

Oregon State Bar Policies

(Adopted by the Board of Governors September 24, 2021)

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Chapter 1 Purpose of Bar and Definitions

Policy 1.100 Purpose of Bar and Definitions

These policies utilize the definitions provided in Section 1.1 of the Bylaws, unless the context or subject matter otherwise requires.

Chapter 2 Board of Governors

Policy 2.100 Board of Governors

(a) Board members are ambassadors for the bar. Board members should listen to stakeholders and bring their perspectives and concerns to the attention of the board. They should share information with stakeholders about the mission, strategic plan, programs, services, activities and policies of the bar. Stakeholders include, but are not limited to, members of the public, bar members and law students within the board member's region, committees, sections and other bar groups to which the board member is appointed as liaison, members of local, specialty and affinity bars, and state and local government officials.

(b) Board members are advocates for the bar within the legal and other communities and should avoid speaking publicly in opposition to positions taken by the Board of Governors.

(c) Board members are leaders within the legal and other communities who should model the values of the Oregon State Bar.

(d) Board members are committed to providing a professional, inclusive, and harassment-free experience for everyone at bar-sponsored events, meetings and functions. Any board member who is aware that someone has engaged in harassment or intimidation against an attendee of a bar-sponsored event, meeting or function, should report the information immediately, as provided in the OSB Event Anti-Harassment Policy.

(e) Board members are committed to preparing for and attending all board meetings and other functions except when, in a board member's judgment, an emergency or compelling circumstance arises that prevents participation.

(f) Board members are committed to development of the skills and competencies needed to contribute to the successful governance of the bar, including but not limited to, organizational knowledge, oversight of the Chief Executive Officer, financial literacy, and cultural competency.

(g) Each board member has special talents, perspectives, and community connections that contribute to the successful governance of the Bar. Expressing opinions, sharing expertise, and providing diverse perspectives on issues before the Bar are important and encouraged.

Policy 2.200 Election

(a) Candidate statements for the office of Governor from a region must be in writing. The Chief Executive Officer will prepare the forms for the candidate statements and supply the forms to the applicants. Applicants must complete and file the form with the Chief Executive Officer by the date set by the Board. The Chief Executive Officer must conduct elections in accordance with the Bar Bylaws and the Bar Act.

Policy 2.300 Board Committee and Other Assignments

(a) 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.

(b) The Chief Executive Officer 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.

Policy 2.600 Amicus Curiae Briefs

(a) A section or committee that wishes to enter an *amicus curiae* appearance before any court must make a request in writing. The request 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.

(b) 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.

(c) 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.

Policy 2.800 Defense of Disciplinary Complaints and Proceedings

(a) Pursuant to Section 2.8 of the Bylaws, any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Respondent or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Respondent which on its face falls within the provisions of the Bylaws, or which the Respondent asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the bar and not within the scope of the Bylaws, the Respondent may file a written request for a defense with the General Counsel, or if the request is by the General Counsel, the President of the bar. The General Counsel or President, as the case may be, will thereupon present his or her recommendations to the Board of Governors regarding the approval of an agreement to pay for the defense of the Respondent, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Governors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to select counsel to defend the Respondent, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on behalf of the bar, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

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

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

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

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

Policy 2.150 Oregon New Lawyers Division Liaison

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.

Policy 2.160 Expenses

(a) 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.

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

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

Policy 2.180 Board Members as Witnesses in Bar Proceedings

If a current member of the Board of Governors is 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.

Policy 2.190 Judicial Selection

(a) Bar members will be notified of the upcoming appointment and will be invited to participate in the appellate recommendation process. If an appellate recommendation process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board may, at its discretion, forego conducting a separate appellate recommendation process and instead resubmit the previous list of highly qualified candidates to the Governor without notification to members.

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

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

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

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

Policy 2.210 Chief Executive Officer

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

(b) The Chief Executive Officer 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.

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

Policy 2.220 Financial Matters

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

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

(c) 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.

(d) The Chief Executive Officer has the authority to write off bar receivables that he or she has determined are uncollectible or for other financial reasons should be written off. In the calendar quarter after the fiscal year end, the Chief Financial Officer will prepare a list of all receivables over \$500 that the Chief Executive Officer 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.

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

(e) 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.

(f) The bar does not generally accept proposals for grants, contributions or sponsorships to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that is germane to the Bar's purposes as set forth in Section 1.2 of the Bylaws. The bar's annual budget shall include an amount dedicated to providing such financial support, although that amount may change from year to year based upon the overall financial needs of the bar. This budgeted amount shall be in addition to any amounts budgeted to allow bar leadership and staff attendance at local bar and community dinners and similar events.

(g) 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.

(h) 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.

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

(1) 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.

(2) 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.

(3) 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.

Policy 2.240 Expense Reimbursement

(a) Requests for expense reimbursement must be received in the Accounting Department not later than 30 days after the expense has been incurred. If an expense reimbursement form is submitted more than 30 days after the expense is incurred, it must be supported by an explanation for the delay. The Chief Financial Officer may deny any late-submitted request for which the justification is deemed insufficient. A person whose request for reimbursement is denied may request that the Chief Executive Officer 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.

(b) Eligible reimbursable expenses while on official business include the following:

(1) Out-of-State Travel:

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

(2) 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.

(3) 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.

(4) 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.

(5) 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.

Chapter 3 House of Delegates

Policy 3.200 Delegates

Elected members of the House of Delegates and ex officio delegates from sections and local bars will be reimbursed for their transportation to and from the annual HOD meetings, as allowed by these Policies. 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. Public member delegates will be reimbursed for their transportation, meals and lodging as provided in Bylaw Section 2.24.

Policy 3.500 House of Delegates Parliamentarian

The House 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 Section 2.24 of the Bar's Bylaws.

Chapter 4 Awards

Policy 4.100 Award Criteria

(a) The criteria for the President's Membership Service Award is as follows: 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.

(b) The criteria for the President's Public Service Awards is as follows: 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.

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

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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, and leadership in adopting sustainable business practices or other significant efforts.

(i) The criteria for the President's Technology & Innovation Award are as follows: The nominee may be an individual or entity; the nominee must have made a significant contribution in Oregon toward promoting respect for the rule of law, improving the quality of legal services or increasing access to justice through new technology or other innovations.

Chapter 5 Oregon State Bar Delegates to the American Bar Association House of Delegates

Policy 5.100 Oregon State Bar Delegates to the American Bar Association House of Delegates

(a) Candidate Statements for the House of Delegates of the American Bar Association ("ABA") must be in writing. The Chief Executive Officer will prepare forms for the candidate statements and supply the forms to applicants. The applicants must file the forms with the Chief Executive Officer not more than 90 nor less than 30 days before the election held in conjunction with the Oregon State Bar House of Delegates election.

(b) 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.

Chapter 6 Membership Classification and Fees

Policy 6.700 Annual Membership Fees and Assessments

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.

Policy 6.701 Hardship and Service Waivers

(a) In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Chief Executive Officer 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.

(b) The Chief Executive Officer, 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.

Chapter 7 Public Records/Meetings

Policy 7.100 Public Records Requirements

- (a) The Chief Executive Officer will assign appropriate staff to respond to requests for public records. The General Counsel will advise the board of any public records petitions to the attorney general seeking review of the bar's public records decisions.
- (b) The Chief Executive Officer will adopt a fee schedule for public records requests, as required by the Oregon 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.

Policy 7.200 Public Meetings Requirements

- (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 respondent or applicant.
- (b) Meetings of the SPRB, and the deliberations of Disciplinary Board trial panels are closed to the public, pursuant to the exemption set forth in ORS 192.690(l) for judicial proceedings.
- (c) Meetings of the Board of Governors relating to disciplinary and reinstatement matters are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings. Meetings of the Board of Governors may also be closed to the public in whole or part for consideration of any matter for which a closed session is authorized under ORS 192.660.
- (d) The Board of Bar Examiners' consideration of individual applicants' qualifications are judicial proceedings for purposes of the Public Meetings Law, pursuant to ORS 9.210(4).

Policy 7.201 Board Meetings

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

Chapter 8 Election Procedures

Policy 8.200 Candidate Statement on Ballots

The Candidate Statement will include 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. Candidate statements are public record.

Chapter 9 Diversity

[No Board policies adopted at this time.]

Chapter 10 Communications

Policy 10.100 Communications

- (a) 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.
- (b) 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.
- (c) 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. 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. A section may survey its own membership without prior approval.

Chapter 11 Legislation and Public Policy

Policy 11.100 Legislative Priorities

- (a) 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 legislation that is germane to the bar's mission. In so doing, the Board will also make a reasonable effort to do the following:
- (1) Encourage as wide a participation of the membership as possible in formulating positions on legislative issues;
 - (2) Inform members, especially sections and committees, of the Bar's legislative positions;
 - (3) Respect divergent opinions of subgroups within the legal profession;
 - (4) Provide assistance to bar sections and committees;
 - (5) Avoid committing bar funds to issues that are divisive or result in creating factions within the profession;
 - (6) Present major issues to the House of Delegates for approval; and
 - (7) 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.

Policy 11.101 Legislative Activities of Committees and Sections

- (a) 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.

(b) 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.

Chapter 12 Pro Bono

Policy 12.100 Pro Bono Service 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.

Policy 12.101 Pro Bono Program Certification

(a) In order for a pro bono program to obtain bar certification, the program must submit an application and meet the applicable criteria set forth below. The Bar's Chief Executive Officer determines whether a program is eligible for certification and this determination is final.

(b) 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.

(c) 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.

(d) 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.

(e) 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.

(f) Diversity: The program must comply with Article 9 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.

(g) 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.

Policy 12.102 Pro Bono Service Recognition

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. 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. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Chapter 13 Committees

Policy 13.100 Standing and Special Committees

(a) 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.

(b) All voting members of standing committees typically serve on a three-year rotating basis. The President of the Board may reappoint members to a committee, if the President of 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.

(c) Committees have no budget, although they may make recommendations regarding the expenditure of funds already budgeted in a particular program area. A committee cannot incur any expense without prior authorization from the Chief Executive Officer.

(d) 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.

(e) 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.

(f) Each committee must file an annual report of its activities with the Chief Executive Officer for the preceding year by December 1 of each year. Other reports may be required from time to time.

(g) 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.

Policy 13.200 Joint Committees

Joint committees comprise a certain number of bar members and a certain number of members of other professional associations. 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.

Policy 13.300 Committee Responsibilities

Committees are established so that members can study issues within the committee's charge and make recommendations to the Board. 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.

Policy 13.400 Committee Membership

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. 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.

Policy 13.500 Committee Financial Issues

Committees may make recommendations to the Board regarding the expenditure of funds already budgeted in a particular program area.

Policy 13.700 Committee Administrative Services

The Bar's meeting rooms will be available on a first-come first-served basis to committees. All committees are encouraged to use the Bar's meeting rooms whenever possible. 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.

Policy 13.800 Committee Reports

The Board may request that Committees issue reports on specific topics from time to time.

Policy 13.900 Quorum for Meetings

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.

Chapter 14 Sections

Policy 14.100 Section Legislative and Policy Activities

Sections may not represent to any person, including the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the Section without the majority approval of the members of the section executive committee and prior approval of the Board. Sections that wish to sponsor legislation or take a position on any bill, rule or public policy issue must submit details of the proposal to the Bar's Public Affairs Department, which will inform the Board. Section requests that are time-sensitive will be presented to the Board's Public Affairs Committee, or the Public Affairs Committee chair, as appropriate, for consideration. Sections must keep the Bar's Public Affairs Department informed about the status of section legislative and policy-related activities.

Policy 14.101 Section Communications

Section communications are communications of the Bar and are subject to the requirements outlined in Articles 9, 10 and 11 of these Bylaws. All section communications must also comply with all bar communications policies. Section communications include, but are not limited to, CLE events and programming, newsletters, websites, blogs, social media pages, and section statements on listserves. The Chief Executive Officer has discretion to determine if section communications comply with this section.

Policy 14.102 Section Continuing Legal Education Activities

- (a) The Bar is the informational clearinghouse for the CLE activities of each section. To allow the Bar to perform its role, each section must advise the Bar's CLE Seminars Department of all proposed section CLE activities at the earliest possible date.
- (b) Sections that provide CLE programs of four MCLE credit hours or more must co-sponsor such a program with the Bar's CLE Seminars Department at least once out of every three years. The CEO will establish policies sections must adhere to when co-sponsoring CLE events.
- (c) Sections must use the Bar's registration services for all section CLE programs. . The Chief Executive Officer will determine the cost to provide registration services and establish policies sections must follow when using bar registration services. Sections are responsible for applying and paying for Minimum Continuing Legal Education credit for seminars not co-sponsored with CLE Seminars.
- (d) A section that plans a seminar or a publication without the co-sponsorship by a bar department must indicate clearly on all publicity, printed seminar materials and publications that the seminar or publication is a section endeavor and list the name of the sponsoring section. The section may not use the Oregon State Bar logo or the phrase Oregon State Bar CLE.

Policy 14.400 Section Finances and Contracts

- (a) Section administrative fees are recalculated periodically as determined by the Chief Executive Officer. Sections with a fund balance as of December 31 equal to or less than two years of section membership fees will be charged a fee equal to 50 percent of the per capita fee.
- (b) Sections with a fund balance as of December 31 exceeding two years of section membership fees will be charged the full per capita fee for the following year. A section may request a waiver to maintain a larger fund balance by submitting a written request to the Board by October 15, outlining the specific event or program for which the funds are needed.
- (c) 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.
- (d) Sections seeking to contract for any goods or services with organizations or individuals or seeking to amend or cancel existing section contracts must contact the OSB's Office of General Counsel for assistance. General Counsel must review and approve all contracts and contract amendments before a contract or amendment is finalized. The CEO or the CEO's designee must approve all section contracts.
- (e) Any damages and penalties incurred by the Bar as a result of a section contract will be assessed to the section, unless the Board specifically authorizes damages and penalties to be charged to the Bar's General Fund.
- (f) 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 support services before contracting with outside organizations or individuals.

Policy 14.401 Section Grants and Donations

- (a) 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.
- (b) Sections may make donations to charitable causes or organizations of section funds, including donations characterized as grants or sponsorships, only with prior approval of the Chief Executive Officer. The Chief Executive Officer may allow such donations on a showing by the section that the donation will further the bar's statutory mission, does not commit bar funds to issues that are divisive or result in creating factions within the profession, and otherwise complies with law. The Chief Executive Officer will maintain a list of approved recipients.
- (c) Sections may make donations to charitable organizations, governmental entities or the Bar's Diversity & Inclusion Department to fund scholarships or stipends for law students or recent law school graduates only with the prior approval of the Chief Executive Officer. Any approved scholarships or

stipends must be administered by the charitable organization, governmental entities, the Bar's Diversity & Inclusion Department, or another third party, and must otherwise comply with law.

Chapter 15 Bar Programs

Policy 15.100 CLE Seminars

(a) 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.

(b) 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.

(c) Complimentary registration does not include the cost of lunch, materials in hard copy for which a separate fee is charged, any fee-based activities held in conjunction with a CLE seminar, or any other item not included in the registration fee.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

Policy 15.101 Legal Publications

(a) 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.

(b) 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.

(c) 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.

Policy 15.200 Member Services

(a) Member Services may provide administrative services, such as mailing services, mailing lists and labels and photocopying to member and nonmember groups at the cost of providing the service or product. Priority is given to official bar business.

(b) Member Services will provide broadcast e-mail and list serves to sections.

Policy 15.300 Legal Ethics Guidance

(a) General Counsel's office will determine whether a question submitted appears to present or involve a question of ethics or professional conduct and whether the inquirer has provided facts sufficient to permit the formulation of an opinion. 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.

(b) 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. General Counsel will not offer an ethics opinion on past conduct by other members, except to assist a member to determine whether conduct described implicates the inquiring member's duty to report another lawyer's misconduct under Oregon RPC 8.3. Ethics questions and responses 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 should submit ethics questions in a hypothetical form that does not disclose client confidences, or obtain their client's informed consent prior to disclosure. Materials submitted to General Counsel in connection with ethics inquiries are public records, and may be disclosed by General Counsel to the public, the Client Assistance Office or Disciplinary Counsel's Office.

(c) For Oregon RPC 8.6 to apply to a request for ethics assistance, a member must put his or her ethics question in writing. General Counsel's office will respond in writing 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.

(d) If inquiries submitted to the Legal Ethics Committee contain facts that 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. 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. 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.

(e) The Legal Ethics Committee will establish and will periodically review guidelines for determining the appropriate form of response to member's ethics questions. 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.

Policy 15.400 Fee Dispute Resolution Program

(a) The Bar's fee arbitration procedure is a private, contract dispute resolution mechanism and not the transaction of public business.

(b) Except as provided in (d) 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.

(c) 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.

(d) Notwithstanding subsection (a), (b) and (c), 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.

Chapter 16 Discipline

[No Policies adopted by Board at this time.]

Chapter 17 Unlawful Practice of Law

Policy 17.100 UPL Committee

For the purpose of Policies 17.100 through 17.600, the following definitions apply:

(a) "Administrator" means the Bar employee assigned to provide administrative support to the Committee and Bar Counsel.

(b) "UPL Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.

(c) "Unlawful practice of law" means (1) the practice of law, as defined under applicable Oregon law, taking place in the State of Oregon, by a person who is not an active member of the Oregon State Bar and is not otherwise authorized by law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon.

(d) "Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.

(e) "Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of conduct related to the unlawful practice of law or consumer fraud.

(f) "Respondent" means the person or persons who are the subject of a complaint to the committee.

(g) "Complaint" means the matter or occurrence that causes the UPL Committee to open a file for the investigation of the respondent's alleged unlawful practice of law.

Policy 17.200 Dispositions

Upon receipt and review of the investigator's report, the UPL Committee may either continue the matter for further investigation and revisions to the report or make one of the following dispositions:

(a) Closure.

This disposition is appropriate when the UPL Committee has insufficient evidence indicating that the respondent has engaged in the unlawful practice of law under Oregon law. The UPL Committee may reopen a closed matter if it receives additional information or evidence implicating the unlawful practice of law by the respondent.

(b) Informational Letter.

This disposition is appropriate when the UPL Committee has insufficient evidence indicating that the respondent has engaged or will continue to engage in the unlawful practice of law, and believes that that the respondent would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter will notify the respondent that the investigation is concluded, and state that the respondent may wish to seek legal advice about whether any specific practice constitutes the unlawful practice of law.

(c) Referral to Board of Governors for initiation of proceedings under ORS 9.166.

(1) Filing suit for injunctive relief is appropriate when (i) the UPL Committee has a reasonable belief that a finder of fact would find clear and convincing evidence necessary to establish that the respondent engaged in the unlawful practice of law, (ii) the practice is ongoing or likely to recur, and (iii) a member of the public has been harmed or is likely to be harmed as a result of the respondent's unlawful practice of law.

(2) Filing suit for contempt relief is appropriate when (i) a court has entered an injunction against the respondent, (ii) the UPL Committee has a reasonable belief that a finder of fact would find clear and convincing evidence necessary to establish that the respondent continues to engage in the unlawful practice of law, and (iii) a member of the public has been harmed or is likely to be harmed as a result of the respondent's unlawful practice of law.

(3) The UPL Committee may decline to request authorization from the Board to initiate proceedings allowed under to ORS 9.166 in favor of other resolutions provided in these rules.

(d) Referral to or Cooperation with Other Agency or Bar Department.

This disposition is appropriate when the UPL Committee determines that an agency or another department of the bar is better positioned to investigate or address the complaint, including but not limited to when:

- (1) The allegations involve activity prohibited by law, ordinance or statute within the jurisdiction of a federal, state or local agency;
- (2) Respondent is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;
- (3) Agency, on review of the allegations before the Committee as to a respondent, indicates a desire to pursue further investigation;
- (4) Agency has or is likely to have, information regarding the complaint, the respondent or parties acting with the respondent, or;
- (5) Complaint concerns conduct by a lawyer or bar applicant, or implicates the rules of professional conduct.

Policy 17.300 Role of Bar Counsel

(a) After authorization by the Board to pursue an action under ORS 9.166, the Administrator may retain counsel to represent the Bar in the action and will report periodically to the UPL Committee and Board on the status of the litigation. To the extent necessary, the Committee and Administrator will assist bar counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Policy 17.400 Settlement Authority

After authorization by the Board to pursue an action under ORS 9.166, the Administrator may negotiate a settlement of the unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the respondent to discontinue the unlawful practice of law.

Policy 17.500 Referral to Bar Counsel

When a new complaint of unlawful practice of law involves an respondent against whom the Board has already authorized suit, the administrator refer the matter directly to bar counsel without obtaining prior authorization from the Committee or the Board. The administrator and Bar counsel may ask the Committee to conduct an investigation into the new complaint and have discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the respondent.

Policy 17.600 Records

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar. Records will be kept in accordance with the Bar's records retention policy.

Chapter 18 Professional Liability Fund

[No Policies adopted by the Board at this time.]

Chapter 19 Attorney Assistance

Policy 19.100 State Lawyers Assistance Committee

The State Lawyers Assistance Committee ("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.

Policy 19.101 State Lawyers Assistance Committee Review and Intake

(a) Any person may submit directly to SLAC, either orally or in writing, the name of any lawyer whose performance or conduct appears to be impairing the lawyer's professional competence or ability to practice law. A referral of a lawyer to SLAC should include a description of the circumstances and copies of any relevant documents. SLAC members who are contacted regarding a complaint or referral will obtain preliminary information and refer the matter to the chairperson. The chairperson will confirm receipt of a referral in a letter to the person making the referral. The letter must contain a disclosure substantially as follows:

"We appreciate your interest in bringing this matter to our attention. Our Committee will respond by contacting the lawyer to discuss the problem. It is important for you to understand, however, that the purpose of this Committee is to provide confidential assistance to lawyers who are impaired in the practice of law for reasons such as drug or alcohol problems, emotional problems or lack of competence. For that reason, we focus our work on determining the specific assistance that the lawyer needs and making sure that the lawyer follows a treatment or assistance program. This Committee does not deal with lawyer discipline issues. All information we receive from you will be kept confidential and will not be reported to the bar disciplinary authorities. If you believe that this lawyer has acted improperly and you wish to make a complaint to the bar, you should write to Client Assistance Office, Oregon State Bar, P.O. Box 231935, Tigard, OR 97281."

(b) If a referral is received from a member of the Bar, the letter required in paragraph (A) must also contain the following statement:

"If you are a member of the Bar, please review Oregon RPC 8.3(a) to determine whether you may have an independent obligation to contact the Bar."

(c) The OSB Client Assistance Office and the OSB Disciplinary Counsel may refer to SLAC the name of any lawyer whose performance or conduct appears to be impairing the lawyer's ability to practice law or professional competence. The referral will include a description of the circumstances and copies of any relevant documents. The State Professional Responsibility Board may refer to SLAC any lawyer whose performance or conduct may be impairing the lawyer's ability to practice or professional competence whether or not the SPRB authorizes prosecution for misconduct. The chairperson will confirm in writing referrals from the Client Assistance Office, Disciplinary Counsel's Office, or the SPRB.

Policy 19.102 SLAC 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 Article 19(f). 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.

Policy 19.103 Preliminary SLAC Assessment and Intake

(a) 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.

(b) 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.

(c) 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.

Policy 19.104 Notice to Referred Lawyer

(a) 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.

Policy 19.105 State Lawyers Assistance Committee Investigations

(a) Within 30 days after notice has been given as provided in Article 19(f) 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.

(b) 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.

(c) 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.

Policy 19.106 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.

Policy 19.107 State Lawyers Assistance Committee Records & Annual Report

(a) The SLAC 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 Article 19(g) of the Bar's Bylaws. Closed files will be maintained for ten years in locked storage at the Bar's offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

(b) SLAC shall submit an annual report to the Board. 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.

Policy 19.108 SLAC Exempt from Public Meetings Law

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.

Chapter 20 Sustainability

Policy 20.100 Sustainability

Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the Chief Executive Officer 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.

Chapter 21 Unclaimed Lawyer Trust Account Funds

Policy 21.100 Unclaimed Lawyer Trust Account Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, the Bar shall review the claim and approve or deny the claim within 120 days after the completed claim form and all necessary information to process the claim is received. If a claimant is requested to provide additional information and fails to do so within 90 days after the request is made, the Bar may close the file without further action. A claim shall be approved if a preponderance of the evidence proves the claimant is legally entitled to the unclaimed lawyer trust account funds. A claim shall be denied if the preponderance of the evidence does not prove the claimant is legally entitled to the property.

(b) The Chief Executive Officer or the Chief Executive Officer's designee shall decide whether to approve or deny all claims for amounts under \$5000. Claims for amounts of \$5000 or more must be reviewed and approved or denied by the Board.

(c) The Bar shall utilize claim forms published by the Oregon Department of State Lands. To evaluate whether to approve or deny a claim under Article 21(d), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(d) If a claim is approved pursuant to this Subsection, the Chief Executive Officer or designee shall notify the claimant.

(e) If a claim is denied, the Chief Executive Officer or the Chief Executive Officer's designee shall notify the claimant. The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity to appeal the denial to the Board.

(f) A claimant may appeal the denial of a claim by making a request in writing to the Chief Executive Officer within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request.

(g) Additional evidence shall not be admissible on appeal to the Board, except by mutual consent of the Board, the claimant, and any other parties to the proceeding. If such additional evidence is not admitted, the Board shall allow the claimant to resubmit the claim to the Chief Executive Officer with the new evidence.

(h) The Chief Executive Officer or designee shall notify the claimant of the Board's decision on appeal.

(i) A holder of property who has delivered unclaimed lawyer trust account funds to the Bar pursuant to ORS 98.386(2) may make payment to or delivery of property to an owner and file a claim with the Bar for reimbursement. The Bar shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Bar may not assess any fee or other service charge to the holder. As a condition of receiving the funds from the Bar, the holder shall agree to assume liability for the claimed asset and hold the Bar harmless from all future claims to the property.

(j) On a quarterly basis, the Chief Executive Officer or designee shall provide a listing of the claims resolved to the Department of State Lands. The Chief Executive Officer shall also provide an annual report of the claims resolved to the Board.

Chapter 22 Admissions

[No Board Policies adopted at this time.]

Chapter 23 Amendment of Bylaws

[No Board Policies adopted at this time.]