. The attorney also has authority to receive money or property claimed by the client in an action, suit or proceeding, during the pendency thereof, or within three years after judgment, and upon the payment or delivery thereof to discharge the claim or acknowledge satisfaction of the judgment. This section does not prevent a party from employing a new attorney to issue execution upon a judgment or to take other proceedings prescribed by law for its enforcement, and when the party does so, the authority of the former attorney ceases. [Amended by 1985 c.540 §23; 2003 c.576 §277]

9.340 Challenge by party of attorney's authority to appear for party. If it is alleged by a party for whom an attorney appears that the attorney does so without authority, and the allegation is verified by the affidavit of the party, the court may, if it finds the allegation true, at any stage of the proceedings relieve the party for whom the attorney has assumed to appear from the consequences of the attorney's acts.

9.350 Challenge of attorney's authority to appear for adverse party. The court or judge thereof may, on motion of either party and on showing reasonable grounds therefor, require the attorney for an adverse party to prove the authority under which the attorney appears, and until the attorney does so, may stay all proceedings by the attorney on behalf of the party for whom the attorney assumes to appear.

9.360 Compelling delivery by attorney of money or papers. When an attorney refuses to deliver over money or papers to a person from whom or for whom the attorney has received them in the course of professional employment, the attorney may be required by an order of the court in which a judicial proceeding was prosecuted or defended, or if none were prosecuted or defended, then by an order of the circuit court or judge thereof for the county where such attorney resides or may be found, to do so within a specified time, or show cause why the attorney should not be punished for a contempt.

9.370 Compelling delivery when attorney claims lien. If an attorney claims a lien, under the provisions of ORS 87.430, upon the money or papers subject to delivery under ORS 9.360, the court shall:

(1) Impose, as a condition of making the order, the requirement that the client give security, in form and amount to be directed, to satisfy the lien when determined in an action or suit;

(2) Summarily inquire into the facts on which the claim of a lien is founded, and determine the same; or

(3) Direct the trial of the controversy by a jury, or refer it, and upon the verdict or report, determine the same as in other cases. [Amended by 1975 c.648 §70; 1991 c.67 §2; 2003 c.14 §9]

9.380 Changing attorneys and terminating attorney-client relationship. (1) The attorney in an action or proceeding may be changed, or the relationship of attorney and client terminated, as follows:

(a) Before judgment or final determination, upon the consent of the attorney filed with the clerk or entered in the appropriate record of the court; or

(b) At any time, upon the order of the court, based on the application of the client or the attorney, for good and sufficient cause.

(2) The relationship of attorney and client may be terminated after the entry of a judgment or other final determination in an action or proceeding by the filing of a notice of termination of the relationship in the action or proceeding. The notice must be signed by the attorney and must state that all services required of the attorney under the agreement between the attorney and the client have been provided. [Amended by 1985 c.540 §24; 2003 c.576 §278; 2011 c.60 §1]

9.390 Notice of change or termination. When an attorney is changed, or the relationship of attorney

and client is terminated, as provided in ORS 9.380, written notice of the change or termination shall be given to the adverse party. Until the notice is given, the adverse party is bound to recognize the former attorney. [Amended by 2011 c.60 §2]

9.400 [1987 c.774 §8; renumbered 20.340 in 1997]

PROFESSIONAL CONDUCT

9.460 Duties of attorneys. An attorney shall:

(1) Support the Constitution and laws of the United States and of this state;

(2) Employ, for the purpose of maintaining the causes confided to the attorney, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of law or fact;

(3) Maintain the confidences and secrets of the attorney's clients consistent with the rules of professional conduct established pursuant to ORS 9.490; and

(4) Never reject, for any personal consideration, the cause of the defenseless or the oppressed. [Amended by 1989 c.1052 §9; 1991 c.726 §5]

9.490 Formulation of rules of professional conduct; prohibition on certain sanctions for violation of rule. (1) The board of governors, with the approval of the house of delegates given at any regular or special meeting, shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, shall have power to enforce the same. Such rules shall be binding upon all members of the bar.

(2) A court of this state may not order that evidence be suppressed or excluded in any criminal trial, grand jury proceeding or other criminal proceeding, or order that any criminal prosecution be dismissed, solely as a sanction or remedy for violation of a rule of professional conduct adopted by the Supreme Court. [Amended by 1995 c.302 §19; 1995 c.708 §2]

PROHIBITED CONDUCT

9.500 Solicitation of personal injury business by nonlawyer. No person shall solicit within the state any business on account of a claim for personal injuries to any person, or solicit any litigation on account of personal injuries to any person within the state, and any contract wherein any person not an attorney agrees to

recover, either through litigation or otherwise, any damages for personal injuries to any person shall be void.

9.505 Payment for referring claims resulting from personal injury or death. No person shall offer or promise payment of money or other consideration, or accept any offer or promise of payment of money or other consideration, nor shall any person pay or accept money or other consideration, for referring to an attorney any claim for damage resulting from personal injury or death. [1961 c.561 §1]

9.510 Solicitation by attorneys. No attorney shall solicit business at factories, mills, hospitals or other places, or retain members of a firm or runners or solicitors for the purpose of obtaining business on account of personal injuries to any person, or for the purpose of bringing damage suits on account of personal injuries.

9.515 Referral of claims, suits or actions between attorneys; division of fees. (1) Nothing contained in ORS 9.505 shall prevent referral of claims, suits or actions between attorneys.

(2) The provisions of ORS 9.505 shall not prohibit the referral of claims, suits or actions between attorneys or the dividing of fees for legal services with another lawyer consistent with the rules of professional conduct adopted pursuant to ORS 9.490. [1961 c.561 §§2,3; 1989 c.1052 §10]

9.520 Acceptance and prosecution of solicited claims. No attorney shall accept from a solicitor described in ORS 9.500 any claim for damages, or bring an action for damages on account of any claim obtained from such solicitor. Any agreement between an attorney and such solicitor regarding compensation to be paid to the attorney or solicitor is void.

BAR DISCIPLINARY PROCEEDINGS

9.527 Grounds for disbarment, suspension or reprimand. The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

(1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;

(2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence;

(3) The member has willfully disobeyed an order of a court requiring the member to do or forbear an act connected with the legal profession;

(4) The member is guilty of willful deceit or misconduct in the legal profession;

(5) The member is guilty of willful violation of any of the provisions of ORS 9.460 or 9.510;

(6) The member is guilty of gross or repeated negligence or incompetence in the practice of law; or

(7) The member has violated any of the provisions of the rules of professional conduct adopted pursuant to ORS 9.490. [Formerly 9.480; 1989 c.1052 §11]

9.528 Advice on conducting covert operations; participation in covert operations. (1) Notwithstanding ORS 9.527 (4), the attorneys listed in subsection (2) of this section:

(a) May provide legal advice and direction to the officers and employees of a public body, as defined in ORS 192.410, or to the officers and employees of the federal government, on conducting covert activities for the purpose of enforcing laws, even though the activities may require the use of deceit or misrepresentation; and

(b) May participate in covert activities that are conducted by public bodies, as defined in ORS 192.410, for the purpose of enforcing laws, or in covert activities that are conducted by the federal government for the purpose of enforcing laws, even though the participation may require the use of deceit or misrepresentation.

(2) The provisions of this section apply to the Attorney General, the Deputy Attorney General, assistant attorneys general, district attorneys, deputy district attorneys and any other attorney employed by, or working on behalf of, a public body, as defined in ORS 192.410, or the federal government. [2001 c.667 §2]

9.529 Status of proceedings relating to discipline, admission or reinstatement. Bar proceedings relating to discipline, admission and reinstatement are neither civil nor criminal in nature. They are sui generis and within the inherent power of the Supreme Court to control. The grounds for denying any applicant admission or reinstatement or for the discipline of attorneys set

forth in ORS 9.005 to 9.755 are not intended to limit or alter the inherent power of the Supreme Court to deny any applicant admission or reinstatement to the bar or to discipline a member of the bar. [1983 c.618 §3; 1997 c.249 §9]

9.532 Local professional responsibility committees; state professional responsibility board; powers; witnesses; subpoenas; oaths. (1) The board of governors shall create local professional responsibility committees to investigate the conduct of attorneys. The composition and authority of local professional responsibility committees shall be as provided in the rules of procedure.

(2) The board of governors shall also create a state professional responsibility board to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure.

(3)(a) The state professional responsibility board and local professional responsibility committees shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the member being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(b) A witness in an investigation conducted by the state professional responsibility board or a local professional responsibility committee who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The state professional responsibility board or local professional responsibility committees may enforce any subpoena issued pursuant to paragraph (a) of this subsection by application to any circuit court.

(c) Any member of the state professional responsibility board or a local professional responsibility committee may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection. [1983 c.618 §4]

9.534 Disciplinary board; procedure before board; oaths; subpoenas; hearing; record. (1) The Supreme Court shall appoint a disciplinary board to hear formal charges against members of the bar. The composition and authority of, and procedure before, the

disciplinary board or panels thereof shall be as provided in the rules of procedure.

(2) A member, formally accused of misconduct by the bar, shall be given reasonable written notice of the charges against the member, a reasonable opportunity to defend against the charges, the right to be represented by counsel, and the right to examine and cross-examine witnesses. The member shall also have the right to appear and testify, and the right to the issuance of subpoenas for attendance of witnesses and the production of books, papers or documents in the defense of the member.

(3) Rules of evidence and discovery in disciplinary proceedings shall be as provided in the rules of procedure.

(4)(a) The disciplinary board shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the accused member, and the production of books, papers and documents pertaining to the matter before the disciplinary board.

(b) A witness in a disciplinary proceeding who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to paragraph (a) of this subsection may be enforced by application to any circuit court.

(c) Any member of the disciplinary board may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection.

(5) The hearing before the disciplinary board shall be held in the county in which the member charged maintains an office for the practice of law, the county in which the member resides, or the county in which the offense is alleged to have been committed. With the consent of the member, the hearing may be held elsewhere in the state.

(6) A record of all hearings shall be made and preserved by the disciplinary board. [1983 c.618 §5]

9.536 Disciplinary board decision; appeal to Supreme Court; review; costs. (1) Upon the conclusion of a hearing, the disciplinary board shall file with the State Court Administrator a written decision in the matter. The Oregon State Bar or the accused may seek review of the decision by the Supreme Court. Such review shall be a matter of right upon the request of either party. Otherwise, the decision of the disciplinary board shall be final. The procedure for seeking

discretionary review and on review shall be as provided in the rules of procedure.

(2) When a matter is before the Supreme Court for review, the court shall consider the matter de novo and may adopt, modify or reject the decision of the disciplinary board in whole or in part and thereupon enter an appropriate order.

(3) The Supreme Court, or the disciplinary board in cases where its decision has become final, may award judgment in any bar proceeding for all or part of a party's actual and necessary costs and disbursements incurred. The procedures for recovery of such costs and disbursements shall be the same as in civil cases.

(4) The State Court Administrator shall enter any judgment for costs and disbursements in the records of the Supreme Court and shall forward a certified copy of the judgment to the clerk of the circuit court of the county in which the member or applicant resides or maintains an office for the practice of law or other business. If a judgment for costs and disbursements is entered against the bar, the State Court Administrator shall forward a certified copy of the judgment to the clerk of the circuit court of the county in which the bar maintains its principal place of business. On receipt of a certified copy of the judgment, the clerk of the circuit court shall file it and cause it to be entered in the circuit court register. Such judgment shall thereafter have the same force and effect, may be enforced by execution in the same manner, may be extended in the same manner and, upon payment, shall be satisfied in the same manner as other judgments entered in circuit court. [1983 c.618 §6; 1985 c.540 §25; 1991 c.790 §2; 1997 c.149 §1; 2003 c.192 §4; 2003 c.576 §175]

9.537 Civil immunity of witnesses, bar officials and employees. (1) Any person who has made a complaint to the bar concerning the conduct of an attorney, or who has given information or testimony in or relative to a proposed or pending admission, reinstatement or disciplinary proceeding shall be absolutely immune from civil liability for any such acts.

(2) The Oregon State Bar, its officers, the members of local professional responsibility committees, the state professional responsibility board, the board of bar examiners, the board of governors, the disciplinary board, and bar counsel, investigators and employees of the bar shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending admission, reinstatement or disciplinary proceedings. [1983 c.618 §7]

9.539 Application to admission and reinstatement proceedings. ORS 9.534 and 9.536 apply to admission and reinstatement proceedings to the extent provided in the rules of procedure. However, the Supreme Court shall review the decisions of the disciplinary board in all such matters. [1983 c.618 §8]

9.542 Rules for investigation of attorneys and applicants; authority of board of governors to require fingerprints. (1) The board of governors, subject to the approval of the Supreme Court, may adopt rules of procedure relating to the investigation of the conduct of attorneys and applicants for admission and reinstatement to the bar, and relating to the conduct of admission, reinstatement and disciplinary proceedings.

(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the board of governors may require the fingerprints of a person who is applying for admission or reinstatement to the bar or for renewal of a license issued by the bar. [1983 c.618 §9; 2005 c.730 §56]

9.555 Copy of complaint or notice to Attorney General when bar is plaintiff or defendant; exceptions. (1) Upon commencement of any action in which the bar is a plaintiff, the bar shall mail a copy of the complaint by certified or registered mail, return receipt requested, to the Attorney General and shall file proof of such mailing with the court.

(2) When the bar is served with summons and complaint in an action in which the bar is named as a defendant, the bar shall give notice to the Attorney General by mailing a copy of the summons and complaint to the Attorney General by certified or registered mail, return receipt requested, within five working days of the date of service on the bar.

(3) The notice provisions of subsections (1) and (2) of this section shall not apply to matters involving admission of any applicant to the bar, discipline or reinstatement of a member of the bar or claims made against a member of the bar for which the professional liability fund of the bar may be obligated to pay money damages under ORS 9.080 (2). [1985 c.446 §3]

9.565 Tax return information from Department of Revenue; use. The Department of Revenue may furnish to the Oregon State Bar the name and address, if known, of any person admitted to practice law in this state who prepares a return or report permitted or required to be filed with the department for another, and may also furnish to the bar the name and address of

the taxpayer, in instances where the department has reasonable grounds to believe the person preparing the return or report prepared it in violation of any provision of ORS 9.460 to 9.542 or 9.705 to 9.755 or the disciplinary rules adopted thereunder. The department shall provide a statement of the basis for its belief that a violation may have occurred. The bar and any person, board or committee described in ORS 9.537 (2), shall use the names, addresses and information furnished under this section solely in the enforcement of ORS 9.460 to 9.542 or 9.705 to 9.755 or the disciplinary rules adopted thereunder. Any information disclosed by the department pursuant to this section may be used in any bar proceeding relating to the discipline, admission or reinstatement of the person preparing the return or report. [1985 c.602 §10; 1999 c.171 §2]

ATTORNEY ASSISTANCE

9.568 State lawyers assistance committee; personal and practice management assistance committees; rules; confidentiality; civil immunity. (1)(a)

The board of governors of the Oregon State Bar may create a state lawyers assistance committee for the purpose of implementing a lawyers assistance program and, pursuant thereto, authorize the state lawyers assistance committee to investigate and resolve complaints or referrals regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence.

(b) The board may adopt rules for the operation of the state lawyers assistance committee.

(c) The purpose of the state lawyers assistance committee is the provision of supervision and assistance to those lawyers whose performance or conduct may impair their ability to practice law or their professional competence.

(2)(a) In addition to the state lawyers assistance committee created under subsection (1) of this section, the board may create personal and practice management assistance committees to provide assistance to lawyers who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct. Personal and practice management assistance committees may also provide advice and training to lawyers in practice management.

(b) The board may adopt rules governing the provision of assistance to lawyers by personal and practice management assistance committees.

(c) The purpose of a personal and practice management assistance committee is the provision of

completely confidential assistance, advice and training to lawyers in a manner that fosters maximum openness in communications between a lawyer and the committee and that encourages a lawyer to seek assistance from the committee.

(3) Any information provided to or obtained by the state lawyers assistance committee or any personal and practice management assistance committee, or provided to or obtained by any agent of those committees, is:

(a) Confidential;

(b) Exempt from the provisions of ORS 192.410 to 192.505;

(c) Not discoverable or admissible in any civil proceeding without the written consent of the lawyer to whom the information pertains; and

(d) Not discoverable or admissible in any disciplinary proceeding except to the extent provided by rules of procedure adopted pursuant to ORS 9.542.

(4) The limitations placed on the disclosure and admissibility of information in this section shall not apply to information relating to a lawyer's noncooperation with the state lawyers assistance committee or any agent of the committee, or to information otherwise obtained by the bar from any other source.

(5) The board may authorize the state lawyers assistance committee to act as the monitor or supervisor for lawyers placed on probation or in diversion in connection with a disciplinary investigation or proceeding, or who have been conditionally admitted or reinstated to the practice of law. Any information provided to or obtained by the state lawyers assistance committee when the committee acts as a monitor or supervisor under the provisions of this subsection is not subject to subsection (3) of this section.

(6) All meetings of the state lawyers assistance committee and the personal and practice management assistance committees are exempt from the provisions of ORS 192.610 to 192.690.

(7) Any person who makes a complaint or referral to the bar as to the competence of an attorney or provides information or testimony in connection with the state lawyers assistance committee or any personal and practice management assistance committee is not subject to an action for civil damages as a result thereof.

(8) With respect to their acts in connection with the state lawyers assistance committee or any personal and practice management assistance committee, the same privileges and immunities from civil and criminal proceedings that apply to prosecuting and judicial officers of the state shall apply to the board, all officers

and employees of the bar, and the members of the committees and their agents.

(9) For the purposes of this section, agents of the state lawyers assistance committee or a personal and practice management assistance committee include investigators, attorneys, counselors, staff personnel and any other individual or entity acting on behalf of or at the request of the committees. [Formerly 9.545; 2005 c.347 §3]

LEGAL SERVICES PROGRAM

9.572 Bar to establish Legal Services Program; director; advisory and technical committees. (1) The Oregon State Bar shall by rule establish a Legal Services Program. The program shall provide standards and guidelines for legal service providers receiving funding from the program. The rules shall also provide methods for evaluating legal service providers. Funding received under the program may be used only for the provision of legal services to the poor without charge and for expenses incurred by the Oregon State Bar in the administration of the Legal Services Program.

(2) The Oregon State Bar shall appoint a director of the Legal Services Program established under this section. The bar shall prescribe the duties of the director and fix the salary of the director.

(3) The Oregon State Bar may establish any advisory or technical committees it deems necessary to advise the bar in establishing and operating the Legal Services Program. [1997 c.801 §73; 2011 c.595 §99]

9.576 Review of providers; mediation; hearing; suspension of funding. (1) The director of the Legal Services Program appointed under ORS 9.572 shall periodically review legal service providers who receive funding from the program. If the director determines that there are reasonable grounds to believe that a provider is not in substantial compliance with the standards and guidelines adopted under ORS 9.572, the director shall negotiate with the provider in an attempt to bring the program into compliance.

(2) If the director of the Legal Services Program is unable to negotiate satisfactory compliance with the standards and guidelines of the program established by the Oregon State Bar under ORS 9.572, the director shall give the provider 30 days in which to bring the program into compliance. If the director concludes that the program is not in compliance at the end of the 30-day period, the matter shall be submitted to mediation. The director and the provider shall jointly select a mediator.

If the director and provider are unable to select a mediator within 15 days after the expiration of the 30-day period, any presiding judge for a judicial district may appoint a mediator upon the petition of the director.

(3) If mediation under subsection (2) of this section fails to produce a resolution of the matter, the director shall give the provider notice that a hearing will be held not sooner than 30 days after the date the notice is given. If, after hearing, the director determines that the provider is not in compliance with the standards and guidelines of the program and that the provider has failed to show satisfactory progress towards achieving compliance, the director shall suspend further funding of the program until such time as the provider makes a showing of compliance. [1997 c.801 §74; 2011 c.595 §100]

9.577 Legal Aid Account. (1) The Legal Aid Account is established in the General Fund of the State Treasury. All moneys in the account are continuously appropriated to the State Court Administrator for the purpose of the distributions required by this section. Interest earned by the account shall be credited to the General Fund.

(2) Each month, the State Court Administrator shall transfer to the Legal Aid Account, from amounts collected by the State Court Administrator as fees and charges in the circuit courts, the amounts necessary to make the distributions required by subsection (3) of this section.

(3) Each biennium, the State Court Administrator shall distribute to the Oregon State Bar \$11.9 million from the Legal Aid Account. Distributions under this section shall be made by the State Court Administrator in eight quarterly installments of equal amounts, with the first distribution to be made as soon as possible after July 1, 2011. Amounts distributed to the Oregon State Bar under this subsection may be used only for the funding of the Legal Services Program established under ORS 9.572. [2011 c.595 §3a]

Note: 9.577 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 9 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

9.578 Other funding sources. The Oregon State Bar may apply for, accept and expend moneys from any public or private source, including the federal government, made available for the purpose of

establishing or funding legal service programs in Oregon. [1997 c.801 §75]

CLIENT SECURITY FUND

9.615 Definition for ORS 9.615 to 9.665. As used in ORS 9.615 to 9.665, "client security fund" means a fund created under ORS 9.625. [1967 c.546 §2]

9.625 Plan to relieve client losses; rules. The board of governors may adopt a plan to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The board may adopt rules of procedure to carry out the plan. The insurance laws of the state shall not apply to this fund. [1967 c.546 §3; 1975 c.641 §10; 1989 c.1052 §12]

9.635 Sources of client security fund. A client security fund may include:

- (1) Transfers by the board of governors from other funds of the state bar;
- (2) Voluntary contributions and payments by members under ORS 9.645;
- (3) Claims recovered under ORS 9.665; and
- (4) Income from investments of the fund. [1967 c.546 §4]

9.645 Annual payment by state bar members. To establish and maintain a client security fund, the board of governors may require an annual payment by each active member of the state bar. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual membership fee. [1967 c.546 §5; 1975 c.641 §11; 1979 c.314 §1; 1983 c.122 §1; 1989 c.1052 §25; 1991 c.726 §6]

9.655 Investigation of claim of loss; subpoena. (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss payable from the client security fund, the board of governors or its designated representative shall determine if the person named in the claim as the attorney whose dishonest conduct caused the loss was an active member of the Oregon State Bar engaged in the practice of law in Oregon at the time of the transaction out of which the claim arose and

whether the transaction arose out of the person's practice of law in Oregon. The board or designated representative shall then determine whether the loss was caused by the person's dishonest conduct and if the person:

- (a) Has been found guilty of a crime arising out of the dishonest conduct;
- (b) In the case of a claim of loss of \$5,000 or less, has been disbarred, suspended or reprimanded in disciplinary proceedings or has resigned from the bar due to circumstances arising out of the dishonest conduct; or
- (c) Is a judgment debtor under the money award portion of a judgment entered in favor of the client in a proceeding arising out of the dishonest conduct, and execution issued on the judgment has been returned uncollected or issuance of execution would be a useless act.

(2) At any time after a claim is filed by a client claiming a pecuniary loss payable from the client security fund, the board or the board's representative may compel by subpoena the person named in the claim as the attorney whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records and documents pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in the circuit court, and may be enforced by order of the circuit court for the county in which the person was served. [1967 c.546 §6; 1975 c.641 §12; 1979 c.383 §1; 1989 c.1052 §13; 2003 c.576 §279; 2005 c.347 §4; 2007 c.59 §1]

9.657 Immunity from civil liability. (1) Any person who has made a claim with the client security fund committee of the bar concerning a loss allegedly caused by the intentional dishonest conduct of the person's lawyer, or who has given information to the bar relative to a proposed or pending client security fund claim shall be absolutely immune from civil liability for such acts.

(2) The Oregon State Bar, its officers, the members of the client security fund committee, the board of governors, bar counsel, investigators and employees of the bar shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending client security fund claims. [1989 c.1052 §4]

9.665 Authority for reimbursement of client; waiver of conditions; subrogation for amount paid. (1)

Except as provided in this section, reimbursement from the client security fund is discretionary with the board of governors.

(2) The board shall not authorize payment unless the conditions of ORS 9.655 (1) have been found to exist. However, the board may, in its sole discretion, waive one or more of the conditions of ORS 9.655 (1) in cases of extreme hardship or special and unusual circumstances. The state bar is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and remedies of that client against the attorney whose dishonest conduct caused the loss, against the estate of the attorney or against any other person liable for the loss. [1967 c.546 §7; 1989 c.1052 §14; 1991 c.726 §7; 2003 c.14 §10]

LAWYER TRUST ACCOUNTS

9.675 Mandatory certification and disclosures for lawyer trust accounts. (1) An active member of the Oregon State Bar shall certify annually to the bar whether the member maintains any lawyer trust accounts in Oregon. If a member maintains one or more lawyer trust accounts, the member must disclose the financial institution in which each account is held and the account number for each account. The executive director of the Oregon State Bar shall prescribe a form and due date for the certification and disclosures required by this section.

(2) If a member does not file the certificate and disclosures required by this section by the due date prescribed under subsection (1) of this section, the executive director shall send written notice of the default to the member. The notice shall be sent by registered or certified mail to the last-known post-office address of the member. If a member does not file the certificate and disclosures required by this section within 60 days after the date the notice is mailed, the person's membership in the bar is automatically suspended. The executive director shall provide the names of all persons suspended under this section to the judges of the circuit courts, the Court of Appeals and the Oregon Tax Court.

(3) A person suspended under this section may be reinstated to membership in the bar only if the person pays all required fees and contributions and complies with all rules of procedure and rules of the Supreme Court relating to reinstatement. [2011 c.304 §2]

9.685 Trust account overdraft notification program. (1) Subject to the requirements of ORS 9.490,

the Supreme Court may establish a trust account overdraft notification program for attorneys.

(2) The board of governors may adopt regulations for the administration of a trust account overdraft notification program established under this section. Regulations adopted under this subsection are binding upon all members of the bar only after those regulations are approved by the Supreme Court. [Formerly 9.132]

SEARCH OR SEIZURE OF LAWYER FILES OR PREMISES

9.695 Status of files or work premises of lawyer; inadmissibility of evidence subject to search or seizure. (1) Notwithstanding ORS 133.535, the files, papers, effects or work premises of a lawyer relating to the provision of legal service by the lawyer shall not be subject to search or seizure by any law enforcement officer, either by search warrant or otherwise.

(2) The provisions of subsection (1) of this section do not apply where there is probable cause to believe that the lawyer has committed, is committing or is about to commit a crime.

(3) As used in this section, "lawyer" means a member of the Oregon State Bar or a person licensed to practice law in any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(4) Evidence or the fruits thereof obtained in violation of this section shall be inadmissible in any criminal or civil action or proceeding, except for an action or suit brought for violation of this section or the rights protected thereby. [1981 c.908 §1]

ASSUMING PRACTICE OF NONPERFORMING ATTORNEY

9.705 Definitions for ORS 9.705 to 9.755. As used in ORS 9.705 to 9.755:

(1) "Affected attorney" means a member or former member of the Oregon State Bar whose law practice is placed within the jurisdiction of the court or as to whom a petition has been filed to place such law practice within the jurisdiction of the court.

(2) "Law practice" means a practice conducted by an individual, a partnership or a professional corporation. [1979 c.252 §2; 1985 c.512 §4; 1989 c.1052 §15]

9.710 Jurisdiction of circuit court when attorney fails to devote adequate attention to practice or to interests of clients. The circuit court of the county

in which an attorney engaged in the practice of law in this state maintains or has maintained a principal office shall have jurisdiction as provided in ORS 9.705 to 9.755 whenever such attorney:

(1) Without good reason has ceased to devote or is incapable of devoting time and attention, personally or through another attorney, to the law practice of the attorney; or

(2) For any reason has ceased to devote or is incapable of devoting the time and attention, personally or through another attorney, to the law practice of the attorney which is necessary to protect the interests of the clients of the attorney. [1979 c.252 §3; 1985 c.512 §5; 1989 c.1052 §16]

9.715 Effect of failure to respond to inquiry from bar. If the affected attorney fails to respond or respond adequately within seven days to an inquiry sent by registered mail or by certified mail with return receipt from the bar to the last-known address of that attorney regarding the alleged failure of the affected attorney to serve and protect adequately the interests of that client of the attorney, either personally or through another attorney, the board of governors may petition the court to take jurisdiction over the law practice of an affected attorney as provided in ORS 9.705 to 9.755. Notice of the filing of the petition, and a copy thereof, shall be served upon the affected attorney, or if appropriate, upon the heirs of the affected attorney, personal representatives or conservators together with notice of time and place for hearing upon said petition. Service may be made by personal or substituted service as provided by law for service of a summons, or in the alternative, may be made by certified or registered mail, return receipt requested, addressed to the affected attorney at the latest address shown on the official membership records of the Oregon State Bar or to the personal representative or conservator of the affected attorney at the latest address shown in the probate proceeding. The court may prescribe additional alternative methods of service as it deems necessary to protect the interest of the affected attorney. Hearing upon said petition shall be held not sooner than five days, nor more than 15 days, after the filing of the petition. [1979 c.252 §4; 1985 c.512 §6; 1989 c.1052 §17; 1991 c.249 §2]

9.720 Court assuming law practice; hearing. If after notice and an opportunity to be heard the court finds that it has jurisdiction and finds that the assumption of such jurisdiction is necessary in order to protect the interest of the clients of the affected

attorney or to protect the public interest, the court may, by appropriate order, immediately take jurisdiction over the law practice of the affected attorney, including all legal files, clients' trust funds, clients' property and all books, records, funds and property used in the law practice of the affected attorney. [1979 c.252 §5]

9.722 Temporary protective order.

Notwithstanding ORS 9.715 and 9.720, the court may enter a temporary order authorizing the Oregon State Bar to take specific action to protect the interests of an attorney's clients, an attorney's employees or other persons without giving notice of the petition to the affected attorney, to the heirs of the affected attorney or to the personal representative or conservator for the attorney if the bar establishes by affidavit or by verified petition that immediate and irreparable injury, loss or damage will result to a client of the attorney, an employee of the attorney or other person if the temporary order is not entered. [1997 c.135 §2]

9.725 Appointment of custodians of law practice; duties of custodian and court. (1) If the court assumes jurisdiction under ORS 9.705 to 9.755, it shall appoint one or more attorneys who are members in good standing of the Oregon State Bar to act as custodian of the law practice of the affected attorney. Immediately upon appointment, such custodian shall take possession and control of all property comprising the law practice of the affected attorney. The court may order any custodian appointed under ORS 9.705 to 9.755 to do one or more of the following:

- (a) Examine the files and records of the law practice and obtain information as to any pending matters which may require attention;
- (b) Notify persons and entities who appear to be clients of the affected attorney that the court has assumed jurisdiction and inform such persons that it may be in their best interest to obtain other legal counsel;
- (c) Apply for extensions of time pending employment of other counsel by the client;
- (d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;
- (e) Give notice to appropriate persons and entities who may be affected, other than clients, that the court has assumed jurisdiction;
- (f) Arrange for the surrender or delivery of clients' papers or property; and

(g) Do such other acts as the court may direct to carry out the purposes of ORS 9.705 to 9.755.

(2) The court shall have jurisdiction over the files, records and property of the affected attorney for the purposes of ORS 9.705 to 9.755, and may make all orders necessary or appropriate to protect the interest of the affected attorney, the clients of the affected attorney and the public. [1979 c.252 §6; 1985 c.512 §7; 1989 c.1052 §18]

9.730 Restriction of custodian's practice. An attorney appointed as custodian under ORS 9.705 to 9.755, and any professional corporation, partner, associate or person sharing office with such custodian shall be prohibited from accepting employment by any client of the affected attorney as to any legal matter pending at the time of the custodian's appointment, provided, however, that any act done by such custodian pursuant to order of the court under ORS 9.705 to 9.755 shall not be deemed acceptance of employment. [1979 c.252 §9; 1985 c.512 §8; 1989 c.1052 §19]

9.735 Compensation of custodian. The court shall enter a judgment awarding reasonable compensation and expenses to any attorney who acts as custodian under ORS 9.705 to 9.755. The judgment shall be against the affected attorney or the estate of the affected attorney. The judgment is a lien upon all nontrust funds, office furnishings, supplies, equipment, library and other personal property used in the law practice of the affected attorney retroactive to the date of filing of the petition for jurisdiction under ORS 9.705 to 9.755. The judgment lien is subordinate to nonpossessory liens and security interest created prior to its taking effect, and may be foreclosed as provided in ORS chapter 87. [1979 c.252 §11; 1985 c.512 §9; 1989 c.1052 §20; 2003 c.576 §225]

9.740 Court orders appealable; stay. Jurisdictional and final orders of the circuit court pursuant to ORS 9.705 to 9.755 are appealable but may not be stayed except as ordered by the circuit court or any appellate court. [1979 c.252 §7; 1985 c.512 §10; 1989 c.1052 §21]

9.745 Statutes of limitation suspended. Any applicable statute of limitations or time limit for the filing set by statute or rule of court as it relates to the affected attorney's clients shall be suspended automatically by the filing of a petition for jurisdiction under ORS 9.705 to 9.755 for a period of 120 days following the date of filing of such petition. [1979 c.252 §8; 1985 c.512 §11; 1989 c.1052 §22]

9.750 Applicability of lawyer-client privilege to examination of files and records. Persons examining the files and records of the law practice of the affected attorney pursuant to ORS 9.705 to 9.755 shall observe the lawyer-client privilege and shall make disclosure only to the extent necessary to carry out the purposes of ORS 9.705 to 9.755. Such disclosure is a disclosure which is reasonably necessary for the accomplishment of the purpose for which the affected attorney was consulted. The appointment of such custodian shall not affect the lawyer-client privilege which privilege shall apply to communications by or to the custodian to the same extent as it would have applied to communications by or to the affected attorney. [1979 c.252 §10; 1985 c.512 §12; 1989 c.1052 §23]

9.755 Final report of custodian; petition for compensation; court approval. Whenever the purposes of ORS 9.705 to 9.755 have been accomplished with respect to the law practice of an affected attorney, the custodian attorney shall file with the court a final report and accounting of all funds and property coming into the custody of that attorney. A copy thereof and a copy of the petition of custodian attorney for compensation and expenses shall be mailed to all persons upon whom service was made pursuant to ORS 9.715. Upon approval by the court an order shall be entered approving the final report and accounting, fixing the amount of compensation and expenses to be allowed to the custodian attorney, and discharging the custodian attorney from further duties. [1979 c.252 §12; 1985 c.512 §13; 1989 c.1052 §24]

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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.
- (H) "Executive Director" means the Executive Director of the Oregon State Bar.
- (I) "Governor" means a member of the Board of Governors of the Oregon State Bar.
- (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 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 Executive Director will develop a plan to visit the groups mentioned above with substantial participation by both the President and the 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.

(b) Nominations for the office of Governor from a region must be in writing. The Executive Director will prepare the forms for these nominations and supply the forms to the applicants. Applicants must complete and file the form with the Executive Director by the date set by the Board. The 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 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 to perform one or more of its authorized functions, including 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) Vice Presidents

The Vice Presidents perform duties as the Board directs.

Subsection 2.201 Election

(a) President and Vice-Presidents Election

The President, President-elect and two Vice-Presidents are elected each year at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect. The other two lawyer members of the third-year class are the only candidates for Vice-President.

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the 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 Executive Director not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

Election requires voting in person. Voting by proxy is not allowed. If there is only one nominee for an office or in the case of the Vice Presidents only two nominees for two positions, the nominee or nominees are deemed elected without balloting. When there is more than one nominee for an office, balloting for election will be as follows: Each member present is given a ballot printed with the names of the nominees for the office. If additional nominations have been made that are not on the printed ballot, those names must be written on the ballot. Each member must vote for his/her first choice only. If after the first ballot no one person receives more than 50 percent of the votes, the last candidate is eliminated and another ballot is cast.

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 12 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

Subject to ORS Chapter 9 and these Policies, the conduct and voting at board meetings are governed by the most recent edition of Robert's Rules of Order.

Subsection 2.401 Regular Meetings

Meetings of the Board must be held at such times and places as the Board determines, and the Executive Director must provide notice of the time and place. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

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 Executive Director. If, within five days after a written request by three Governors is filed with the Executive Director, the President fails or refuses for any reason to set a time for and give notice of a special meeting, the Executive Director or some other person designated by the three Governors joining in the request, may set a time for and give notice of the meeting. The date fixed for the meeting may be no less than five nor more than ten days from the date of the notice. The Executive Director or the person designated by the three Governors in their request must sign the notice of a special meeting. The notice must set forth the day, hour, place and purpose of the meeting. The notice must be in writing and be communicated to each Governor at his or her principal office address. Notice must be given to each Governor, unless waived. A written waiver by or actual attendance of a Governor is the equivalent of notice to that Governor. Special meetings may consider only the matters set forth in the notice of the meeting.

Subsection 2.403 Emergency Meetings

When the President determines that a matter requires immediate attention of the Board, an emergency meeting or conference call may be called with 24-hour notice to members of the Board. Notice must indicate the subject matter to be considered. Conference calls and emergency meetings can consider only the matters for which notice is given. If all members of the Board are present at the meeting or participating in the conference call, any actions taken are final. If any member does not participate or receive notice, the matters decided must be ratified at the next Board meeting.

Subsection 2.404 Minutes

The Executive Director or his or her designee must keep accurate minutes of all board meetings. The vote of each member of the Board, on any matter considered by it, must be recorded in the minutes if the vote is not unanimous.

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 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 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 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 Executive Director, the bar official must notify the 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 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 Executive Director.

(b) If the bar official is the 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 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 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

If requested by the appropriate appointing authority, the Board will participate in a state or federal judicial selection process. Any poll conducted by the Bar will be for informational purposes only and will not constitute the official position of the Bar. Certified election results will be made available as promptly as possible to the press, to the candidates, to the appointing authority and otherwise as the Board may direct.

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, no bar poll will be taken, but bar members will be notified of the impending appointment and will be asked to inform the Board of their interest. If an appellate selection process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board has the option of not conducting a separate process, but re-submitting the previous list of highly qualified candidates to the Governor without notification to members.

(b) The Governor's Office will deliver copies of the completed applications to the bar. The Board will make recommendations to the Governor from the pool of candidates who submit information to the Governor's Office for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor. Upon completion of the due diligence review, the Board's Committee on the Judiciary will recommend a list of candidates suitable for consideration by the Governor to the Board, based on the statutory requirements of ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.445 for the Oregon Tax Court, as well as information obtained in the review process, and as screened in using, at a minimum, the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and public service. The Board will then determine the final list of candidates to submit to the Governor. A lawyer who seeks appointment to the same position within two years of first having received a "suitable for consideration by the Governor status" will not be required to submit another application or to be re-interviewed. Candidates in this category must inform the Board of any changes in information previously submitted. The Board reserves the right to request and receive additional information from any candidate prior to deciding whether to resubmit the candidate's name to the Governor. The chair of the Board's Committee on the Judiciary (along with members of the committee as determined by the committee) will also provide a written or oral summary of the committee's information about each candidate to the Office of General Counsel for the Governor. The summary will also include comments regarding candidates not submitted for consideration.

(c) The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar's Bylaws, a committee to make candidate qualification recommendations to the Board using the criteria set forth in this section. Meetings of the committee, including interviews of candidates, 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 background check process. The committee will discuss reference reports in executive session pursuant to ORS 192.660(1)(f). The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.

Section 2.8 Executive Director

Subsection 2.800 Duties

The Executive Director, appointed by and acting under the supervision of the Board, is the principal administrative officer of the Bar. The 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 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 Executive Director is responsible for preparing an annual budget for the Board's Budget Committee. The 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 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 Executive Director, staff and the membership. The Board will conduct the evaluation in executive session. The Board or its representative will meet with the 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 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 executive director or the executive director's designee. The executive director will assign appropriate staff to respond to board member requests. If a board member is dissatisfied with the executive director's action regarding any request or if the executive director believes a board member's request is inappropriate or unduly burdensome, the board member and executive director, as the case may be, may bring his or her concerns to the board for resolution. The 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 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 active and inactive 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 Affirmative Action Award

The criteria for the President's Affirmative Action 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 minority representation 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

Nominations for the House of Delegates of the American Bar Association ("ABA") must be in writing. The Executive Director will prepare forms for these nominations and supply the forms to applicants. The applicants must file the forms with the 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.

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 plus the Client Security Fund assessment.

(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 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 Transfer of Classification of Membership

An inactive member may be enrolled as an active member only by complying with the Bar Act, the Rules of the Supreme Court, the Rules of Procedure of the Bar and paying required fees. An active member may voluntarily transfer to inactive status on certification by the member that the criteria of that classification are met and on payment of required fees.

Subsection 6.103 Reinstatement

A final vote by the Board on an application for reinstatement submitted under BR 8.1 of the Rules of Procedure requires notice at a prior board meeting unless two-thirds of the entire Board waives such requirement. If the Board, in its review and investigation, determines that an applicant for reinstatement as an active member of the Bar has not been an active member continuously for a period of more than five years, the Board may recommend to the Supreme Court of the State of Oregon that, as one of the conditions precedent to reinstatement, if it is otherwise recommended, the applicant (1) be required to establish his or her competency and learning in the law by receiving a passing grade on the Oregon Bar Examination as defined under the Rules of the Supreme Court for Admission of Attorneys next following the date of filing of such application for reinstatement or (2) be required to complete a specified number of credit hours of accredited Continuing Legal Education activity before or within a specified time after the applicant's reinstatement.

Section 6.2 Register of Members

The 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 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 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 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 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.

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 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 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 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 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: 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 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 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 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 discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. The 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 discipline and Minimum Continuing Legal Education programs must be incorporated into the final budget approved by the Board.

Subsection 7.203 Grants

The bar does not accept proposals for grants or other contributions 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, in the sole discretion of the Board of Governors, furthers the mission of the bar. The amount allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and may change from year to year based upon the overall financial needs of the bar.

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 investment manager in investing all cash assets held by the Bar. The funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. 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 objective of the **Short-term Investment** policy is to provide for short-term investment of cash to be used within the Bar's current fiscal year, generally one year or less. The objective shall be to minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The objective of the **Long-term Investment** policy is to provide for long-term growth and stability of all reserves, designated, and contingency funds. 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. This investment fund 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 Bar. Long-term investment strategy should achieve reasonable yields while minimizing exposure to risk.

Subsection 7.401 Investment Management

The Executive Director 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 he or she may require. The Bar will maintain a list of all authorized institutions that are approved for investment purposes.

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 monitor the investment policy and portfolio.

Investment(s). The Committee 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 this policy and the specific direction of the Committee. The investment managers may contact the designated liaison of the Committee, who shall be the Bar's Chief Financial Officer between meetings of the Committee to implement or suggest changes in investments or strategy. If necessary, the Committee may meet by telephone to consider changes in investments or strategies. The selection and allocation of funds to individual statement managers will be made by the Committee.

Committee Meetings. The investment manager(s) shall prepare quarterly reports of the portfolio's performance. The Committee will meet at least quarterly to monitor the performance of the assets.

Performance Standards. The investment committee will evaluate investment managers using a number of factors including performance relative to the most applicable benchmarks, quality of communications with the investment committee, and adherence to the Bar's investment policy.

Annual Review. This investment guidelines and policies shall be reviewed at least annually by the Budget & Finance Committee.

Subsection 7.402 Approved Investments

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments.
- (g) Mutual funds of U.S. and foreign equities.
- (h) Federal deposit insurance corporation insured accounts.
- (i) Individual public-traded stocks, excluding margin transactions, short sales, and derivatives.
- (j) Small capitalization international equities.
- (k) Emerging markets fixed income.

Security	Minimum credit quality
Interest bearing deposits of banks, savings and loans and credit unions	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by U.S., local, city and state governments and agencies	A-/A3 as defined by Standard & Poor's and Moody's
Money Market Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Money Market Mutual Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by the U.S. Federal government	Not applicable
Obligations issued or guaranteed by U.S. Federal agencies	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by U.S. government-sponsored enterprises	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by local, city and state governments and agencies.	A-/A3 as defined by Standard & Poor's and Moody's
Obligations of U.S. corporations	A-/A3 as defined by Standard & Poor's and Moody's

Subsection 7.403 Limitations

At the discretion of the Budget & Finance Committee, the entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months.

Subsection 7.404 Prudent Person Standard

The standard of prudence to be used by the investment manager 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 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 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 executive director will assign appropriate staff to respond to requests for public records. The 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 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 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 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 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, committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).

Subsection 8.202 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

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 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 nominating petitions 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 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 executive director of the Bar at least 30 days before the election.

Section 9.2 Ballots

The 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. The 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 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 Executive Director has 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 Executive Director of the Bar. The Board will review each written objection received by the Executive Director at its next scheduled board meeting following receipt of the objection. The Board will respond through the 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 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 peremptory challenge to the list of arbitrators. The Bar and the objecting member must notify one another of a peremptory 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 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 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 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 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 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 only with prior approval of the Executive Director. The Executive Director will allow such donations only on a showing by the prospective donee that the donation of section funds to the charitable entity is related to the purposes for which the section exists. For sections that are not entirely self-supporting, as described in Article IX, Section 5(B) of the Standard Section Bylaws, the prospective donee must also show that the donation fits within the limitations set forth in Section 12.1 of the Bar's Bylaws.

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 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 or other fee-based activities held in conjunction with a CLE seminar.

(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 Insurance

Providers of Bar-sponsored insurance may use the Bar's logo in their advertising and promotional material with the prior approval of the Executive Director. They may also indicate approval or endorsement by the Board in such material if the Board has approved or endorsed the insurance. Inactive membership status does not affect the eligibility of a member for bar-sponsored insurance.

Section 17.3 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 five 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 seven resident active members of the Bar and two at large public members appointed by the Board of Governors. The Board of Governors annually will appoint one 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. The two public members are appointed for terms of not more than four years. No member may serve more than four years. The Board of Governors may replace 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

Disciplinary Counsel will notify the accused as soon as possible after the SPRB has directed the institution of a formal disciplinary proceeding against the accused. 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 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, LPRC 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 LPRC and SPRB Replacements

In the case of a local professional responsibility committee or the State Professional Responsibility Board, the Board of Governors may 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.

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 these Rules of Procedure, the following definitions apply:

- (A) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.
- (B) "Unlawful practice of law" means the practice of law, as defined by the Oregon Supreme Court, by persons who are not members of the Bar and are not otherwise authorized by statute to do so. It is unlawful for a person who is not an active member of the Bar to engage in the practice of law within the State of Oregon, whether or not for compensation or in connection with any other activity, unless specifically authorized by law or rule. The practice of law includes, but is not limited to, any of the following: Holding oneself out, in any manner, as an attorney or lawyer authorized to practice law in the State of Oregon; appearing, personally or otherwise, on behalf of another in any judicial or administrative proceeding or providing advice or service to another on any matter involving the application of legal principles to rights, duties, obligations or liabilities.
- (C) "Documents" includes, but is not limited to, contracts, deeds, mortgages, satisfactions, leases, options, certificates of assumed business name, articles of incorporation and other corporate documents, bulk-sales affidavits, wills, trusts, notes and pleadings and other papers incident to legal actions and special proceedings.
- (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 acts or conduct that concern or are related to acts or conduct that may represent 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, thing or occurrence that represents a file opened by the Committee for the investigation of an accused person or any person or activity associated with one or more accused persons under the allegations contained in a file or any activity related thereto.

Section 20.2 Practices Subject to Investigation

The following conduct by persons who are not members of the Bar is subject to investigation by the Committee, pursuant to ORS 9.164:

- (A) Use of stationery or other written material describing the person as a lawyer.
- (B) Appearance on behalf of another in court or administrative proceedings without statutory authority.
- (C) Correspondence on behalf of another when the correspondence is a jurisdictional prerequisite for legal action or customarily precedes legal action, such as demand letters.

- (D) Negotiation on behalf of another for the settlement of pending or possible legal actions.
- (E) Drafting or selecting documents for another or giving advice to another in regard thereto when informed or trained discretion must be exercised in selecting or drafting a document to meet the needs of another.
- (F) Any exercise of an intelligent choice or informed discretion in advising another of his or her legal rights or duties.
- (G) Representing to the public that the person is authorized to practice law.
- (H) Use of printed or electronic materials, advertisements or other solicitations describing services that can reasonably be construed as legal services.
- (I) Any other action for another that requires legal skill or judgment.

Section 20.3 Practices Not Subject to Investigation

The Committee may decline to investigate allegations of unlawful practice of law in the following instances: When the allegations of unlawful practice of law are not made to the Committee in writing or when the allegations of unlawful practice of law consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

Section 20.4 Practices Subject To Prosecution

The Committee may request the Board to authorize a suit, pursuant to ORS 9.166, to enjoin unlawful practice of law when after investigation by the Committee, it appears that: There is at least one person, identified by the Committee, who has been injured by a person unlawfully practicing law, who has received legal services from a person who is not a member of the Bar or who has personal knowledge of facts constituting the unlawful practice of law or the unlawful practice of law is an ongoing activity; or an accused in any other respect has violated ORS 9.160. The Committee may, at its discretion, for good cause, decline to request authorization from the Board to enjoin the unlawful practice of law pursuant to ORS 9.166 in favor of other resolutions provided in these rules.

Section 20.5 Practices Not Subject to Prosecution

The Committee may, at its discretion, decline to request authorization to enjoin unlawful practice of law pursuant to ORS 9.166 when, after investigation by the committee, it appears that: The unlawful practice of law is not an ongoing activity; the investigator has been unable to obtain sufficient evidence to substantiate the allegation of unlawful practice of law or the investigator has been unable to obtain sufficient evidence to support a suit for injunction pursuant to ORS 9.166. The investigator may, after authorization by vote of a majority of the Committee, conclude an investigation by negotiating an agreement with an accused wherein the accused agrees to discontinue the unlawful practice of law. The agreement will be subject to and not become effective until approval by the Board.

Section 20.6 Other Investigators

The Committee may recommend hiring a person who is not a member of the Committee to perform further investigation on consideration of the following factors: The number of persons who have been injured by a person unlawfully practicing law or who have received legal services from a person who is not a member of the Bar; the probable nature and extent of damages to the persons receiving legal services from a person who is not a member of the Bar; the need for additional facts and witnesses to substantiate the allegation of unlawful practice of law for the purpose of a suit for injunction pursuant to ORS 9.166 and the recommendation of the investigator and the Committee's inability to compel discovery.

Section 20.7 Processing Unlawful Practice of Law Complaints

Subsection 20.700 Investigation

On receiving a complaint of unlawful practice of law meeting the requirements of Section 20.2 of the Bar's Bylaws, the committee chairperson will assign the complaint a case number and assign it to a committee member for investigation. The committee member will review the documentation accompanying the complaint and will contact the complainant, affected parties and witnesses. The committee member may not employ any methods in his or her investigation that do not comply with the Rules of Professional Conduct. Within 60 days after receiving a complaint of unlawful practice of law, the investigator will

submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition. The chairperson of the Committee may grant extensions of time to submit a report of investigation as the chairperson deems reasonable.

Subsection 20.701 Dispositions

Actions to be taken at the discretion of the Committee:

(a) Dismissal without prejudice.

This disposition is appropriate when the accused did not commit the unlawful practice of law.

(b) Notice Letter.

This disposition is appropriate when insufficient facts exist to establish that the accused has committed the unlawful practice of law, but the accused's activities are such that the Committee believes it appropriate to notify the accused of the provisions of ORS 9.160

(c) Cautionary Letter.

This disposition is appropriate when the Committee asserts that the accused is engaged in activities involving the unlawful practice of law, but either (1) the practice is neither ongoing nor likely to recur, or (2) the Committee determines that the matter is inappropriate for prosecution.

(d) Resolution by agreement.

This disposition is appropriate when the Committee asserts that the accused committed the unlawful practice of law, but is willing to enter into an agreement to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board of Governors.

(e) Referral to Board of Governors for prosecution under ORS 9.166.

This disposition is appropriate when the Committee asserts that the accused committed the unlawful practice of law, the practice is ongoing or likely to recur and the accused is unwilling to enter an agreement to discontinue the unlawful practice of law; or, for any other reason, the Committee concludes that prosecution under ORS 9.166 is warranted.

(f) Appointment of Outside Investigator or Referral to Other Agency.

This disposition is appropriate when the Committee is unable to obtain sufficient information to make an informed recommendation or when the Committee otherwise elects to refer the matter to another investigator or agency.

(g) Referral to Bar Counsel

When a complaint of unlawful practice of law involves an accused against whom the Board has already authorized prosecution, the Committee may refer the matter directly to bar counsel without obtaining prior authorization from the Board. Bar counsel may ask the Committee to conduct an investigation into the new complaint and has discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Subsection 20.702 Actions of Unlawful Practice of Law Committee

The Committee will consider reports of investigations at its first meeting after submission of a report. On a vote of a majority of members, a quorum being present, the Committee must: Adopt the report as written or modify the report or continue the matter for further investigation and revisions to the report. The committee chairperson must document in writing the Committee's final findings and disposition of each complaint. The chairperson or his or her delegate, must, in writing, inform the complainant and the accused of dismissals without prejudice. A cautionary letter authorized by the Committee gives notice to the accused that the Committee has evidence that the accused is engaged in activities that the Committee maintains involve the unlawful practice of law. The cautionary letter may provide information on the limits of the law and may demand that the accused case activities that the Committee asserts constitute the unlawful practice of law. On a vote of a majority of members of the Committee, a quorum being present, a complaint of unlawful practice of law must be referred to the Board for authorization to file an action under ORS 9.166.

Subsection 20.703 Board of Governors

On authorization by the Board to pursue an action under ORS 9.166, the Bar may obtain counsel to prosecute the action and will report periodically to the Committee and Board on the status of the litigation.

Counsel for the Bar may settle 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 Board. To the extent necessary, the Committee will assist counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection 20.704 Prevention and Education

The unlawful practice of law statutes cannot be adequately enforced by investigation and prosecution alone. Prevention of unlawful practice of law is also a focus of committee activity. Thus, in addition to the disposition options outlined above, the Committee may engage in public outreach and education to prevent and educate the public about the unlawful practice of law. Also, when the Committee becomes aware of a person or entity engaged in activities likely to involve the unlawful practice of law based on the Committee's experience, the Committee may send a letter to the person or entity regarding the limits of the law on the provision of legal services.

The Committee may also, in its discretion, write informal advisory opinions on questions relating to what activities may constitute the practice of law. Such opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that may be of concern to or investigated by the Committee. All such opinions must be approved by a majority vote and submitted to the Board of Governors for final approval prior to publication.

Subsection 20.705 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.

Subsection 20.706 Other Agencies

The Committee may refer to, cooperate with or consult other agencies whether federal, state or local having an interest in the subject matter of any complaint before the Committee or having information or resources that would benefit the Committee's investigation. Referral to, joint prosecution with or requests for information or investigation are appropriate under circumstances that include, but are not limited to the following:

- (a) When the allegations concerning a claim of unlawful practice of law would also support or form a part of an activity prohibited by law, ordinance or statute; whether civil or criminal and recognized as a responsibility of the applicable federal, state or local agency.
- (b) When the person accused of the unlawful practice of law or a person acting with the accused, is or has been the subject of an investigation, action, injunction or other similar review by a federal, state or local agency and the matter complained of relates directly or indirectly to the matter, person or activity reviewed or investigated.
- (c) Whenever an agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation alone or in combination with the Bar.
- (d) Whenever the agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused.

Article 21 Client Security Fund

The 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 at the annual meeting of the House of Delegates and must report periodically to the 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 the President-elect of the Bar, an additional lawyer member of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors. The additional lawyer member of the Board serves at least two years as liaison and will be replaced by a new lawyer member of the Board who will serve at least two years.

(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) One or more of the Board's PLF liaisons 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 September 1 of each year, the proposed assessments for primary and excess 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) All closed claim reports prepared in a manner consistent with the confidentiality requirements of ORS 9.080(2)(a);

(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 Prohibition Against Prosecuting Claims

(a) Board of Governors members will neither prosecute nor defend PLF covered claims, but may mediate the claims at the request of the parties.

(b) The policy set forth in (a) above does not extend to the prosecution or defense of PLF covered claims by lawyers in board members' firms, as long as the board member is screened from any form of participation or representation in the matter. To ensure such screening:

(1) The board member must prepare and file an initial affidavit with the Executive Director of the Bar attesting that while his or her firm is handling a PLF covered claim, the board member will not participate

in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member. The board member must also prepare and submit a compliance affidavit to the Executive Director of the Bar describing the board member's actual compliance with these undertakings promptly on final disposition of the matter or representation.

(2) The board member's firm must also prepare and file an initial affidavit with the Executive Director of the Bar attesting that all firm members are aware of the requirement that the board member be screened from participating in or discussing the matter or other representation. The firm must also prepare and file with the Executive Director of the Bar a compliance affidavit indicating the firm's actual compliance with the procedures for screening the board member promptly on final disposition of the matter or representation.

(3) The initial affidavits called for by Subsection 23.503 (B)(1) and (2) Bar's Bylaws must be filed with the Executive Director of the Bar no later than 14 days following the acceptance of a case involving a PLF covered claim by a board member's firm. Acceptance of a case for purposes of Subsection 23.503 is the day that the attorney-client relationship is established. The compliance affidavits required by Subsection 23.503 (B)(1) and (2) must be filed with the Executive Director no later than 14 days following the final disposition of the matter or representation.

(4) The compliance affidavits called for by Subsection 23.503 (1)-(3) need not be filed with the Executive Director if a board member's term on the Board of Governors ends before the final disposition of the matter or representation.

(c) Nothing in this section relieves members of the Board of Governors or their firms from ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).

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. The meeting must include a report by the Personal and Practice Management Committee of the PLF pursuant to PLF Policy 6.150(C). This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by April 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 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 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 Executive Director and staff in all areas of the Bar's business and activities. The 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 assessments for coverage are 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 proposals to the Board of Governors for all recommended assessments 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 assessments that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

Subsection 23.601 Appeals by Members

(a) Review by the Professional Liability Fund Board of Directors

The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:

(1) All notices of assessments and invoices for assessments to members include language that gives notice to the assessed member of the right to appeal to the PLF, the appeal procedure to be followed, and the time limits to perfect the appeal.

(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:

"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of this letter. The Executive Director's address is PO Box 231935, Tigard, OR 97281-1935. A request for Board of Governors review constitutes and evidences your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."

(3) Assure that all steps necessary are taken by the PLF Board of Directors and staff to facilitate the Board of Governors review of the action by the PLF Board of Directors in denying relief requested in the petition.

(b) Review by the Board of Governors.

(1) Any member who, after properly and timely filing a petition, is denied requested relief by the PLF Board of Directors has a right to request the Board of Governors to review the action of the PLF Board of Directors in denying the relief requested in that petition. To be entitled to such review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written notice from the PLF to the member denying the requested relief. Review by the Board of Governors on a timely filed request is de novo and on the record. In making the determination whether to affirm the action of the PLF Board of Directors, only the grounds asserted in the petition and written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, on its own motion, requests additional materials from the member and from the PLF.

(2) The President of the Oregon State Bar must appoint a committee of at least three of the members of the Board of Governors, which must meet and review the appropriate materials and make a recommendation to the Board whether to affirm the action of the PLF Board of Directors. The Board of Governors must make a determination and notify the member in writing of its decision, including any adjustment to the assessment. The decision of the Board of Governors is final.

(3) A request for Board of Governors review does not relieve a member from the obligation to pay the contested assessment, nor does a review pending before the Board of Governors suspend or toll the default date or delay the imposition of late payment penalties or suspension proceedings. If the Board of Governors review results in an adjustment to the assessment requiring a refund to the member, the PLF must pay the member an appropriate refund together with statutory interest thereon.

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

SLAC will be comprised of not more than 12 members, including two public members, appointed by the Board of Governors. Terms will be for four years or as otherwise deemed necessary by the Board to maintain staggered terms and to fill vacancies. The lawyer members of SLAC will be active members of the Bar reflecting as closely as possible the geographic distribution of bar members. The Board of Governors will designate one of the lawyer members as chair and one to serve as secretary, each to serve a term of two years. The underlying terms of either secretary or chair will be extended for one additional year so as to coincide with the underlying terms of office, if necessary. Rules for the provision of assistance by SLAC will be as set forth in this bylaw.

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 8.1(c) 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 permanently 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 Executive Director in an amount sufficient to cover the cost of providing information and services to Law Student Associates. Law Student Associates will receive a subscription to the Bulletin, will be informed of the Bar sections that permit Law Student Associates and will be informed of CLE seminars that the CLE Seminars Manager determines are relevant to law students. Other services and information may be provided as determined by the 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 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 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 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 Executive Director or the Executive Director's designee shall decide whether to approve or deny all claims for amounts under \$500. Claims for amounts of \$500 or more must be reviewed and approved or denied by a special committee appointed 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 Executive Director or designee shall notify the claimant.

(e) If a claim is denied, the Executive Director or designee special committee 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 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 and respond through the Executive Director in writing. The Board's response will include an explanation of the Board's reasoning.

(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 special committee with the new evidence.

(h) The 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 monthly basis, the Executive Director or designee shall provide a listing of the claims resolved to the Department of State Lands. The Executive Director shall also provide an annual report of the claims resolved to the Board.

Article 28 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.