

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

January 29, 2021

2:30 PM

Zoom Videoconference

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 2:30 p.m. on January 29, 2021. Items on the agenda will not necessarily be discussed in the order as shown.

- | | | |
|---|---------------|-----------------------|
| 1. Call to Order | | |
| 2. Special Election for Region 5 | Action | <u>Exhibit</u> |
| Establish bar policy for review of candidate eligibility and approve revised timeline for Region 5 special election | | |
| 3. Late Fees for 50-year members | Action | <u>Exhibit</u> |
| Consider whether to waive late fees for 50-year members | | |

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: January 29, 2021
From: Danielle Edwards, Director of Member Services
Nik Chourey, Deputy General Counsel
Re: Candidate Eligibility Review Procedure

Action Recommended

Establish a bar policy for the implementation of procedures, under ORS 9.042,¹ for the review of a candidate's eligibility for election to the Board of Governors and approve a revised timeline for the region 5 special election.

Background

As discussed previously, the bar is conducting a special election to fill a vacant seat in region 5 on the Board of Governors pursuant to ORS 9.040(5). A member recently submitted a written request for review of eligibility of Region 5 BOG candidate David James Robinson in the special election.

The Board must establish procedures for the implementation of the review and determination of the candidate's eligibility. ORS 9.042(5). Considering the statute's parameters, bar staff proposes the following policy:

¹ **9.042 Determination of eligibility of candidate for board of governors; procedure; review by Supreme Court.** (1)

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

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

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

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

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

(6) This section provides the exclusive procedure for challenging the eligibility of a candidate for the board. No other administrative or judicial proceeding may be brought to challenge the eligibility of a candidate for the board.

BOG Candidate Eligibility Review Procedure:

Upon the receipt of written request to determine the eligibility under ORS 9.042, the Board through the CEO shall notify the candidate within five days and provide a copy of the request. The Board shall allow the candidate at least 10 days to provide any additional written materials to support their eligibility for candidacy. The Board shall provide the candidate with the date, time, and location of the board meeting where, in public session, they will determine the candidate's eligibility and invite the candidate to attend and present if they so desire. Immediately after making its decision, the Board will notify the candidate of their decision in writing and proceed with the election in accordance with ORS 9.042.

As required by ORS 9.040(1), on November 20, 2020, the Board approved dates for the special election as outlined on the attached memo. While the dates are in accordance with the statute, the timeline did not allow for the eligibility review process to proceed more quickly than the specified dates. As such, the following revised timeline is proposed:

December 16 Deadline for BOG Candidate Statements

January 15 Deadline for candidate eligibility review requests to be filed

Request for review submitted on January 15.

January 17 Candidate was notified of request for eligibility review

February 12 BOG meeting to determine candidate's eligibility

March 1 Last day for candidate to file petition for review with Supreme Court

If no petition for review is filed with the Supreme Court:

March 4 Election begins (must occur before March 11 to comply with ORS 9.042(5))

March 18 Election ends, ballots due by 5:00 pm

If a petition for review is filed with the Supreme Court:

Election must begin within 10 days of the Supreme Court's determination.

Election period will last two weeks from the start date.

Options

1. Adopt the policy and revised timeline as provided.
2. Modify the eligibility review process and determine if this requires changes to the provided timeline.
3. Take no action during this meeting and direct staff to return to the BOG with other policy options. The BOG is required by ORS 9.042(5) to develop a procedure for the eligibility review process prior to determining the candidate's eligibility. The statutory deadline for determining Mr. Robinson's eligibility in the special election is March 1.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: November 20, 2020
From: Danielle Edwards, Director of Member Services
Re: BOG Special Election Dates

Action Recommended

Approve dates for a BOG special election as provided below.

Background and Discussion

Based on ORS 9.025(5)(c), the term of a BOG member ends when the member becomes a judge. Adrian Brown, whose term on the BOG ends December 31, 2023, was elected to the Multnomah County bench beginning January 1, 2021.

As outlined by ORS 9.040(5), a vacancy on the BOG occurring more than 24 months before the term expiration, must be filled by special election as soon as possible after the occurrence of the vacancy. The BOG is responsible for determining election dates, as provided in ORS 9.040(1). Therefore, the following schedule outlines different election dates based on whether or not a candidate challenge is received.

Wednesday, December 16	Deadline for BOG Candidate Statements
Friday, January 15	Deadline for candidate challenges to be filed

If no candidate challenges are received:

Monday, January 18	Election begins: Ballots distributed
Monday, February 1	Election ends: Ballots due by 5:00 p.m.
Tuesday, February 2	Results announced, BOG member assumes office
February 11/12	BOG and Committee meetings

If a candidate challenge is received¹:

Wednesday, March 1	BOG decision on challenges due
Tuesday, March 16	Petition for Supreme Court review
Tuesday, March 30	Final Supreme Court review
Monday, April 5	Election begins: Ballots distributed
Monday, April 19	Election ends: Ballots due by 5:00 p.m.
Tuesday, April 20	Results announced, BOG member assumes office
May 22	BOG Committee meetings

¹ ORS 9.042 outlines the deadlines for review of candidate challenges.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: January 29, 2021
From: Helen Hierschbiel, CEO
Re: Late Fees for 50-Year Members

Action Recommended

Consider whether to waive late fees for 50-year members for the 2021 fee season.

Background and Discussion

The payment date for the 2021 annual membership fees and assessments is February 1, 2021. OSB Bylaw 6.400. Payments made after February 1 will be assessed a late payment penalty of \$100 for active members and \$50 for active pro bono, inactive, and retired members. The board of governors set these late payment penalties pursuant to OSB Bylaw 6.402.

At its 2020 annual meeting, the HOD approved a change in policy to begin charging 50-year members the regular annual membership fees. For decades prior, 50-year members were not charged fees to retain membership in the Oregon State Bar.

Of the 595 members who have over 50 years of membership in the OSB, less than half have paid the fees as of January 26, 2021. The attached spreadsheet shows a breakdown of the fees paid and unpaid, based on member type.

There are several possible reasons for this low payment rate. First, many 50-year members have contacted the bar with concerns about this change in policy. Bar staff has informed these members that their feedback will be shared with the BOG at its first regular meeting of the year on February 12, 2021. Some 50-year members are hoping the BOG will reverse the decision to charge 50-year members fees, or otherwise change the new policy in some way. Therefore, some members are waiting until February 12 to make their decision about whether to continue membership in the bar.

Second, because this is the first year that the bar has required a fee payment from 50-year members, it is likely that some 50-year bar members are simply not aware of the new fee. While staff has conducted targeted outreach to this group of members, providing an additional 60 days to pay the new fee without penalty would allow staff to conduct additional outreach.

Options

1. Waive the late fee for 50-year members for the 2021 fee season to allow 50-year members an opportunity to adjust to the change in policy. Staff recommends this approach.
2. Do nothing.

Attachment: 50-Year Member Fee Payment Data

50+ Year Members as of January 26, 2021

Member Type	Total			Total	Late Fee \$
	HC	Paid	Unpaid	Paid & Unpaid	
Active	121	85	34	119	\$ 3,400
Active Discounted	0	2	0	2	\$ -
Active Pro Bono	45	13	32	45	\$ 1,600
Inactive	338	108	230	338	\$ 11,500
Retired	91	45	46	91	\$ 2,300
	<u>595</u>	<u>253</u>	<u>342</u>	<u>595</u>	<u>\$ 18,800</u>