

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

August 27, 2020

Virtual

Open Session Agenda

The mission of the OSB is to serve justice and the public interest by promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice.

The Special Open Session Meeting of the Oregon State Bar Board of Governors will begin at 1:00 p.m. August 27, 2020. Items on the agenda will not necessarily be discussed in the order shown.

2020 BOG Areas of Focus

2020 BOG Ground Rules for Meetings

1. Call to Order
2. BOG Appointment and Removal Discussion Exhibit
3. Executive Session pursuant to ORS 192.660(2)(f) and (h)
 - a. Consult with General Counsel Discussion Exhibit

OSB Board of Governors

STATUTORY CHARGE

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the Judicial Department of the State of Oregon.¹ The OSB Board of Governors (BOG) governs the state bar and must “at all times direct its power to serve the public interest by:

- (a) Regulating the legal profession and improving the quality of legal services;
- (b) Supporting the judiciary and improving the administration of justice; and
- (c) Advancing a fair, inclusive and accessible justice system.”²

As a unified bar, the OSB may use mandatory member fees only for activities that are germane to the purposes for which the bar was established.³

MISSION

The mission of the OSB is to serve justice and the public interest by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice.

FUNCTIONS AND GOALS

The BOG has adopted the following goals for its three statutory functions:

FUNCTION #1 – REGULATE THE LEGAL PROFESSION AND IMPROVE THE QUALITY OF LEGAL SERVICES

GOAL: Protect the public by ensuring competence and integrity and promoting professionalism in the legal profession.

FUNCTION #2 – SUPPORT THE JUDICIARY AND IMPROVE THE ADMINISTRATION OF JUSTICE

GOAL: Protect and advance the quality, integrity, and impartiality of the judicial system.

FUNCTION #3 – ADVANCE A FAIR, INCLUSIVE, AND ACCESSIBLE JUSTICE SYSTEM

GOAL: Foster trust in, respect for, understanding of, and access to the justice system.

FIDUCIARY ROLE

In order to advance the mission and achieve its goals, the BOG must ensure that the OSB is effectively governed and managed, and that it has adequate resources to maintain the desired level of programs and activities.

¹ ORS 9.010.

² ORS 9.080.

³ 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.

BOG AREAS OF FOCUS FOR 2020

1. Board Culture and Leadership Development
 - a. Establish ground rules for conduct of BOG meetings.
 - b. Review board member roles and responsibilities and make changes as needed.
 - c. Identify board leadership development needs and implement training.
 - d. Review event anti-harassment policy and revise as needed.
2. Implement Diversity Action Plan items identified for 2020.
3. Support and participate in development of Diversity Action Plan for 2021-2023.
4. Provide review and oversight of the OSB governance model, programs, activities and communications to ensure alignment with the bar's public service mission.
 - a. Make changes as needed.
 - b. Support implementation of changes made in 2019 to existing programs.
 - c. Support development and implementation of paraprofessional licensing program, writing for the bar program, and leadership institute.
5. Provide budget oversight
 - a. Evaluate potential forms of revenue for 2021 budget and beyond.
 - b. Review the Client Security Fund cap limit and reserve level.
 - c. Determine definition of "gross income" for member fee discount.
6. Implement legislative priorities adopted for 2020.
7. Identify and adopt legislative priorities for 2021.



**OSB Board of Governors Meetings
Ground Rules**

Adopted April 17, 2020

1. Listen respectfully. Do not interrupt. Seek first to understand, then to be understood. Be curious.
2. Assume good intent. We are all doing the best we can. Seek to meet people where they are.
3. Say what is true for you. Speak from "I" perspective.
4. Attack the problem, not the person.
5. No swearing.
6. Be mindful of and attempt to balance introvert and extrovert sensibilities. Give yourself and others time to process and permission to not make sense.
7. Participate. Each person has a perspective that is valuable to the decision-making process. Seek to share your perspective in the way that works for you. If you have not spoken in a while, the chair may check in with you to make room for your voice.
8. Let others participate. Monitor the space you are occupying in the discussion. The chair may defer calling on you if you have already spoken so that other voices and perspectives can be shared.
9. Be present. Recognize that your multi-tasking may interfere with your attentive presence and be a distraction to others. Limit outside work to the extent possible. At the same time, do not police the activity of others.
10. Come prepared.
11. Stay on topic.
12. Speak up if someone is not following the ground rules, bylaws, BOG responsibilities.
13. Be on time, start on time, end on time.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: August 20, 2020
From: Helen M Hirschbiel, CEO
Re: BOG Member Election and Removal

Action Recommended

Discuss legislative options to change governance structure of the Oregon State Bar and determine how to proceed.

Background

The Oregon State Bar (OSB) is a public corporation and an instrumentality of the Judicial Department of the State of Oregon. The OSB Board of Governors (BOG) governs the state bar and must “at all times direct its power to serve the public interest by:

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

In early 2019, when the Board of Governors resolved to include this mission within the Bar Act, it also decided to undertake a review of the Oregon State Bar governance model to ensure that the bar’s governance structure was aligned with this public service mission.

At present, the fifteen lawyer board members are elected by other lawyers within their regions. The four public board members are appointed by the board. ORS 9.025. In the normal course, board members leave the board when their terms end, they resign or die, or if they no longer qualify to serve, as provided by ORS 9.025(5):

(5) The term of any member of the board of governors terminates 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) A member of the board of governors is not eligible during the member’s term of office for service pro tempore as a judge of any municipal, state or federal court.

Alternately, they may be removed through a recall process. The removal process for lawyer board members is found in ORS 9.050, which provides:

(1) On petition signed by 25 percent of the members in any region for the recall of any governor elected from that region, the chief executive officer of the Oregon State Bar 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 chief executive officer shall distribute 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 chief executive officer 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 chief executive officer shall distribute 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.

In the unusual circumstance that the State Professional Responsibility Board authorizes formal charges against a board member, the bylaws provide for suspension and a temporary replacement of the member, as follows:

Subsection 18.600 Applicability to BOG and SPRB

The service of members of the Board of Governors 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 18.602 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

Removal of public members is set forth in OSB Bylaw 2.302, which provides:

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.

In short, the OSB governance model as currently structured, provides accountability to the lawyers of Oregon, not to the public.

Options to Consider

On May 22, 2020, the Board of Governors decided to ask Legislative Counsel's Office to draft amendments to the Bar Act that would: 1) change the BOG election process into a nomination for appointment, made by the Oregon Supreme Court; and 2) eliminate the recall process, and; 3) allow the BOG to recommend Court removal of BOG members, as provided in the bylaws.

In addition, the Board asked for further discussion about governance options available after receipt of the LC Draft. Attached is a summary of addition governance options available, including the LC Draft.

	Lawyer Member Selection	Public Member Selection	Removal of BOG Members	Current Regions vs Congressional Districts	Size of Board	Supreme Court Approval of Bylaws
LC Draft	Court appointed after election	Court appointed after BOG recommendation	Supreme Court removal per bylaws	Current regions	19	Yes
Removal Only	Election	BOG appointment	BOG removal per bylaws	Current regions	19	Yes
Public Member Appt PLUS Removal	Election	Court appointed after BOG recommendation	BOG removal per bylaws	Current regions	19	Yes
Regional Restructure	Election (6) AND Court Appointment (5 lawyers from districts + 4 public at large)	Court appointed	Court removal per bylaws	Congressional Districts (5 w/1 pending)	15	Yes
Regional Restructure	Election (6) AND Court Appointment (3 lawyers at large + 4 public at large)	Court appointed	Court removal per bylaws	Congressional Districts	13	Yes
California Model	Appointment <ul style="list-style-type: none"> • Court (5) • Legislature (2) 	Appointment <ul style="list-style-type: none"> • Legislature (2) • Governor (4) 	By appointing entity	None	13	Yes
Status Quo	Election	BOG appointment	Recall only	Current Regions	19	No