

AGENDA

BOG Policy & Governance Committee

Meeting Date: February 12, 2021
Location: Videoconference
Chair: Kamron Graham
Vice-Chair: Kate Denning
Members: Gabriel Chase, Kate Denning, John Grant, Rob Milesnick, Curtis Peterson, Joe Pucci, David Rosen
Staff Liaison: Helen M. Hirschbiel

Charge: Develops and monitors the governing rules and policies relating to the structure and organization of the bar; ensures that all bar programs and services comply with organizational mandates and achieve desired outcomes. Identifies and brings emerging issues to the BOG for discussion and action.

2021 PGC Work Plan

1. Wellness Task Force Report. <i>Review report and decide whether to pursue any recommendations.</i>	<u>Exhibit</u>	Action	10
2. Evidence-Based Decision-Making Policy. <i>Review Futures Task Force recommendation regarding evidence-based decision-making policy and consider whether to adopt the recommended policy.</i>	<u>To Be Posted</u>	Action	10
3. HOD Authority. <i>Discuss whether to pursue changes to limits of HOD authority either through amendments to HOD Rules or Bar Act.</i>	<u>Exhibit</u>	Action	10
4. OSB Bylaw Overhaul. <i>Review draft of OSB bylaw overhaul, splitting between policies and bylaws.</i>	<u>Exhibit</u>	Discussion	20
5. Bar Sponsorship of Lawyer Referral Services. <i>Review issue presented by Legal Ethics Committee.</i>	<u>Exhibit</u>	Discussion	20

6. Section Program Review. <i>Review feedback regarding proposed changes to bylaws.</i>	<u>Exhibit</u>	Discussion	20
7. Approve minutes of January 8, 2021 meeting.	<u>Exhibit</u>	Action	1

2021 POLICY & GOVERNANCE WORK PLAN

February 12, 2021 draft

2021 AREAS OF FOCUS	TO DO TASKS	IN PROCESS (PGC) 1. Identify information needed for decision 2. Review information; provide input 3. Decide whether/what to recommend to BOG	PGC TASKS DONE	IN PROCESS (BOG) 1. Identify information needed for decision 2. Review information; provide input 3. Decide action or refer back to committee.	BOG TASKS DONE
Strategic Governance					
	Adopt 2021 PGC Work Plan	<ul style="list-style-type: none"> January—Review plan and decide whether to adopt or revise. Determine priorities. 	1/8/20 plan adopted		
	Overhaul bylaws to shift details from bylaws to policies	<ul style="list-style-type: none"> January—Review draft and provide input 			
	Adopt bylaw that requires court approval of all bylaws (only if the proposed Bar Act Amendment regarding court approval of bylaws does not pass)	<ul style="list-style-type: none"> June—Review leg session results and consider whether or what bylaw needed 			
	Consider amendments to HOD Rule 5.6 and OSB Bylaw 3.4 OR to ORS 9.139(3)(d)	<ul style="list-style-type: none"> January—Review background information and discuss whether to pursue any changes February—Continue discussion 			
	Consider amendments to OSB Bylaw Articles 11 and 12 based on the bar’s new	<ul style="list-style-type: none"> June?? 			

	statutory mission (post-litigation only)				
	Review and consider changes to PLF BOD appointment process. OSB Bylaw 23.1 and PLF Bylaw Article 3	<ul style="list-style-type: none"> • April?? 			
	Review National Wellness Task Force Report. Determine whether to pursue any recommendations	<ul style="list-style-type: none"> • February—Review report and determine whether to pursue any recommendations 			
Program Development, Review and Oversight					
	Program Evaluation Review and Feedback	<ul style="list-style-type: none"> • April—Review program evaluations; provide feedback 			
	Complete In-Depth Program Review of Sections	<ul style="list-style-type: none"> • February—Review comments and discuss 			
	Complete Legal Publications In-Depth Review	<ul style="list-style-type: none"> • April?? 			
	Bar-sponsorship of lawyer referral services RPC 5.4(a)(5)	<ul style="list-style-type: none"> • February—Review LEC memo and discuss 			
	Consider whether to adopt specialty certification program	<ul style="list-style-type: none"> • April—Review information from jurisdictions with programs and determine whether/how to proceed 			
Policy Issues					
	Consider adopting notice and feedback process for regulatory rule amendments	<ul style="list-style-type: none"> • January—Review draft process and consider whether to recommend BOG adoption 	1/8/20 PGC approved recommendation to BOG	February BOG meeting	

	Consider adopting policy for public comment at BOG meetings	<ul style="list-style-type: none"> January—Review draft policy and consider whether to recommend BOG adoption 	1/8/20 PGC approved recommendation to BOG	February BOG meeting	
Follow up on Futures Task Force Recommendations					
	Embrace Evidence-Based Decision Making <ul style="list-style-type: none"> Adopt evidence-based decision-making policy 	<ul style="list-style-type: none"> January—Review draft policy and consider whether to recommend BOG adoption February—Consider revised draft. 			
	Consider recommendations of Paraprofessional Licensing Implementation Committee	<ul style="list-style-type: none"> June—Review draft proposal and provide feedback 			
	Request report from PLF on FTF Report Recommendation #6 re PMA resources & programming	<ul style="list-style-type: none"> April 			



*“You can do what I cannot do. I can do what you cannot do.
Together we can do great things.” — Mother Teresa*

Regulators play a vital role in fostering individual lawyer well-being and a professional culture that makes it possible. We broadly define “regulators” to encompass all stakeholders who assist the highest court in each state in regulating the practice of law.⁹² This definition includes lawyers and staff in regulatory offices; volunteer lawyer and non-lawyer committee, board, and commission members; and professional liability lawyers who advise law firms and represent lawyers in the regulatory process.

Courts and their regulators frequently witness the conditions that generate toxic professional environments, the impairments that may result, and the negative professional consequences for those who do not seek help. Regulators are well-positioned to improve and adjust the regulatory process to address the conditions that produce these effects. As a result, we propose that the highest court in each state set an agenda for action and send a clear message to all participants in the legal system that lawyer well-being is a high priority.

Transform the profession’s perception of regulators from police to partner.

To carry out the agenda, regulators should develop their reputation as partners with practitioners. The legal profession often has a negative perception of regulators,

who typically appear only when something has gone awry. Regulators can transform this perception by building their identity as partners with the rest of the legal community rather than being viewed only as its “police.”

Most regulators are already familiar with the 1992 Report of the Commission on Evaluation of Disciplinary Enforcement—better known as the “McKay Commission Report.”⁹³ It recognized and encouraged precisely what we seek to do through this report: to make continual improvements to the lawyer regulation process to protect the public and assist lawyers in their professional roles. Accordingly, we offer the following recommendations to ensure that the regulatory process proactively fosters a healthy legal community and provides resources to rehabilitate impaired lawyers.

20. TAKE ACTIONS TO MEANINGFULLY COMMUNICATE THAT LAWYER WELL-BEING IS A PRIORITY.

20.1. Adopt Regulatory Objectives That Prioritize Lawyer Well-Being.

In 2016, the Conference of Chief Justices adopted a resolution recommending that each state’s highest court consider the ABA’s proposed Model Regulatory Objectives.⁹⁴ Among other things, those objectives sought to encourage “appropriate preventive or wellness programs.” By including a wellness provision, the ABA recognized the importance of the human element in the practice of law: To accomplish all other listed objectives, the profession must have healthy, competent lawyers. The Supreme Court of Colorado already has adopted

⁹²See AM. BAR ASS’N RESOL. 105 (February 2016).

⁹³AM BAR ASS’N COMM’N ON EVALUATION OF DISCIPLINARY ENFORCEMENT, LAWYER REGULATION FOR A NEW CENTURY: REPORT OF THE COMMISSION ON EVALUATION OF DISCIPLINARY ENFORCEMENT (1992), available at http://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report.html.

⁹⁴RESOL. 105, *supra* note 92.

a version of the ABA’s Regulatory Objectives. In doing so, it recommended proactive programs offered by the Colorado Lawyer Assistance Program and other organizations to assist lawyers throughout all stages of their careers to practice successfully and serve their clients.⁹⁵ The Supreme Court of Washington also recently enacted regulatory objectives.⁹⁶

We recommend that the highest court in each U.S. jurisdiction follow this lead. Each should review the ABA and Colorado regulatory objectives and create its own objectives that specifically promote effective lawyer assistance and other proactive programs relating to well-being. Such objectives will send a clear message that the court prioritizes lawyer well-being, which influences competent legal services. This, in turn, can boost public confidence in the administration of justice.

20.2. Modify the Rules of Professional Conduct to Endorse Well-Being As Part of a Lawyer’s Duty of Competence.

ABA Model Rule of Professional Conduct 1.1 (Competence) states that lawyers owe a duty of competence to their clients. “Competent” representation is defined to require “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”⁹⁷ We recommend revising this Rule and/or its Comments to more clearly include lawyers’ well-being in the definition of “competence.”

One alternative is to include language similar to California’s Rule of Professional Conduct 3-110, which defines “competence” to include the “mental, emotional, and physical ability reasonably necessary” for the representation.⁹⁸ A second option is to amend the Comments to Rule 1.1 to clarify that professional competence requires an ability to comply with all of the Court’s essential eligibility requirements (see Recommendation 21.2 below).

Notably, we do not recommend discipline solely for a

lawyer’s failure to satisfy the well-being requirement or the essential eligibility requirements. Enforcement should proceed only in the case of actionable misconduct in the client representation or in connection with disability proceedings under Rule 23 of the ABA Model Rules for Disciplinary Enforcement. The goal of the proposed amendment is not to threaten lawyers with discipline for poor health but to underscore the importance of well-being in client representations. It is intended to remind lawyers that their mental and physical health impacts clients and the administration of justice, to reduce stigma associated with mental health disorders, and to encourage preventive strategies and self-care.

20.3. Expand Continuing Education Requirements to Include Well-Being Topics.

We recommend expanding continuing education requirements for lawyers and judges to mandate credit for mental health and substance use disorder programming and allow credit for other well-being-related topics that affect lawyers’ professional capabilities.

In 2017, the ABA proposed a new Model Continuing Legal Education (MCLE) Rule that recommends mandatory mental health programming. The Model Rule requires lawyers to earn at least one credit hour every three years of CLE programming that addresses the prevention, detection, and/or treatment of “mental health and substance use disorders.” We recommend that all states adopt this provision of the Model Rule. Alternatively, states could consider authorizing ethics credit (or other specialized credits) for CLE programs that address these topics. California and Illinois are examples of state bars that already have such requirements.⁹⁹

The ABA’s new Model Rule also provisionally recommends that states grant CLE credit for “Lawyer Well-Being Programming.” The provision encompasses a broader scope of topics than might fall under a narrow definition of mental health and substance use

⁹⁵Washington Courts, Suggested Amendments to General Rules (2017), http://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=549.

⁹⁷MODEL RULES PROF. CONDUCT R. 1.1 (2017), available at https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_1_competence.html.

⁹⁸CAL. RULES PROF’L CONDUCT R. 3-110, available at <http://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules/Rule-3-110>.

⁹⁹See RULES OF THE STATE BAR OF CAL., Title 2, Div. 4, R. 2.72 (2017); ILL. SUP. CT. R. 794(d)(1) (2017).



disorders. Tennessee is one example of a pioneering state that authorizes credit for a broad set of well-being topics. Its CLE Regulation 5H authorizes ethics and professionalism credit for programs that are designed, for example, to: enhance optimism, resilience, relationship skills, and energy and engagement in their practices; connect lawyers with their strengths and values; address stress; and to foster cultures that support outstanding professionalism.¹⁰⁰ We recommend that regulators follow Tennessee's lead by revising CLE rules to grant credit for similar topics.

20.4. Require Law Schools to Create Well-Being Education for Students as An Accreditation Requirement.

In this recommendation, the Task Force recognizes the ABA's unique role as accreditor for law schools through the Council of the Section of Legal Education and Admissions to the Bar of the ABA.¹⁰¹ The Task Force recommends that the Council revise the Standards and Rules of Procedure for Approval of Law Schools to require law schools to create well-being education as a criterion for ABA accreditation. The ABA should require law schools to publish their well-being-related resources on their websites. These disclosures can serve as resources for other law schools as they develop and improve their own programs. Examples of well-being education include a mandatory one credit-hour course on well-being topics or incorporating well-being topics in to the professional responsibility curriculum.

A requirement similar to this already has been implemented in the medical profession for hospitals that operate residency programs. Hospitals that operate Graduate Medical Education programs to train residents must comply with the Accreditation Council for Graduate Medical Education (ACGME) Program Requirements. The ACGME requires hospitals to “be committed to and

responsible for . . . resident well-being in a supportive educational environment.”¹⁰² This provision requires that teaching hospitals have a documented strategy for promoting resident well-being and, typically, hospitals develop a wellness curriculum for residents.

21. ADJUST THE ADMISSIONS PROCESS TO SUPPORT LAW STUDENT WELL-BEING.

To promote law student well-being, regulations governing the admission to the practice of law should facilitate the treatment and rehabilitation of law students with impairments.

21.1. Re-Evaluate Bar Application Inquiries About Mental Health History.

Most bar admission agencies include inquiries about applicants' mental health as part of fitness evaluations for licensure. Some critics have contended that the deterrent effect of those inquiries discourages persons in need of help from seeking it. Not everyone agrees with that premise, and some argue that licensing of professionals necessarily requires evaluation of all risks that an applicant may pose to the public. Over the past several decades, questions have evolved to be more tightly focused and to elicit only information that is current and germane. There is continuing controversy over the appropriateness of asking questions about mental health at all. The U.S. Department of Justice has actively encouraged states to eliminate questions relating to mental health, and some states have modified or eliminated such questions.¹⁰³ In 2015, the ABA adopted a resolution that the focus should be directed “on conduct or behavior that impairs an applicant's ability to practice law in a competent, ethical, and professional manner.”¹⁰⁴ We recommend that each state follow the ABA and more closely focus on such conduct or behavior rather than any diagnosis or treatment history.

¹⁰⁰TENN. COMM'N ON CONTINUING LEGAL EDUC., REG. 5H (2008), available at <http://www.cleln.com/images/Documents/Regulations2013.04.16.pdf>.

¹⁰¹See AM. BAR ASS'N, ABA STANDARDS AND RULES OF PROCEDURE FOR APPROVAL OF LAW SCHOOLS 2016-2017, available at https://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2016_2017_aba_standards_and_rules_of_procedure.authcheckdam.pdf.

¹⁰²ACCREDITATION COUNSEL FOR GRADUATE MEDICAL EDUCATION, CGME COMMON PROGRAM REQUIREMENTS, § VI.A.2, available at https://www.acgme.org/Portals/0/PFAssets/ProgramRequirements/CPRs_07012016.pdf

¹⁰³D. Hudson, *Honesty Is the Best Policy for Character and Fitness Screenings*, A.B.A. J., June 1, 2016, available at http://www.abajournal.com/magazine/article/honesty_is_the_best_policy_for_character_and_fitness_screenings.

¹⁰⁴AM. BAR ASS'N RESOL. 102 (August 2015).



21.2. Adopt Essential Eligibility Admission Requirements.

Promoting lawyer well-being includes providing clear eligibility guidelines for lawyers with mental or physical impairments. Regulators in each state should adopt essential eligibility requirements that affirmatively state the abilities needed to become a licensed lawyer. Their purpose is to provide the framework for determining whether or not an individual has the required abilities, with or without reasonable accommodations.

At least fourteen states have essential eligibility requirements for admission to practice law.¹⁰⁵ These requirements help the applicant, the admissions authority, and the medical expert understand what is needed to demonstrate fitness to practice law. Essential eligibility requirements also aid participants in lawyer disability and reinstatement proceedings, when determinations must be made of lawyers' capacity to practice law.

21.3. Adopt a Rule for Conditional Admission to Practice Law With Specific Requirements and Conditions.

Overly-rigid admission requirements can deter lawyers and law students from seeking help for substance use and mental health disorders. To alleviate this problem, states should adopt conditional admission requirements, which govern applicants for admission to the practice of law who have successfully undergone rehabilitation for substance use or another mental disorder, but whose period of treatment and recovery may not yet be sufficient to ensure continuing success.¹⁰⁶ Conditional admission programs help dismantle the stigma of mental health and substance use disorders as "scarlet letters." Especially for law students, they send a meaningful message that even in the worst circumstances, there is

Rigid admission requirements can deter help-seeking.

hope: seeking help will not block entry into their chosen profession.

21.4. Publish Data Reflecting Low Rate of Denied Admissions Due to Mental Health Disorders and Substance Use.

At present, no state publishes data showing the number of applications for admission to practice law that are actually denied or delayed due to conduct related to substance use and other mental health disorders. From informal discussions with regulators, we know that a low percentage of applications are denied. Publication of this data might help alleviate law students' and other applicants' fears that seeking help for such disorders will inevitably block them from practicing law. Accordingly, we recommend that boards of bar examiners collect and publish such data as another means of encouraging potential applicants to seek help immediately and not delay until after their admission.

22. ADJUST LAWYER REGULATIONS TO SUPPORT WELL-BEING.

22.1. Implement Proactive Management-Based Programs (PMBP) That Include Lawyer Well-Being Components.

PMBP programs encourage best business practices and provide a resource-based framework to improve lawyers' ability to manage their practice. Such programs

¹⁰⁵See, e.g., SUP. CT. OF OHIO, OFF. OF BAR ADMISSIONS, OHIO ESSENTIAL ELIGIBILITY REQUIREMENTS; available at http://www.supremecourt.ohio.gov/AttySvcs/admissions/pdf/ESSENTIAL_ELIGIBILITY_REQUIREMENTS.pdf; MINN. RULES FOR ADMISSION TO THE BAR, RULE 5, available at https://www.revisor.leg.state.mn.us/court_rules/rule.php?type=pr&subtype=admi&id=5; COLO. R. CIV. PROC. 208.1(5), available at http://www.coloradosupremecourt.com/Future%20Lawyers/FAQ_CharacterFitness.asp; WASH. ADMISSION AND PRACTICE RULES, RULE 20(e), available at http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=APR&ruleid=gaaprj; IDAHO BAR COMM'N RULE 201. Other states to adopt essential eligibility requirements include Florida, Illinois, Kentucky, Massachusetts, Minnesota, Nebraska, North Dakota, South Dakota, and Wyoming.

¹⁰⁶About a quarter of all jurisdictions already have conditional admission rules for conduct resulting from substance use or other mental disorders. See 2016 NAT'L CONF. OF BAR EXAMINERS, COMPREHENSIVE GUIDE TO BAR ADMISSIONS REQUIREMENTS, Chart 2: Character and Fitness Determinations (2016). Those states include Arizona, Connecticut, Florida, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Dakota, Oregon, Puerto Rico, Rhode Island, South Dakota, Tennessee, Texas, West Virginia, Wisconsin and Wyoming. Additionally, Guam allows conditional admission for conduct related to substance abuse.



are designed to alleviate practice stress, improve lawyer-client relationships, and enhance career satisfaction.¹⁰⁷ Further, PMBP programs allow regulators to engage with the profession in a service-oriented, positive manner, reducing the anxiety, fear, and distrust that often accompanies lawyers' interactions with regulators.¹⁰⁸ Transforming the perception of regulators so that they are viewed as partners and not only as police will help combat the culture of stress and fear that has allowed mental health and substance use disorders to proliferate.

22.2. Adopt A Centralized Grievance Intake System to Promptly Identify Well-Being Concerns.

We recommend that regulators adopt centralized intake systems. These allow expedited methods for receipt and resolution of grievances and help reduce the stress associated with pending disciplinary matters. With specialized training for intake personnel, such systems also can result in faster identification of and possible intervention for lawyers struggling with substance use or mental health disorders.¹⁰⁹

22.3. Modify Confidentiality Rules to Allow One-Way Sharing of Lawyer Well-Being Related Information From Regulators to Lawyer Assistance Programs.

Regulators' information-sharing practices can contribute to the speed of help to lawyers in need. For example, admissions offices sometimes learn that applicants are suffering from a substance use or other mental health disorder. Other regulators may receive similar information during investigations or prosecutions of lawyer regulation

matters that they consider to be confidential information. To facilitate help for lawyers suffering from such disorders, each state should simplify its confidentiality rules to allow admissions offices and other regulators to share such information immediately with local lawyer assistance programs.

Allowing this one-way flow of information can accelerate help to lawyers who need it. To be clear, the recommended information sharing would be one-way. As always, the lawyer assistance programs would be precluded from sharing any information with any regulators or others.

22.4. Adopt Diversion Programs and Other Alternatives to Discipline That Are Proven Successful in Promoting Well-Being.

Discipline does not make an ill lawyer well. We recommend that regulators adopt alternatives to formal disciplinary proceedings that rehabilitate lawyers with impairments. Diversion programs are one such alternative, and they have a direct and positive impact

Discipline does not make an ill lawyer well.

on lawyer well-being. Diversion programs address minor lawyer misconduct that often features an underlying mental health or substance use disorder.¹¹⁰ When lawyers enter a diversion program, they agree to follow

¹⁰⁷S. Fortney & T. Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. ST. THOMAS L. J. 152 (2012).

¹⁰⁸L. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717 (2016).

¹⁰⁹The American Bar Association's Model Rules for Lawyer Disciplinary Enforcement, Rule 1, defines a Central Intake Office as the office that "receive[s] information and complaints regarding the conduct of lawyers over whom the court has jurisdiction" and determines whether to dismiss the complaint or forward it to the appropriate disciplinary agency. The Model Rules for Lawyer Disciplinary Enforcement are available at http://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement.html.

¹¹⁰Title 6 of Washington's Rules for Enforcement of Lawyer Conduct provides an excellent overview of when diversion is appropriate and procedures for diversion. It is available through the Washington State Courts website at http://www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=ELC. Some of the many jurisdictions to adopt such programs are Arizona, Colorado, the District of Columbia, Florida, Illinois, Iowa, Kansas, Louisiana, New Hampshire, New Jersey, Oklahoma, Oregon, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, and Wyoming.



certain conditions to continue practicing law. Those conditions can include training, drug or alcohol testing, peer assistance, and treatment. Monitoring plays a central role in ensuring compliance with the diversion agreement and helps lawyers successfully transition back to an unconditional practice of law and do so healthy and sober. By conditioning continued practice on treatment for an underlying mental health disorder or substance use disorder, diversion agreements can change a lawyer's life.

In addition, probation programs also promote wellness. Lawyer misconduct that warrants a suspension of a lawyer's license may, under certain circumstances, qualify for probation. In most jurisdictions, the probation period stays the license suspension and lawyers may continue practicing under supervision and specified conditions that include training, testing, monitoring, and treatment. Once again, this places a lawyer facing a mental health or substance use crisis on the path to better client service and a lifetime of greater well-being and sobriety.

23. ADD WELL-BEING-RELATED QUESTIONS TO THE MULTISTATE PROFESSIONAL RESPONSIBILITY EXAM (MPRE).

A 2009 survey reflected that 22.9 percent of professional responsibility/legal ethics professors did not cover substance use and addiction at all in their course, and 69.8 percent addressed the topic in fewer than two hours.¹¹¹ Notwithstanding the pressure to address myriad topics in this course, increased attention must be

given to reduce these issues among our law students. The National Conference of Bar Examiners should consider adding several relevant questions to the MPRE, such as on the confidentiality of using lawyer assistance programs, the frequency of mental health and substance use disorders, and the tie-in to competence and other professional responsibility issues.¹¹² Taking this step underscores both the importance of the topic and the likelihood of students paying closer attention to that subject matter in their course. In addition, professional responsibility casebook authors are encouraged to include a section devoted to the topic, which will in turn compel instructors to teach in this area.

¹¹¹A. M. PERLMAN, M. RAYMOND & L. S. TERRY, A SURVEY OF PROFESSIONAL RESPONSIBILITY COURSES AT AMERICAN LAW SCHOOLS IN 2009, <http://www.legalethicsforum.com/files/pr-survey-results-final.pdf>.

¹¹²See Krill, Johnson, & Albert, *supra* note 1, for the ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation Study; Organ, Jaffe, Bender, *supra* note 3, for *Suffering in Silence: The Survey of Law Student Well-Being and the Reluctance of Law Students to Seek Help for Substance Use and Mental Health Concerns*.



OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: January 8, 2021
From: Helen M Hirschbiel, CEO
Re: HOD Authority

Action Recommended

Discuss limits of HOD authority.

Background

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

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

The House of Delegates (HOD) is a representative assembly of OSB members and members of the public. The HOD’s authority is set by ORS 9.139, which reads as follows:

9.139 Powers of house of delegates.

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

- (a) Modify or rescind an action or decision of the board of governors.
- (b) Direct the board of governors as to future action.

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

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

- (a) To invalidate payments previously made at the direction of the board;
- (b) To direct, modify or rescind any assessment by the board for contributions to a professional liability fund established under ORS 9.080; or
- (c) To direct, modify or rescind any other action or decision by the board that is subject to control, approval or review by the Supreme Court.

¹ ORS 9.010.

² ORS 9.080.

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

The HOD directs the BOG through resolutions adopted by majority vote of a quorum of HOD members present at its annual meeting. Delegates may submit resolutions for inclusion on the HOD agenda no later than 45 days in advance of the meeting.

The BOG reviews proposed resolutions “for conformity with applicable law and bar policy and proposes a preliminary agenda for the meeting.” HOD Rule 5.5. The BOG “may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar’s statutory mission or are determined by the Board to be outside the scope of a mandatory bar’s activity under the U.S. Supreme Court decision in *Keller v. State Bar of California*.” OSB Bylaw Section 3.4. The HOD may vote, however, to add back onto the HOD agenda any resolutions excluded by the Board pursuant to HOD Rule 5.6, which provides:

An agenda shall be adopted by the House of Delegates at the commencement of each meeting. Upon motion of a delegate, the House may add to the agenda, prior to its final adoption, any question or measure submitted pursuant to Rules 5.2 to 5.4 above and excluded from the agenda by the Board. The order of business at meetings of the House shall be as set forth in the agenda adopted by the House.

This means that the HOD could direct the BOG to take action that does not comply with applicable law or the bar’s mission or policy.

Options

1. Do nothing

The Board could leave the framework as it currently exists, knowing that the HOD might adopt a resolution that violates *Keller* or otherwise does not comply with law. If the HOD does adopt a resolution that the BOG believes violates *Keller* (or some other law), the BOG would then have to decide whether to pursue the proposed course of action. Arguably, the bar and HOD’s authority is already implicitly limited by law.

2. Amend the Bar Act

The Board could propose amendments to the Bar Act to make clear that the HOD’s authority is limited by law.

3. Amend HOD Rule 5.6

The Board could propose to the HOD an amendment to HOD Rule 5.6 that would prohibit the HOD from adding a resolution to the agenda that the BOG has determined does not conform with law.

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: February 12, 2020
From: Amber Hollister, General Counsel
Re: Division of OSB Bylaws into Bylaws and Board Policies

Action Requested

Discuss approach and timeline for division of OSB Bylaws into separate OSB Bylaws and Board Policies.

Discussion

Prior to 2003, the OSB Bylaws and Board Policies were separate documents and separately maintained. At that time, the Bylaws were only 14 pages in length and consisted of 18 discrete articles, as follows:

- ARTICLE 1 Definitions
- ARTICLE 2 Purposes of Bar
- ARTICLE 3 Membership: Dues and Fees
- ARTICLE 4 Board of Governors
- ARTICLE 5 Officers of the Oregon State Bar
- ARTICLE 6 Committees and Sections
- ARTICLE 7 Legislation and Public Statements
- ARTICLE 8 House of Delegates
- ARTICLE 9 Executive Director
- ARTICLE 10 Service of Notice, Process and Documents
- ARTICLE 11 Bar Office
- ARTICLE 12 Election of Delegates to the House of Delegates of the American Bar Association
- ARTICLE 13 Public Meetings and Records
- ARTICLE 14 State Professional Responsibility Board
- ARTICLE 15 Professional Liability Fund
- ARTICLE 16 State Lawyers Assistance Committee and PLF Personal and Practice Management Assistance Committee
- ARTICLE 17 Amendment of Bylaws and Policies
- ARTICLE 18 Indemnity

In other words, our bylaws looked like typical organizational bylaws. The bylaws focused primarily on the purpose of the bar, the operation of its governing bodies (the HOD and BOG), committees and sections, the authority of the Executive Director (now CEO). Board policies, which contained operational detail, were found in a separate document.

In 2003, everything changed. The board pursued a Bylaw review project to consolidate the Bylaws and Board Policies into one massive document. The purpose of the project was to remove redundancy between the bylaws and policies, and the Bar Act itself. At the end of the 2003 review project, we were left with one document totaling 55 pages in length.

Today, our [bylaws](#) have further expanded to a robust 69 pages in length (or 82, with indexes). Having a primary organizational document of this length is less than ideal. Operational details and routine matters are addressed in detail in the bar's bylaws, instead of in more malleable policies. Our governing principles are less accessible to the board, staff and membership because of their length and complexity.

In order to address this concern, the P&G Committee has placed review and division of the OSB Bylaws into Bylaws and OSB Policies on its 2020 Workplan. A very first draft of the division is attached for the Board's review, to provide a flavor of the project and seek feedback. The proposed timeline is as follows:

- | | |
|-----------------------|--|
| 1. September 25, 2020 | Initial Division Presented to P&G Committee |
| 2. November 19, 2020 | Solicit Input from P&G Committee |
| 3. February 2021 | Present Revisions to P&G Committee & Board for Input |
| 4. April 17, 2021 | Final Approval |

The purpose of the project is to return the OSB Bylaws to a traditional bylaw format, focused on the core infrastructure of the organization. At the same time, additional operational detail will be placed in a set of cross-referenced Board Policies.

The purpose of this project is to provide clarity, but not substantive change. Staff would appreciate input from the Committee on what it considers to amount to substantive change. If staff discovers inconsistencies or omissions while engaging in this work, any proposed substantive edits will be separately highlighted for the Committee and Board.

Oregon State Bar **Bylaws**

(As amended by the Board of Governors through June 26, 2020)

Commented [AH1]: Note: Cross-references and internal references have not yet been updated with revised numbering; this will be done after changes completed.

Article 1 Purpose of Bar and Definitions

Section 1.1 Definition

In these Bylaws, unless the context or subject matter otherwise requires:

- (A) "State Bar" and "Bar" mean the Oregon State Bar, as described in ORS Chapter 9.
- (B) "State Bar Act" and "Bar Act" mean ORS Chapter 9.
- (C) "Board of Governors" and "Board" mean the Board of Governors of the Oregon State Bar.
- (D) "House of Delegates" and "House" mean the House of Delegates of the Oregon State Bar created by ORS 9.136.
- (E) "President" means the President of the Oregon State Bar.
- (F) "President-elect" means the President-elect of the Oregon State Bar.
- (G) "Chief Executive Officer" means the Chief Executive Officer of the Oregon State Bar.
- (H) "Governor" means a member of the Board of Governors of the Oregon State Bar.
- (I) "Member" means a member of the Oregon State Bar.

(J) "Policies" means bar policies adopted by the Board pursuant to these **Bylaws**.

Commented [AH2]: ADDITION: Addition to define separate policies.

Section 1.2 Purposes

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

The Bar fulfills that mission through the following functions:

- (A) We regulate the legal profession and improve the quality of legal services.
- (B) We support the judiciary and improve the administration of justice.
- (C) We advance a fair, inclusive, and accessible justice system.

Article 2 Board of Governors

Section 2.1 Duties and Responsibilities

Subsection 2.100-General

(a) The Board of Governors governs the Bar, except as provided in ORS 9.136 to 9.155, and must at all times direct its power to serve the public interest as provided in ORS 9.080(1).

(b) The Board establishes and monitors implementation of the mission, strategic plan, programs, services and policies of the bar.

(c) The Board monitors the financial condition of the bar, ensures that adequate resources exist for operations, programs, and services, and approves the annual bar budget.

(d) The Board will establish each year the budget of the Bar's admissions, discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. Additional provisions pertaining to the development and approval of the admissions budget are set out in Article 28. The admissions, discipline and Minimum Continuing Legal Education components of the Board's preliminary budget for the following year must be submitted to the Chief Justice of the Oregon Supreme Court for review and approval by the court. Any changes made by the court in the preliminary budgets of the Bar's admissions, discipline and Minimum Continuing Legal Education programs must be incorporated into the final budget approved by the Board.

(de) The Board selects and appoints the Chief Executive Officer, who is the Board's only employee. The Chief Executive Officer is responsible for implementing, administering and supervising bar operations, bar staff, bar programs and services as provided in OSB Bylaw 2.8. The Board supports, provides direction to, evaluates the performance of, and determines compensation for the Chief Executive Officer.

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

Section Subsection 2.2101 Election

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws. Newly elected governors and officers of the Bar take office on January 1 of the year following their election.

Subsection Section 2.3 2-102 Board Committee and Other Assignments

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

Commented [AH3]: The original bylaws did not contain subsections. This version removes them, and policies are cross-referenced with matching numbers ending in hundredths (e.g. if Bylaw is Section 2.1, corresponding Board policy is Policy 2.100).

Commented [AH4]: MOVED: Moved from Article 7

Commented [AH5]: QUESTION: Whether to add reference to Statutory requirement to submit Bar budget as a whole to court.

Commented [AH6]: ADDITION: Addition of "bar staff" to consolidate bylaws, in lieu of having two subsections addressing same topic.

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Commented [AH7]: ADDITION: This language is added, but is consistent with prior language. The entire original detail of the process is in Policy 2.300.

~~Subsection~~**Section 2.4103 Judicial Campaigns and Appointments**

(a) ~~Bar Positions on Judicial Campaigns and Appointments.~~ The members of the Board must refrain from stating or suggesting that the bar or Board is taking a position on judicial campaigns or appointments, except to relay recommendations made by the Board pursuant to OSB Bylaw 2.703, Statewide Judicial Appointments.

(b) ~~Personal Positions on Judicial Campaigns and Appointments.~~ If a member agrees to be listed as supporting or opposing a judicial candidate and be identified as a member of the Board, any publication must include a prominent disclaimer that the views expressed are the member’s own and do not represent the views of the bar or Board. Members of the Board who express a personal position on a judicial campaign or appointment should strive to explain that they are not taking a position on behalf of the bar or Board public involvement in judicial campaigns and appointments that in any way identifies them as members of the Board, officers of the Bar, or otherwise representing the Oregon State Bar.

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~~Subsectio~~**Sectionn 2.5104 Separation of Powers**

The Board will not nominate or appoint persons who work in or for the state executive or legislative departments to the following bodies: State Professional Responsibility Board, Disciplinary Board, Minimum Continuing Legal Education Board and Commission on Judicial Fitness and Disability. In the case of a challenge to the candidacy of a member of the Board of Governors under ORS 9.042, the Board will follow the procedures outlined in the statute.

~~Subsection~~**Section 2.1056 Amicus Curiae Briefs**

A section or committee that wishes to enter an *amicus curiae* appearance before any trial court or appellate court must obtain prior approval from the Board.

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~~Subsection~~**Section 2.7106 Indemnification**

The Bar must indemnify its officers, board members, directors, employees and agents and defend them for their acts and omissions occurring in the performance of their duties, to the fullest extent permitted by ORS Chapter 30 relating to indemnification by public bodies, especially the provisions of ORS 30.285. The term "officers, board members, directors, employees and agents" of the Bar includes subordinate groups established by the Bar or the Supreme Court to perform one or more of the Bar’s authorized functions, including the Board of Bar Examiners, the Professional Liability Fund, the State Professional Responsibility Board, the Disciplinary Board, bar counsel, Unlawful Practice of Law, Client Security Fund, and the State Lawyers Assistance Committee. The right to and method and amount of defense and indemnification are determined in accordance with the provisions of ORS 30.285 or comparable provisions of law governing indemnity of state agents in effect at the time of a claim.

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~~Subsection~~**Section 2.8107 Defense of Disciplinary Complaints and Proceedings**

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(a) The bar will defend any of its current and former officers, employees and agents (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the

performance of his or her official duties on behalf of the bar as provided in this bylaw.

(b) The duty to defend does not apply in the case of malfeasance, gross negligence or willful or wanton neglect of duty.

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

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

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

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

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should be a reprimand or greater sanction imposed by the Disciplinary Board or the Oregon Supreme Court or other court or agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the board may waive the reimbursement requirement.

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

Subsection Section 2.9108 BOG member Censure or Suspension from Service

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

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

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

Section 2.2-10 Officers

Subsection 2.200-Duties

(a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs. The President is the official chief spokesperson for the Bar. If public appearances or statements by the chairperson or other officer or member of any bar committee are deemed necessary, prior authority must be obtained in advance from the President.

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(b) President-Elect

The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

(c) Immediate Past President

The Immediate Past President is a non-voting *ex officio* member of the Board. Upon completion of the term for which the President is elected, the President becomes the Immediate Past-President for one year. The duties of the Immediate Past President will be as agreed between the Immediate Past President and the Board from time to time. Expenses of the Immediate Past President will be reimbursed as approved by the Board.

Subsection 2.201Section 2.11 Election of Officers

(a) Time of Election

The President and President-elect are elected at the last regularly scheduled board meeting of the calendar year. The only candidate for President is the President-elect.

(b) President-Elect

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

(c) Nomination of President-elect

Each candidate **for President-elect** must submit with ~~said the candidate's~~ notice a statement outlining the candidate's qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth-year class and the current President-elect, will interview each candidate and nominating committee members will confer with the remaining board members to discuss their view about each candidate's respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 20 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee's selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the Chief Executive Officer not less than 10 days prior to the last regularly scheduled board meeting of the calendar year. If the Nominating Committee is unable to select a sole candidate for President-elect, the board will elect a President-elect at its last regularly scheduled board meeting of the calendar year, pursuant to Subsection 2.201(c).

(ed) Voting

If there is only one candidate for an office, the candidate is deemed elected without a formal vote. When there are two nominees for President-elect, the candidate receiving the most votes will be elected. If there are three nominees for President-elect and no candidate receives more than 50 percent of the votes on the first vote, the candidate receiving the fewest votes is eliminated and another vote will be taken. Only board members present at the meeting may vote.

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~~Subsection 2.202~~ Section 2.12 Removal of Officers

Any officer of the Bar may be removed with or without cause on a three-fourths affirmative vote of all board members. That position is then filled by the Board, at the same or a subsequent meeting, using the above rules as far as applicable.

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Section 2.133 Public Members

(a) In addition to the resident active members of the Bar required by ORS 9.025, four public positions exist on the Board of the Bar.

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~~Subsection 2.300~~ Appointment

(b) Any person appointed to a public position on the Board must meet the qualifications set forth in ORS 9.025(1). Public members serve for a term of four years, beginning on January 1 of the year following appointment. Every attempt will be made to maintain geographic distribution; however, the priority will be to match the current needs of the Board with the areas of interest of the public members.

~~Subsection 2.301~~ Powers and Duties

(c) Public members of the Board have the same voting rights as the lawyer members of the Board. They take the same oath of office and are charged with the same functions and duties as provided by statute and Board Policies. Public members cannot serve as officers of the Bar.

~~Subsection 2.302~~ Removal

(d) Public members of the Board are subject to removal by the Board upon the following grounds and for the following reasons: A public member no longer meets the initial qualifications for appointment set forth in Subsection 2.300 of the Bar's Bylaws; or a public member commits an act substantially similar to the conduct proscribed by ORS 9.527 or fails to perform the duties of the office. If at least ten members of the Board propose that the public member be removed, the public member is given written notice of the proposed removal, together with the reasons therefore. The written notice must be given at least 15 days before the next regularly scheduled board meeting. Thereafter, on a vote of at least ten members of the Board, the public member is removed and the position is vacated.

~~Subsection 2.303~~ Vacancies

(e) On the death, resignation or removal of a public member of the Board, the Board must appoint a replacement to serve the unexpired portion of the then vacant position. Any person so appointed must satisfy the qualifications for appointment set forth in Subsection 2.400 of the Bar's Bylaws and is subject to removal as set forth in Subsection 2.302 of the Bar's Bylaws.

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Section 2.14 Meetings

~~Subsection 2.400~~ Robert's Rules of Order

(a) Board meetings are governed by ~~ORS Chapter 9~~ the Bar Act, the provisions of ORS Chapter 192, the Oregon Public Meetings Act, these bylaws, and the most recent edition of Robert's Rules of Order.

~~Subsection 2.401~~ Regular Meetings

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(b) Meetings of the Board are held at such times and places as the Board determines. The Chief Executive Officer will provide notice of the time and place of all meeting ~~as required by the Oregon Public Meetings Act in accordance with ORS 192.610 to 192.690.~~

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~~Subsection 2.402 Special Meetings~~

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(c) A special meeting of the Board may be called by the President or by three Governors filing a written request with the Chief Executive Officer. If, within five days after a written request by three Governors, the President fails or refuses for any reason to set a time for and give notice of a special meeting, the Chief Executive Officer must call the meeting and provide at least 24 hours' notice of the time and place of the special meeting ~~in accordance with ORS 192.610 to 192.690.~~

~~Subsection 2.403 Emergency Meetings~~

(d) When the President determines that a matter requires immediate attention of the Board, an emergency meeting may be called on less than 24 hours' notice. ~~Notice must be given to members of the board, the media and other interested persons as may be appropriate under the circumstances. The notice must indicate the subject matter to be considered if permitted by the Oregon Public Meetings Law.~~ Only the matters for which the emergency meeting is called may be considered at the meeting.

Commented [AH21]: DELETION: These are merely redundant recitations of the law itself.

~~Subsection 2.404 Minutes~~

Commented [AH22]: TECHNICAL: Review for consistency with Oregon Public Meetings Law.

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

~~Subsection 2.405~~ **Section 2.15 Oregon New Lawyers Division Liaison**

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~~The~~ A member of the Oregon New Lawyers Division ("ONLD") ~~Executive Committee has will serve as~~ a non-voting liaison to the Board, ~~who must be a member of the ONLD Executive Committee.~~

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Section 2.165 Expenses

~~Subsection 2.500 General Policy~~

All provisions of Section 7.5 of the Bar's Bylaws (Expense Reimbursements) apply to the Board of Governors ~~with the following additions.~~

~~Section 2.176 Conflicts of Interest~~ **Government Standards and Practice Act**

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Bar officials are public officials subject to the provisions of ORS Chapter 244, the Government Standards and Practices Act. ~~Nothing in this section is intended to enlarge or contradict the statutory provisions as they may apply to bar officials. To the extent anything in this section contradicts the provisions of ORS Chapter 244, bar officials shall be bound by the statutory provisions.~~

Commented [AH24]: ADDITION: Addition for clarity. Public officials is term used by Act.

~~Subsection 2.600 Definitions~~

Commented [AH25]: DELETION: Recommend deleting summary of government ethics law from bylaws.

As used in Section 2:

(a) "Actual conflict of interest" means that the person, a relative of the person or a business with which the person or a relative of the person is associated will derive a

~~private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities.~~

~~(b) "Bar official" means members of the Board of Governors; appointees of the Board of Governors, including members of standing committees, bar counsel panels, and the State Professional Responsibility Board; section officers and executive committee members; and bar staff.~~

~~(c) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed person and any other legal entity operated for economic gain, but excluding any income-producing not-for-profit corporation that is tax-exempt under IRC §501(c) with which a bar official is associated only as a member or board director or in a non-remunerative capacity.~~

~~(d) "Business with which the person is associated" means:~~

~~(1) any private business or closely held corporation of which the bar official or the bar official's relative is a director, officer, owner, employee or agent or any business or closely held corporation in which the bar official or the bar official's relative owns or has owned stock worth \$1,000 or more at any point in the preceding year;~~

~~(2) Any publicly held corporation in which the bar official or the bar official's relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; and~~

~~(3) Any publicly held corporation of which the bar official or the bar official's relative is a director or officer.~~

~~(e) Except as excluded by ORS 244.020(6), "gift" means something of economic value given to or solicited by a bar official, or a relative or member of the household of the bar official:~~

~~(1) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not bar officials or the relatives or members of the household of bar officials on the same terms and conditions; or~~

~~(2) For valuable consideration less than that required from others who are not bar officials.~~

~~(f) "Potential conflict of interest" means that the bar official, a relative of the bar official or a business with which the bar official or a relative of the bar official is associated, could derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities, unless the pecuniary benefit or detriment arises out of the following:~~

~~(1) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the bar official of the office or position.~~

~~(2) Any action in the bar official's official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the bar official, or the bar official's relative or business with which the person or the bar official's relative is associated, is a member or is engaged.~~

~~(3) Membership in or membership on the board of directors of a nonprofit corporation that is tax exempt under section 501(c) of the Internal Revenue Code.~~

~~(g) "Member of the household" means any person who resides with the bar official.~~

~~(f) "Relative" means the bar official's spouse, the bar official's Oregon Registered Domestic Partner, any children of the bar official or the bar official's spouse or Oregon Registered Domestic Partner, and siblings and parents of the bar official or the bar official's spouse or Oregon Registered Domestic Partner. Relative also means any individual for whom the bar official provides benefits arising from the bar official's public employment or from whom the bar official receives benefits arising from that individual's employment.~~

Subsection 2.601 Prohibited Actions

Regardless of whether an actual or potential conflict is disclosed:

~~(a) No bar official may use or attempt to use the person's official position to obtain any financial gain or the avoidance of any financial detriment that would not otherwise be available to the person, but for the bar official's holding of the official position, except official salary, reimbursement of expenses for official activities or unsolicited awards for professional achievement for the bar official, a relative of the bar official, a member of the household of the bar official, or for any business with which the bar official or the bar official's relative is associated.~~

~~(b) No bar official may attempt to further the personal gain of the bar official through the use of confidential information gained by reason of an official activity or position.~~

~~(c) No bar official or relative or member of the household of a bar official may solicit or receive, during any calendar year, any gift or gifts with an aggregate value of more than \$50 from any single source that could reasonably be known to have an economic interest, distinct from that of the general public, in any matter subject to the decision or vote of the bar official acting in the bar official's official capacity. This provision does not apply to bar officials who are subject to the Oregon Code of Judicial Conduct.~~

~~(d) No bar official may solicit or receive a promise of future employment based on an understanding that any official action will be influenced by the promise.~~

Subsection 2.602 Disclosure of Conflict

~~When met with an actual or potential conflict of interest, a bar official must disclose the conflict and take any other action required by this bylaw.~~

~~(a) If appointed by the Chief Executive Officer, the bar official must notify the Chief Executive Officer of the nature of the conflict and request the Chief Executive Officer to dispose of the matter giving rise to the conflict. Upon receipt of the request, the Chief Executive Officer will designate within a reasonable time an alternate to dispose of the matter, or will direct the bar official to dispose of the matter in a manner specified by the Chief Executive Officer.~~

~~(b) If the bar official is the Chief Executive Officer, she/he must notify the Board of Governors, through the President, of the nature of the conflict and request the Board~~

~~of Governors to dispose of the matter giving rise to the conflict. Upon receipt of the request, the President will designate within a reasonable period of time an alternate to dispose of the matter, or will direct the Chief Executive Officer to dispose of the matter in a manner specified by the Board of Governors.~~

~~(c) If the bar official is elected to or appointed by the Board of Governors or other appointing authority to serve on a board, committee, council, commission or other public body, the bar official must:~~

~~(1) When met with a potential conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a bar official; (2) when met with an actual conflict of interest, announce publicly the nature of the actual conflict, and refrain from participating in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue, except that if the bar official's vote is necessary to meet a requirement of a minimum number of votes, the bar official may vote, but may not participate in any discussion or debate on the issue out of which the actual conflict arises.~~

~~(d) When a bar official gives notice of an actual or potential conflict of interest under subsection 2.602(c), the conflict must be recorded in the minutes or other official record of the board, committee, council, commission or other public body on which the official serves, together with an explanation of how the conflict was resolved. If there are no minutes or other official record, then the bar official, in addition to the disclosure to the board, committee, council, commission or other public body, must disclose the conflict in writing to the Chief Executive Officer.~~

~~(e) No decision or action of the any bar official or of any board, committee, council, commission or other public body on which the official serves is invalid or voidable solely by reason of the failure to disclose an actual or potential conflict of interest.~~

~~Subsection Section 2.18603~~ Board Members as Witnesses in Bar Proceedings

As provided in BR 5.3(c), a current member of the Board of Governors must not testify as a witness in any bar admission, discipline or reinstatement proceeding except pursuant to subpoena.

Section 2.197 Judicial Selection

~~Subsection 2.700-General~~

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

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-Section 2.20 Supreme Court Review of Oregon Rules of Professional Conduct

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

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Section 2.8-21 Chief Executive Officer

Subsection 2.800 Duties

(a) The Chief Executive Officer, appointed by and acting under the supervision of the Board, is the principal administrative officer of the Bar. The Chief Executive Officer is responsible for the day-to-day operations of the Bar including, without limitation: hiring, managing and terminating bar personnel; negotiating and executing contracts; collecting debts owed to the bar and assigning debts for collection as deemed appropriate; and acquiring (through purchase or lease), managing and disposing of personal property related to the bar’s operations, within the budget approved by the board. The Chief Executive Officer will attend all meetings of the Board and the House of Delegates; will keep the Board informed of all agenda items with appropriate background information and staff or committee reports; and will keep a record of the proceedings of all such meetings. The Chief Executive Officer is responsible for preparing an annual budget for the Board’s Budget Committee. The Chief Executive Officer performs other duties as imposed by the Bar Act, the Bar Bylaws, Board policies, or as otherwise directed by the Board.:-

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Subsection 2.802 Service of Notice

(b) When a statute or rule requires a petition, notice or other writing to be filed with or serve on the Bar or the Board, the Chief Executive Officer is the designated agent for receipt.

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Section 2.22 Financial Matters

(a) All funds paid to the Bar will be received by the Chief Executive Officer or the Chief Financial Officer and deposited to the account of the Bar in a checking account or accounts with a commercial bank. The Chief Executive Officer or the Chief Financial Officer will make all disbursements from such accounts. The Board’s Budget and Finance Committee will adopt the policy governing the investment, reinvestment, sale, conversion or other disposition of funds of the Bar, subject to the approval of the Board.

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(b) The President and either the Chief Executive Officer, or the Chief Financial Officer acting for and on behalf of the Bar, are authorized and empowered:

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(1) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender and approved by the Board, a sum deemed prudent and necessary to effectuate the mission of the Bar.

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(2) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.

(3) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.

(4) To execute and deliver to any lender any financing statements, security agreements or other instruments in writing, of any kind or nature, that may be necessary to complete a financial transaction.

(5) To draw on or endorse to any lender the savings on deposit or to dispose of the proceeds there from as may be deemed advisable.

(6) To perform other acts and to execute and deliver to any lender other documents as may be deemed reasonable, necessary or proper.

(b) The President and either the Chief Executive Officer, or the Chief Financial Officer, acting for and on behalf of the Bar, are also authorized and empowered to execute and deliver documents to any lender to memorialize or otherwise complete any borrowing or other financial transaction that has been previously authorized by the Board of Governors.

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Section 2.23 Investment Policy

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Section 7.4 Investment Policy

Subsection 7.400 Purpose

(a) This investment policy is established to provide direction and limits for the Bar's Chief Executive Officer and Chief Financial Officer and for any fee-for-service investment manager that have been engaged in investing financial assets held by the Bar. The investment objectives of the General Fund, Client Security Fund and Affirmative Action Fund are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity, and to obtain the highest possible rate of return. The investment objectives of the Legal Services Fund are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity, and to implement a twenty-year total return based spending policy. The policy consists of objectives for the Bar's short-term and long-term investments.

(b) The Bar's short-term investments consist of cash and cash equivalents anticipated to be needed and used within the Bar's current fiscal year, generally one year or less. The objective shall be to maximize liquidity and minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

(c) The Bar's General Fund, Client Security Fund and Affirmative Action Fund long-term investments include all reserve balances and designated funds. The objective of these investments is to provide for long-term growth and stability and to achieve reasonable yields while minimizing exposure to risk. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. The long-term investments shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the preservation of capital or returns on investment to the Bar.

(d) The Bar's Legal Services Fund long-term investments are contained in a designated fund, and do not contain a reserve balance. The objective of these investments is to fund legal aid services in Oregon pursuant to ORS 9.572. These

funds are invested based on a twenty-year total return based spending policy, to allow for phased proceeds to legal aid programs. These long-term investments shall be diversified to provide reasonable assurance that investment in a single security, a class of securities, or industry will not have an excessive impact on the preservation of capital or returns on investment to the Bar.

Subsection 7.401 Investment Management

(e) The Chief Executive Officer or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as the ~~officers~~ **CEO or CFO** may require. The Bar may engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of the bar's Investment Policy and the specific direction of the Investment Committee.

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Commented [JS29]: DW reference to "officers" needs to change as officers are defined to mean the President and President-Elect. See 2.11 and 2.12. I think here officers means or should mean CEO and CFO.

(f) Subsection 7.402 Management and Monitoring of Performance

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall manage and monitor the investment policy and portfolio. All policy and bylaw changes will be reviewed and approved by the Budget & Finance Committee.

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Subsection 7.403 Prudent Investor Rule

(g) The standard of prudence to be used by any fee-for-service investment manager that is engaged by the Bar in managing the overall portfolio will be the Prudent Investor Rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

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Section 2.24 Expense Reimbursement

(a) Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with ~~this policy~~ **Board policies** when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors.

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(b) Any person who is entitled to a travel reimbursement pursuant to this section may retain travel awards, mileage awards, credit card awards and other awards or benefits accrued while in the conduct of the person's official duties, as part of their reimbursement of expenses and official compensation. As to members of the Board of Governors, this subsection shall only apply to the President and President-Elect in office on January 1, 2020, and members of the Board of Governors whose terms commence on or after January 1, 2019.

Section 7-62.25 Location of Office

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

Article 3 House of Delegates

Section 3.1 Duties and Powers

(a) The House of Delegates ("House") is a forum for the membership of the Bar and representatives of sections and local bars to advise the Board and to debate and decide matters of policy relating to the membership or the administration of justice as provided in the Bar Act, these Bylaws and other rules and regulations of the Bar. (See rules adopted by the House.)

Section 3.2 Delegates

(b) On or before February 1 of each year, the Board must determine the number of delegates each region should have and whether there are vacancies. Once elected, however, a delegate may serve a full term even if the lawyer population of the region falls below the number required to entitle the region to the delegate. Elected delegates are subject to recall as provided in the Bar Act. Public member delegates are subject to removal by the Board on the same grounds that a public member of the Board is subject to removal under the Bar Act and these Bylaws.

Section 3.3 Resolutions

(c) House member or bar member resolutions must include the name of the bar member who will present the resolution and an estimate of the financial impact, if any, of the resolution. This information must be submitted at least 45 days before the House of Delegates meeting. The Board must independently evaluate the financial impact of the resolution. If the Board's evaluation of the financial impact differs from the sponsor's, both positions must be included when the resolution is presented to the House. Only proposed legislative measures or resolutions that appear in full in the printed agenda may be considered, ~~except that unusually long measures or resolutions may be summarized by bar staff. If this exception applies, then the Bar must provide delegates with copies of the full text of the measures at or before the House meeting at which the proposed measures or resolutions will be discussed and voted on.~~

Section 3.4 Meeting Agenda

(d) After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in *Keller v. the State Bar of California*. The House agenda, including any resolutions that the Board has excluded, must be published by the Board, with notice thereof, to all bar members, at least 20 days in advance of the House meeting.

Commented [AH30]: DELETION: This seems out of date now that all agendas are available electronically, and page limit is less important.

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Section 3.5 Parliamentarian

~~(e)~~ ~~(e)~~ The Board must designate a parliamentarian for each House meeting.

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~~(f)~~ ~~(f)~~ The meetings of the Bar’s House of Delegates must be held within the geographical boundaries of the State of Oregon.

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Section 3.26 Initiative Petitions and Referenda

An initiative petition of the membership or a referendum from the Board or House, brought under ORS 9.148, must be submitted to a vote of the active members. The proponent’s question or measure must be printed or circulated to all members of the Bar, along with statements for and against the proposal. The Board determines the manner of circulating the required material. The Board also writes the ballot title and a factual summary of the proposal. Election procedures outlined in Article 9 of the Bar’s Bylaws apply.

Section 3.7 Location

Article 4 Awards

Commented [AH31]: TECHNICAL: Consider Moving this to Article 2 with Board duties and deleting Article entirely.

Section 4.1 General Policy

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

Commented [AH32]: ADDITION: Detail of award criteria in policy 4.100.

Commented [AH33]: CHANGE: May seems more consistent with spirit of awards.

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

Commented [NC34]: Chad: move to policies as it is not Board action. I would keep it here.

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

Commented [AH35]: ADDITION: Changes for clarity.

Section 5.2 Voting

Each delegate to the ABA House of Delegates, as a condition of election, must vote substantially consistent with any position or direction of the Board of Governors, the Oregon State Bar House of Delegates or the Bar’s membership.

Article 6 Membership Classification and Fees

Section 6.1 Classification of Members

~~Subsection 6.100~~ General

Members of the Bar are classified as follows:

(a) Active member - Any member of the Bar admitted to practice law in the State of Oregon who is not an inactive or suspended member. Active members include Active Pro Bono members.

(b) Inactive member - A member of the Bar who does not practice law may be enrolled as an inactive member. The "practice of law" for purposes of this subsection consists of providing legal services to public, corporate or individual clients or the performing of the duties of a position that federal, state, county or municipal law requires to be occupied by a person admitted to the practice of law in Oregon. Inactive members include Retired members.

~~Subsection Section 6.101-2~~ Active Pro Bono Status

~~(a) Purpose~~

~~The purposes of the Active Pro Bono category of active membership in the Bar is to facilitate and encourage the provision of pro bono legal services to low-income Oregonians and volunteer service to the Bar by lawyers who otherwise may choose inactive status or even resign from membership in the Bar, and by lawyers who move to Oregon.~~

~~(b) Eligibility for Active Pro Bono Status~~

The Active Pro Bono category of active membership is available to lawyers in good standing. ~~Active Pro Bono Status members who~~ agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws ~~and report annually to the Oregon State Bar the number of hours of pro bono service they provide.~~ The Chief Executive Officer or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.

~~(b) Active Pro Bono Status lawyers may not who do not engage in the practice of law~~ rely on their Active Pro Bono status to practice law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, the Disciplinary Board or as bar counsel; ~~who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who~~

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

~~(d) Membership Fees~~

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

~~(e) Procedure~~

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~~The Bar will notify potentially eligible lawyers of the availability of the Active Pro Bono category of membership and provide interested members with an application form. The Chief Executive Officer or designee is authorized to determine members' eligibility for Active Pro Bono status and this determination is final.~~

Commented [AH37]: DELETION: This requirement seems overly specific and out of date.

~~(e) Reporting Requirement for Active Pro Bono Status~~

Bar Certified pro bono programs will report to the Bar no later than January 31 of each year the total hours of pro bono services that Active Pro Bono lawyers provided in the preceding calendar year. Active Pro Bono lawyers must ensure that the certified program reports their hours or must individually report their hours no later than February 15 of each year.

Commented [AH38]: TECHNICAL: Does this requirement comport with current practice?

~~(f) Transfer from Active Pro Bono Status~~

~~Active Pro Bono members may continue in that status from year-to-year on certification that they remain eligible for such status and payment of the appropriate membership fees and assessments. Active Pro Bono members wishing to resume regular active membership status must comply with BR 8.14. Active Pro Bono members admitted through Admissions Rule 17.05 are not eligible to transfer their status to any other status.~~

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Section 6.3 Retired Status

~~Subsection 6.102 Retired Status~~

~~(a) Purpose:~~

~~The purpose of the Retired category of inactive members in the Bar is to recognize the continuing contributions to the legal profession of members who are at least 65 years of age and are retired from the practice of law.~~

~~(b) Eligibility for Retired Status:~~

A member of the Bar who is at least 65 years old and who is retired from the practice of law (as defined in paragraph 6.100(b)) may be enrolled as a retired member.

~~(c) Membership Fees:~~

Retired members are assessed a fee that is equivalent to the inactive membership fee.

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~~(d) Transfer of Membership:~~

~~Retired members wishing to resume regular active membership status must comply with BR 8.1 or 8.2, whichever is applicable. Retired members wishing to transfer to Active Pro Bono status must comply with BR 8.14.~~

Commented [AH40]: DELETION: Recommend deleting as redundant.

~~Subsection Section 6.103-4~~ **Publication of Notice of Application for Formal Reinstatement**

Upon receipt of an application for reinstatement submitted under BR 8.1 of the Rules of Procedure, the bar shall publish notice of and a request for comment on the application on the bar’s web site for a period of 30 days before the application is considered.

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Commented [AH41]: ADDITION: Recommended heading change for clarity.

Section 6.2-5 Register of Members

The Chief Executive Officer must keep a register of the enrollment of members of the Bar, which must contain such matters of information that the Board determines to be proper and desirable. ~~The register is subject to public inspection in accordance with the Public Records Law (ORS 192.410-192.502). The register may be published in any manner the Chief Executive Officer determines suitable, including in print or electronically.~~ The published ~~information register of members~~ must include at least the member’s name, bar number, and current status.

Commented [AH42]: DELETION: Recommend deletion as redundant – repeats public records law and powers of CEO to determine day-to-day operation of bar.

Commented [AH43]: ADDITION: Recommended heading change for clarity

Section 6.3-6 Rights of Members; Suspended Members

Subject to the other provisions of these policies, all active members have equal rights and privileges including the right to hold an office of the Bar, the right to vote, and the right to serve on bar committees. Inactive members may be members, but not officers, of sections. Suspended members may remain members of or join sections during the term of their suspensions, but may not hold an office of the Bar, vote or serve on the Board of Governors, in the House of Delegates or on any bar committee or section executive committee.

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Section 6.4-7 Annual Membership Fees and Assessments

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Subsection 6.400 Due Date

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

(b) No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive membership after January 31. ~~However, a~~

(c) A bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive status and ~~timely~~ pays the inactive membership ~~assessment fees by that date~~, but does not timely submit a signed Request for Enrollment as an Inactive Member, may be allowed to complete the inactive transfer without payment of the active membership assessment, if extenuating ~~the Chief Executive Officer finds~~ circumstances exist. The Chief Executive Officer’s decision ~~regarding the existence of sufficient extenuating circumstances~~ is final.

Commented [AH45]: ADDITION: Change for clarity.

Subsection 6.402 Late Payment Penalty

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

Commented [AH46]: TECHNICAL QUESTION: Consider moving to hardship waiver section of bylaws.

Subsection 6.403 Effect of Failure to Pay

(e) Any member in default of payment of annual member fees will be given a reasonable opportunity to cure the default as determined by the Board. The Chief

Executive Officer shall send a notice of delinquency to each member in default at the member's electronic mail address on file with the bar on the date of the notice. The ~~chief~~ Chief Executive Officer shall send the notice by mail to any member who is not required to have an electronic mail address on file with the bar under the rules of procedure. If a member fails to pay the fees or contributions within the time allowed to cure the default as stated in the notice, the member is automatically suspended.

Subsection 6.404 New Admittees

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

Section 6.5 Waiver of Fees and Assessments

Subsection 6.500 Hardship

(g) The Chief Executive Officer may, each year, exempt or waive payment of annual membership in cases of proven extreme hardship, or for members engaged in active military service, the Peace Corps, Vista or other volunteer programs serving the national interest or the legal profession, and for which the member receives only a subsistence income, stipend or expense reimbursement that is the member's principal source of income.

Subsection 6.502 Emergencies

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

Section 6.8 Law Student Associates

Any student currently enrolled in an Oregon law school may become a Law Student Associate of the Bar. Law Student Associates are not members of the Bar and, except as provided in this article, do not have any of the rights and responsibilities of members. Law Student Associates must pay an annual fee established by the Chief Executive Officer in an amount sufficient to cover the cost of providing information and services to Law Student Associates. Services and information provided to Law Student Associates will be determined by the Chief Executive Officer.

Article 78 Public Records/Meetings

Section 87.1 Public Records

Subsection 8.100 General Policy

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

Commented [AH47]: ADDITION: This section takes the identical language from the prior bylaw; detail moved to Policy 6.700

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Section 78.2 Public Meetings

All regular and special meetings of the Board of Governors, Board of Bar Examiners, committees, sections, and subcommittees or subsections thereof, are subject to the Public Meetings Law (ORS 192.610-192.690).

Article 9-8 Election Procedures

Section 98.1 Date of Elections

(a) The election for members of the Board of Governors will be held annually on the third Monday in October. Bar members who wish to appear on the ballot must present a candidate statement to the Chief Executive Officer of the Bar at least 160 days before the election.

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which candidate statements for the Board are required to be filed, provided that a challenge has not been filed pursuant to ORS 9.042. If a challenge has been filed, the candidate will be declared elected at the end of that process unless the challenge is successful.

(b) The election for members of the OSB House of Delegates will be held annually on the third Monday in April. Bar members who wish to appear on the ballot must present candidate statement to the Chief Executive Officer of the Bar at least 30 days before the election.

(c) The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a candidate statement to the Chief Executive Officer of the Bar at least 30 days before the election. Only members with a principle office address in Oregon will be eligible to vote for the ABA House of Delegates representatives.

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

Section 98.2 Ballots

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

Section 98.3 Voting

Members eligible to vote will be provided a secure link to the candidate statements and an online ballot. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. Voting must be completed on or before 5:00 p.m. on the day of the election. The Chief Executive Officer will announce the results of the balloting and will notify each candidate of the results of the election.

Article ~~10-9~~ Diversity

The Bar respects the diversity of its membership and its employees. Bar entities, including, but not limited to standing committees, section executive committees and Continuing Legal Education programs and publications, should reflect this diversity. "Reflect," as used in this article, does not ~~require-mean~~ the application of ~~strict~~ quotas, but requires a good faith attempt to ~~achieve-invite~~ representative participation. Reports of such efforts may be required of bar entities. In addition, no bar entity may discriminate on the basis of race, religion, color, gender, sexual orientation, geographic location, age, handicap or disability, marital, parental or military status or other classification protected by law. No professional, business or social functions of the Bar, or any of its sections, committees, affiliates or other authorized entities may be held at any private or public facility, which discriminates, based upon the terms listed above. Furthermore, advertisements or solicitations for employment must offer equal employment opportunities. The United States Armed Forces are exempt from this policy as it regards advertisements in the bar's communications.

Commented [AH49]: CHANGE: For future discussion.

Article ~~10-1~~ Communications

Section ~~11.1~~ General Policy

(a) Communications of the Bar and its constituent groups and entities, including printed material and electronic communications, should be germane to the law, lawyers, the practice of law, the courts and the judicial system, legal education and the Bar in its role as a mandatory membership organization. Communications, other than permitted advertisements, should advance public understanding of the law, legal ethics and the professionalism and collegiality of the bench and Bar.

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Section ~~11.2~~ Editorial Policy

~~Subsection 11.201 Editorial Advisory Committee Policy~~

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

~~Subsection 11.202 Editorial Policies~~

(c) All editorial policies will be approved by the Board. Editorial policies may address such matters as advertising, political communication, profanity and obscenity, letters to the editor, use of artwork, photographs and illustrations, story placement, headlines and scheduling, advertising content and rates and similar topics. Editorial policies must be consistent with **Article 10 Diversity and Article 12.1 Guidelines**.

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~~Subsection 11.203 Review by Chief Executive Officer~~

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

Article ~~12-11~~ Legislation and Public Policy

Section ~~12.1~~ Legislative Guidelines

(a) Bar legislative or policy activities must be reasonably related to any of the following subjects: Regulating and disciplining lawyers; improving the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency; making legal services available to society; regulating lawyer trust accounts; the education, ethics, competence, integrity and regulation of the legal profession; providing law improvement assistance to elected and appointed government officials; issues involving the structure and organization of federal, state and local courts in or affecting Oregon; issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; or issues involving the duties and functions of judges and lawyers in federal, state and local courts in or affecting Oregon.

Section ~~12.2~~ Initiation of Legislation

Subsection ~~12.200~~ House of Delegates and Membership

(b) The Bar must sponsor legislative proposals approved by the House of Delegates or through a membership initiative to the Legislative Assembly directly following the House or membership action. Legislation not enacted may not be sponsored in the following session unless resubmitted by one of the methods set forth above or by action of the Board.

Subsection ~~12.201~~ Board of Governors

(c) The Board may sponsor legislative proposals to the Legislative Assembly on its own initiative. The Board and its Public Affairs Committee has the authority between meetings of the House of Delegates to act on legislative and public policy matters pursuant to the guidelines established.

Section ~~12.5-2~~ Professional Liability Fund Legislation

The Professional Liability Fund ("PLF") may not present to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of the PLF without the majority approval of the Board of Directors of the PLF and the prior approval of the Board of Governors, except as is provided in Section 12.4 of the Bar's Bylaws.

Section ~~12.6-3~~ Objections to Use of Bar Dues

Subsection ~~12.600~~ Submission

(a) A member of the Bar who objects to the use of any portion of the member's bar dues for activities he or she considers promotes or opposes political or ideological causes may request the Board to review the member's concerns to determine if the Board agrees with the member's objections. Member objections must be in writing and filed with the Chief Executive Officer of the Bar. The Board will review each written objection received by the Chief Executive Officer at its next scheduled board meeting following receipt of the objection. The Board will respond through the Chief

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Executive Officer in writing to each objection. The Board's response will include an explanation of the Board's reasoning in agreeing or disagreeing with each objection.

Subsection 12.601-Refund

(b) If the Board agrees with the member's objection, it will immediately refund the portion of the member's dues that are attributable to the activity, with interest paid on that sum of money from the date that the member's fees were received to the date of the Bar's refund. The statutory rate of interest will be used. If the Board disagrees with the member's objection, it will immediately offer the member the opportunity to submit the matter to binding arbitration between the Bar and the objecting member. The Chief Executive Officer and the member must sign an arbitration agreement approved as to form by the Board.

Subsection 12.602-Arbitration

(c) If an objecting member agrees to binding arbitration, the matter will be submitted to the Oregon Senior Judges Association ("OSJA") for the designation of three active-status retired judges who have previously indicated a willingness to serve as volunteer arbitrators in these matters. The Bar and the objecting member will have one peremptory challenge to the list of arbitrators. The Bar and the objecting member must notify one another of a peremptory challenge within seven days after receiving the list of proposed arbitrators. If there are no challenges or only one challenge, the OSJA will designate the arbitrator. The arbitrator will promptly arrange for an informal hearing on the objection, which may be held at the Oregon State Bar Center or at another location in Oregon that is acceptable to the parties and the arbitrator. The hearing will be limited to the presentation of written information and oral argument by the Bar and the objecting member. The arbitrator will not be bound by rules of evidence. The presentation of witnesses will not be a part of the hearing process, although the arbitrator may ask the state bar representative and the objecting member and his or her lawyer, if any, questions. The hearing may be reported, but the expense of reporting must be borne by the party requesting it. The Bar and the objecting member may submit written material and a legal memorandum to the arbitrator no later than seven days before the hearing date. The arbitrator may request additional written material or memoranda from the parties. The arbitrator will promptly decide the matter, applying the standard set forth in *Keller v. State Bar of California*, 496 U.S. 1, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990), to the expenditures to which the member objected. The scope of the arbitrator's review must solely be to determine whether the matters at issue are acceptable activities for which compulsory fees may be used under applicable constitutional law. In making his or her decision, the arbitrator must apply the substantive law of Oregon and of the United States Federal Courts. The arbitrator must file a written decision with the Chief Executive Officer within 14 days after the hearing. The arbitrator's decision is final and binding on the parties. If the arbitrator agrees with the member's objection, the Bar will immediately refund the portion of the member's dues that are reasonably attributable to the activity, with interest at the statutory rate paid on the amount from the date that the member's fees were received to the date of the Bar's refund. If the arbitrator agrees with the Bar, the member's objection is denied and the file in the matter closed. Similar or related objections, by agreement of the parties, may be consolidated for hearing before one arbitrator.

Article 123 Pro Bono

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

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Article 14-13 Committees

Section 134.1 Standing and Special Committees

(a) Standing or special committees of the Bar or any member or officer of those committees may be appointed or discharged by the President or the Board. All members of standing committees must be active members of the Bar, except designated public members.

(be) The President or the Board appoints members to fill Committee vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

Commented [AH50]: MOVED: From another subsection (the remainder of which is now in bylaws); ADDED "except designated public members" for clarity.

Commented [AH51]: ADDED "or the President" to be consistent with prior appointment provision.

Section 1413.2 Joint Committees

(a) The Board has from time to time agreed to may also create joint committees between the Bar and other professional groups to develop better understanding between the two groups and to assist in resolving problems of mutual concern.

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

Article 15-14 Sections

Section 1514.1 Purpose

Sections are an integral and important part of the Bar. Sections are intended to provide bar members who share particular interests an opportunity to develop and improve skills and to provide a forum for communication and action in matters of common interest.

Section 1514.2 Formation

Any 100 members of the Bar who wish to form a section in a particular area of law may submit a petition to the Board to create a section. The petition must state that the signators are committed to becoming members of the section, if the Board approves forming the section. The Board must consider creating a section when it receives the petition and determines that the proposed section does not duplicate another section's activities or area of legal interest. The Board may merge, reorganize or abolish sections at the request of affected sections or as the Board deems appropriate. Factors that the Board must consider include, but are not limited to, the requirements outlined in Standard Section Bylaws, Article XII, Section 2.

Section ~~15~~14.3 Bylaws

Sections are governed by the Standard Section Bylaws adopted by the Board. Sections may propose and the Board may approve, modified bylaws commensurate with the section’s needs.

Section ~~15~~14.4 Finances

~~Subsection 15.400 Dues~~

~~(A) (A)~~The Bar will assess and collect section dues at the same time that bar membership dues are collected. Section dues will be assessed and collected together with bar dues by the Bar. The Board must approve the dues for each section.

~~(A) The Board must approve the annual budget for each section.~~

(B)

Article ~~16-15~~ Continuing Legal Education Bar Programs

Section ~~15~~6.1 Purpose CLE Seminars and Legal Publication Programs

The mission of the Bar’s CLE Seminars and Legal Publications programs is to produce high quality, practical CLE Seminars, books, and resources on Oregon law in a timely manner, with a goal of ensuring a competent bar by enhancing the knowledge and skills of Oregon lawyers.

Article ~~17~~ Member Services

Section ~~17-15~~2 Administrative Member Services

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

Section 15.3 Legal Ethics Guidance

(a) All legal ethics questions regarding the propriety of a proposed course or act of professional conduct or the intent or interpretation of a rule or statute regulating the professional conduct of members of the Bar must be submitted or referred to General Counsel’s office. Legal ethics questions may be submitted in writing or by telephone.

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

(c) Responses and opinions provided by General Counsel’s office, the Legal Ethics Committee and the Board of Governors are limited to and deemed to address only the facts as submitted in writing by the inquirer. ~~Article 18 Discipline~~

Commented [AH52]: Consider whether additional programs might be included here.

Commented [AH53]: ADDITION: Recommend adding mission here to be consistent.

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Section 15.4 Fee Dispute Resolution Program

The Bar may provide for a fee arbitration and mediation procedure whereby fee disputes between attorneys maintaining offices in Oregon and their clients or other attorneys are submitted to arbitration panels for resolution. Such a procedure shall be administered through General Counsel, pursuant to rules approved by the Board.

Commented [AH54]: ADDITION: The Board has also adopted rules on fee mediation.

Article 16 Discipline

Section 16.1 State Professional Responsibility Board

(a) The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws.

Commented [JS55]: DW where is Supreme Court appointment of SPRB referenced?

~~The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of six members is present at any meeting and act by a vote of a majority of those present.~~

Commented [AH56R55]: Answer: The SPRB is appointed by the Supreme Court per the Bar Act and BRs.

~~Subsection 18.101 Composition~~

~~The SPRB will consist of eight resident active members of the Bar and two at large public members nominated by the Board of Governors and appointed by the Supreme Court. The Board of Governors annually will nominate and request the Supreme Court to appoint one attorney member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions located within the state of Oregon. The two public members are appointed for terms of not more than four years. No member may serve more than four years consecutively. Members are eligible for reappointment to a nonconsecutive term not to exceed four years. The Board of Governors may nominate and request the Supreme Court to appoint replacement members of the SPRB as the need arises.~~

Commented [AH57]: This section of the bylaws is redundant. All of this information is found in BR 2.3 and the Bar Act.

~~Subsection 18.102 Expenses~~

(b) All members of the SPRB will receive the same reimbursement of expenses as is accorded the members of the Board of Governors.

~~Subsection 18.103 Notice to the Respondent~~

~~Disciplinary Counsel will notify the respondent as soon as possible after the SPRB has directed the institution of a formal disciplinary proceeding against the respondent. The notice will contain a statement that all communications on the merits of the matter must be restricted to the lawyers in Disciplinary Counsel's office and with appointed counsel for the Bar and that an accused must not contact a member of the Board of Governors, the SPRB, or any other employee, agent or representative of the Bar regarding the matter.~~

Commented [AH58]: DELETION: Redundant of BR 2.6(c)

Subsection 18.104 Disclosure of Contacts

(c) If a complainant, respondent or their representatives contact a SPRB member concerning the merits of a disciplinary complaint, the SPRB member contacted must make a full disclosure of the nature of the contact before the SPRB takes action on the complaint.

~~(c) Members of the Bar against whom charges of misconduct have been approved for filing will be removed from the Lawyer Referral Service panel of lawyers until those charges have been resolved. If a member is suspended as a result thereof, the member may not be reinstated to the panel until the member is authorized to practice law again. Charges of misconduct include those authorized to be filed pursuant to BR 3.4.~~

Commented [AH59]: TECHNICAL: Consider to move to new section addressing LRS

(d) The service of members of the State Professional Responsibility Board against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board is suspended until the charges filed against them have been resolved. If a member is suspended as a result thereof, the member may not resume service on the board until the member is once again authorized to practice law. Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

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(e) The Board of Governors may nominate and request the Supreme Court to appoint a temporary replacement to serve until the member suspended under this bylaw is again able to serve. The temporary replacement will have the same rights and responsibilities as any other member of the entity.

Section 18.2 Letters of Admonition

~~(A) A disciplinary investigation, whether in response to a complaint filed with the Bar or otherwise instituted as authorized by law, may be terminated after investigation by the SPRB's issuing a letter of admonition.~~

Commented [AH60]: DELETION: This section is redundant to BR 2.3(c)(1) and BR 2.6(c)(1)(B)

~~(B) An admonition does not constitute the imposition of formal discipline. An admonition is, however, a public statement that the lawyer's conduct, in the opinion of the SPRB, violated the Rules of Professional Conduct of the Bar.~~

~~(C) An admonition may be issued, at the discretion of the SPRB, only when a Rule of Professional Conduct has been violated and if in light of all circumstances, the violation was not aggravated, but was of sufficient concern that dismissal would be inappropriate.~~

~~(D) The procedure for issuing letters of admonition is provided in the Rules of Procedure. If accepted, a letter of admonition will be placed in the lawyer's personal file maintained by the Bar.~~

Section 18.316.2 Disciplinary Counsel's Office Recovery of Costs/Collection of Judgments

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

Section 18.4 Disciplinary Correspondence

(b) Members of the Board of Governors or other bar officials may receive occasional correspondence related to disciplinary matters. All such correspondence, including letters from complainants or accused lawyers, must be forwarded to Disciplinary Counsel for response. Disciplinary Counsel need not send a copy of any response to the board member or bar official to whom the initial correspondence was addressed. Any correspondence alleging an ethics complaint about Disciplinary Counsel or General Counsel must be sent directly to the chairperson of the SPRB pursuant to BR 2.6(gf), with a copy to the staff member named in the complaint.

Section 18.6 Suspension of Service

Subsection 18.600 Applicability to SPRB

Section 18.601 SPRB Replacements

~~The Board of Governors may nominate and request the Supreme Court to appoint a temporary replacement to serve until the member suspended under this bylaw is again able to serve. The temporary replacement will have the same rights and responsibilities as any other member of the entity.~~

Section 16.38-7 Adjudicator

The Adjudicator is the Disciplinary Board's statewide adjudicator, who is authorized to exercise his or her powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The Adjudicator is appointed by and serves at the pleasure of the Oregon Supreme Court, and is an employee of the Oregon State Bar.

Article 17 Unlawful Practice of Law

Definitions

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

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

(c) Pursuant to ORS 9.164 and BR 12.2, the UPL Committee shall investigate complaints of the unlawful practice of law. The UPL Committee may decline to investigate allegations of unlawful practice of law when: the allegations are not made to the UPL Committee in writing and submitted on the Bar's online UPL Complaint Form; the administrator determines the allegations do not involve the unlawful practice of law, or; the allegations consist only of printed or electronic materials,

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Commented [AH61]: ADDITION: Change conforms to current practice.

Commented [NC62]: ADDITION: Staff feedback is that limiting submission of UPL complaints to the "UPL Complaint Form" could reduce staff processing of multiple emails, and may better focus complainants while providing them with critical disclaimers and information concerning the bar's limited resources for prosecution. May be better suited for Policies, and a definition of "UPL Complaint Form"; consider new definition of "UPL Grievance" v. "Complaint" in Policy 17.100 [like DCO's approach.

advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

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

(e)-The UPL Committee may engage in public outreach to educate the public about the potential harm caused by the unlawful practice of law, pursuant to BR 12.3(a). The Committee may cooperate in its education efforts with federal, state and local agencies tasked with preventing consumer fraud.

(f) The UPL Committee may write informal advisory opinions on questions relating to what activities may constitute the practice of law, pursuant to BR 12.3(b). Opinions must be approved by the Board before publication. The published opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that Oregon Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law.

Article ~~21~~-17 Client Security Fund

The Chief Executive Officer or General Counsel of the Bar will continue, as feasible, collection efforts in each instance in which Client Security Fund ("CSF") money is paid out. In each of these cases, the Bar will obtain an assignment of judgment in the amount paid out. The status of any such outstanding judgments shall be reviewed at least annually by the CSF Committee and the Board.

Article ~~23~~-18 Professional Liability Fund

Section ~~23~~18.1 Board of Directors

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors. At the request of two-thirds of the members of the Board of Directors, the Board of Governors may appoint the immediate past PLF Chief Executive Officer to the Board of Directors for a period not to exceed one year following their resignation or retirement from the PLF CEO position. The former PLF CEO will be a non-voting, tenth member of the Board of Directors.

Commented [AH63]: ADDITION:
Summarizes matters now in Board policy.

Section 1823.2 Authority

The Board of Governors vests in the Board of Directors of the PLF the authority that is necessary and convenient to carry out the provisions of ORS 9.080 relative to the requirement that all active members of the Oregon State Bar in the private practice of law in Oregon carry professional liability coverage, the establishment of the terms of that coverage and the defense and payment of claims under that coverage. The Board of Directors of the PLF must recommend to the Board of Governors appropriate requirements for PLF coverage and amounts of money that active members in the private practice of law will be assessed for participation in the PLF.

Section 1823.3 Operation

Subject to the authority of the Board of Governors to take the action that is authorized by ORS 9.080 and its authority to amend these policies to provide otherwise, the Board of Directors of the PLF has sole and exclusive authority and responsibility to operate and manage all aspects of the PLF. The Board of Directors of the PLF has authority to adopt its own bylaws and policies to assist it in conducting the business of the PLF. No PLF bylaw, coverage plan, or assessment, or amendment thereto, can take effect until approved by the Board of Governors. The policies of the PLF must be consistent with the Bar's Bylaws regarding the PLF and will be effective on approval by the PLF Board of Directors, subject to review and ratification by the Board of Governors within 60 days after notice of the policies has been given to the Board of Governors.

Section 2318.4 Reports

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

Section 2318.5 Relationship with the Board of Governors Liaisons to the PLF

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Subsection 23.500 Liaisons

- (a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of Governors members, bar management, PLF Board of Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.
- (b) Each year the President of the Bar appoints two lawyer members of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors.
- (c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.
- (d) The PLF CEO or the CEO's designee must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.
- (e) The Board of Governors' PLF liaisons are responsible for keeping the Board advised of the activities of the PLF to ensure good communications between the Board of Governors and the PLF Board of Directors and to ensure that the Board is

fully informed of the background and rationale for all PLF bylaw, policy, coverage plan, and assessment recommendations to it. The Board's PLF liaisons must not participate in the consideration of any specific PLF claim or other confidential PLF matter except as provided in PLF Policy 4.250(D) (Bar and/or Board of Governors is/are named parties in an action).

~~Subsection 23.501 Reports~~Section 18.4 PLF Reports to the Board

The PLF must regularly provide to the BOG the following:

- (a) All financial statements when completed;
- (b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;
- (c) All reports of investment performance and changes in investments;
- (d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;
- (e) On or before October 1 of each year, the proposed assessment for primary coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;
- (f) A report generally describing the previous year's excess enrollment, including total firms enrolled, total lawyers and gross premiums from the excess program;
- (g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;
- (h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

~~Subsection 23.502~~Section 18.5 Release of Information to the Board

All requests by the Board for confidential claim file information from the Professional Liability Fund must be directed by the President ~~of the Board of Governors~~ to the Chair of the PLF Board of Directors. No such material or information will be released by the Board of Governors without first receiving the approval for release from the Chair of the PLF Board of Directors. The Board of Governors must coordinate and consult with the Chair of the PLF Board of Directors before releasing public statements regarding the PLF and its operations.

Commented [JS64]: Per DW

~~Subsection 23.503~~Section 18.6 BOG Members Participating in PLF Claims

A member of the Board of Governors who is representing either the plaintiff or the PLF in a PLF-covered claim shall not participate in any discussion of a PLF-related matter that comes before the Board of Governors. During the course of the representation, at any time that a PLF-related matter comes before the Board of Governors, the Board of Governors members shall announce the fact of the representation and recuse himself or herself from discussing or otherwise participating in the matter. The minutes of Board of Governors meetings shall reflect the announcement and the recusal.

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Subsection 23-504 Section 18.7 Annual Joint Meeting

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and discuss matters of common interest to the Board of Governors and the PLF. This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by May 1st of each year, whichever is earlier.

Subsection Section 23-505 18.8 Audit of PLF

The Board of Governors may cause a special audit of the performance and financial statement of the PLF in addition to the statutory audit. Special audits are at the expense of the general membership of the Bar.

Subsection 23-506 Section 18.9 Location of Office

The physical location of the PLF will be determined by the Board of Governors on recommendation of the PLF Board of Directors.

Subsection 23-507 Section 18.10 Staff Responsibility

The Chief Executive Officer of the Bar and the bar staff have no responsibility or authority with respect to the management of the PLF. However, because the PLF is a function of the Bar, the Chief Executive Officer and bar staff will cooperate with the Board of Directors of the PLF, its Chief Executive Officer, and staff in all areas of the PLF's business and activities. Likewise, it is expected that the PLF Chief Executive Officer and staff will cooperate with the Bar, its Chief Executive Officer and staff in all areas of the Bar's business and activities. The Chief Executive Officer of the Bar will make the PLF aware of all personnel and other policies of the Bar so that there may be uniformity for all bar functions recognizing, however, that the nature of the PLF may justify deviations from such policies in certain circumstances.

Section 23-618.11 PLF Assessment

Subsection 23-600 Principles

The Board of Governors recognizes that the assessment for coverage is derived by the prudent application of actuarial principles, responsible evaluation of past and present operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit to the Board of Governors its recommended assessment for the subsequent year (or any mid-year special assessment) supported by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt an assessment that it reasonably

believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

Subsection 18.12 Professional Liability Fund Personal and Practice Management Assistance Committee

The Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC ") has the authority to provide assistance to lawyers and judges who are suffering from impairment or other circumstances that may adversely affect professional competence or conduct and may also provide advice and training in law practice management. The PLF-PPMAC may provide this assistance through the PLF's Oregon Attorney Assistance Program and the Practice Management Advisor Program and by the use of the PLF staff and volunteers.

Commented [NC65]: MOVED: Previously was **Subsection 24.201**

Article 2194 Attorney Assistance

Section 24.1 Creation and Purpose

~~(a) There is hereby created, pursuant to ORS 9.568, the State Lawyers Assistance Committee ("SLAC"), created pursuant to ORS 9.568, supervises and assists. The purpose of the SLAC is to supervise and assist~~ lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The board may appoint members and public members as it deems appropriate.

Commented [AH66]: DELETION, Recommend Deletion of Subsection 24.201 regarding Professional Liability Fund Personal and Practice Management Assistance Committee, and all references to the committee, as such a committee has not existed for some time.

~~(b) SLAC shall receive confidential referrals regarding Oregon lawyers whose practice may be impaired and conduct investigations regarding the referrals.~~

Commented [NC67R66]: Per your emails with PLF GC, this committee continues and re-inserted 24.201 but into PLF above as last subsection to A

~~(c) If SLAC finds that a lawyer's performance or conduct may impair the lawyer's professional competence or ability to practice law, SLAC shall require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.~~

~~(d) SLAC shall supervise referred lawyers referred pursuant to a conditional admission, conditional reinstatement or other disciplinary order.~~

Commented [AH68]: ADDITION: This is a summary of material that is now in Bar Policies.

Section 24.7 Other State Lawyers Assistance Committee Policies

Subsection 24.700 Non-cooperation

~~(e) The failure or refusal of the a~~ referred lawyer to respond to SLAC's initial inquiry; to participate in interviews with designees during the course of SLAC's investigation; to respond to SLAC requests for information or for a professional evaluation; or to participate in and comply with a remedial program, may result in the lawyer being referred to Disciplinary Counsel for possible action under Oregon RPC 8.1(c).

Subsection 24.701 Confidentiality

~~(f) SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential, unless disclosure is authorized by ORS 9.458(4). Those records and information are not subject to public disclosure and are inadmissible as evidence in any disciplinary or civil proceeding.~~ Pursuant to ORS 9.568(4), the confidentiality does not apply to information relating to a lawyer's non-cooperation with SLAC or its designees or to information obtained by the Bar from any other source not connected with the referral to SLAC. Pursuant to ~~Subsection 24.402~~ Bar Policy of the Bar's Bylaws, the SLAC chairperson or

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Commented [AH69]: DELETION: This language is inconsistent with ORS 9.568 and BR 5.9, which allows admission of SLAC information with referred lawyer's consent.

designee may release the name of the referred lawyer to the OAAP. ~~SLAC may also release statistical data, pursuant to Subsection 24.703 of the Bar's Bylaws.~~

Commented [AH70]: DELETION: Combined with annual report requirement below.

~~Subsection 24.702 Duty to Report Unethical Conduct~~

~~SLAC and its designee are exempt from the reporting requirements of Oregon RPC 8.3(a) pursuant to Oregon RPC 8.3(c)(1).~~

Commented [AH71]: DELETION: Just repeats RPC.

~~Subsection 24.703 Statistical Data~~

~~(g) SLAC will prepare a written annual report of its activities, which does not disclose individually identifiable confidential information regarding confidential referrals.~~

Article 25 Law Student Associates

Article 26-20 Sustainability

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

Article 271 Unclaimed Lawyer Trust Account Funds

Section 27.100 Purpose

~~(a) This policy is established to provide direction and limits. The Chief Executive Officer shall assign bar staff to oversee for the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar. For the purposes of this section, "unclaimed lawyer trust account funds" are defined to mean all funds allocated to the bar pursuant to ORS 98.386(2). The administration, disbursement and claims adjudication of unclaimed lawyer trust account funds shall be consistent with the requirements of ORS Chapter 98 and Board Policies.~~

Section 27.101 Administration

~~(a) All unclaimed lawyer trust account funds appropriated to the Bar shall be received and held in a separate fund in the manner authorized by Section 7.1.~~

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~~(b) All unclaimed lawyer trust account funds shall be invested in the same manner as the Bar's general funds as described at Section 7.4 in these Bylaws. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.~~

Commented [JS72]: DW reference to 7.1 needs to be corrected (unless waiting for final)

Commented [JS73]: DW reference to 7.4 needs to be corrected (unless waiting for final)

Subsection 27.102 Disbursement

~~(a) The Chief Executive Officer and the Chief Financial Officer are authorized and empowered to make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to:~~

~~(1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection 27.103, and pursuant to ORS Chapter 98 and these Bylaws.~~

Commented [JS74]: DW change (unless waiting for final)

~~(2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the Chief Executive Officer determines such~~

disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to ~~pursuant to ORS Chapter 98 and these Bylaws Subsection 27.103~~ from unclaimed lawyer trust account funds.

Commented [JS75]: DW change (unless waiting for final)

(~~bf~~) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to the Bar to the Legal Services Program established under ~~ORS 9.572 the Bar Act~~ for the funding of legal services. The Board may authorize such disbursements only if the Board determines the disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

Article ~~28-22~~ Admissions

Section ~~228.1~~ Board of Bar Examiners

Pursuant to ORS 9.210, the Supreme Court appoints a Board of Bar Examiners (BBX) to carry out the admissions function of the Oregon State Bar. The BBX recommends to the Supreme Court for admission to practice those who fulfill the requirements prescribed by law and the rules of the Court. The BBX's responsibilities include: investigating applicants' character and fitness, developing a bar examination, determining the manner of examination, determining appropriate accommodations for applicants, grading the bar examinations and setting standards for bar examination passage. The BBX may appoint co-graders to assist with the grading of examinations. The BBX may also recommend to the Court rules governing the qualifications, requirements and procedures for admission to the bar, by examination or otherwise, for law student appearance, and other subjects relevant to the responsibilities of the BBX.

Section ~~228.2~~ Nominations

The bar and the BBX will recruit candidates for appointment to the BBX and for appointment as co-graders. The BBX will solicit input from the Board of Governors before selecting co-graders and nominating candidates for appointment to the BBX.

Section ~~228.3~~ Liaisons

The Board of Governors shall appoint one of its members as a liaison to the BBX. The BBX may appoint one of its members as a liaison to the Board of Governors. The liaisons shall be entitled to attend all portions of the BBX and Board of Governor meetings, including executive and judicial sessions.

Section ~~228.4~~ Admissions Director

The Admissions Director shall report to and be supervised by the Director of Regulatory Services, under the overall authority of the Chief Executive Officer. The Chief Executive Officer and Director of Regulatory Services will make the hiring, discipline and termination decisions regarding the Admissions Director. The Chief Executive Officer and Director of Regulatory Services will solicit BBX's input into these decisions and give due consideration to the recommendations and input of the BBX. If the BBX objects to the final hiring decision for the Admission Director, recruitment will be reopened.

Section 228.5 Budget

With the approval of the Oregon Supreme Court, the BBX may fix and collect fees to be paid by applicants for admission. A preliminary annual budget for admissions will be prepared by the Admissions Director and Director of Regulatory Services in consultation with the BBX. Upon approval by the BBX, the budget will be submitted to the Board of Governors. The final budget presented to the Board of Governors will be provided to the BBX. Upon adoption by the Board of Governors, the budget will be submitted to the Supreme Court in accordance with Bylaw 7.202, and the BBX may make a recommendation to the Supreme Court regarding adoption of the budget. The budget will align with bar policy generally after consideration of the policy goals and objectives of the BBX.

Commented [JS76]: DW corrected (unless waiting for final)

Section 228.6 Amendments

Any proposed amendment to Article 228 shall be submitted to the BBX and Supreme Court for consideration and the BBX shall make its recommendation to the Supreme Court regarding adoption of the proposed amendment. Upon Supreme Court approval, the Board of Governors may adopt such amendments in accordance with Article 239.

Article 29-23 Amendment of Bylaws and Policies

(a) Any amendment of the Bar's Bylaws requires notice at a prior Board meeting unless two-thirds of the entire Board waives the notice requirement. The Bar's Bylaws may be amended by affirmative vote of a majority of the entire Board at any regular meeting or at any special meeting of the Board called for that purpose.

(b) The Board may adopt or amend Bar Policies not inconsistent with these Bylaws by an affirmative vote of a majority of the entire Board at any regular meeting or at any special meeting of the Board called for that purpose.

Commented [AH77]: ADDITION: Need to add mechanism regarding adoption and amendment of Bar policies.

2020 Board Policies

Chapter 1

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

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 2.90 Defense of Disciplinary Complaints and Proceedings

(a) Pursuant to Article 2 of the Bylaws, any complaint is made to the Oregon State Bar or other agency or court with disciplinary jurisdiction over the Accused or a disciplinary proceeding is brought by the Oregon State Bar or such agency or court against an Accused which on its face falls within the provisions of the Bylaws, or which the Accused asserts to be based in fact on an act or omission in the performance of his or her official duties on behalf of the bar and not within the scope of the Bylaws, the Accused may file a written request for a defense with the General Counsel, or if the request is by the General Counsel, the President of the bar. The General Counsel or President, as the case may be, will thereupon present his or her recommendations to the Board of Governors regarding the approval of an agreement to pay for the defense of the Accused, including attorney fees and costs during the investigation, prosecution, and appeal of a complaint of professional misconduct. The Board of Governors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to select counsel to defend the Accused, unless the Board determines that the complaint does not arise out of an act or omission occurring in the performance of official duties on

behalf of the bar, or that the act or omission amounted to malfeasance, gross negligence or willful or wanton neglect of duty, in which case the Board will reject the request.

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

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

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

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

[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 of Board Members

(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. The Board will conduct the evaluation in executive session. The Board or its representative will meet with the Chief Executive Officer to discuss the evaluation.

Commented [AH1]: TECHNICAL: Check for consistency with Public Meetings Law.

(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 12.1 of these 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

Policy 3.100 House of Delegates

(a) 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 Subsection 7.501 of the Bar's Bylaws.

(b) 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 Subsection 7.500 and 7.501**.

Policy 4.100 Award Criteria

(a) The criteria for the President's Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections, boards or the Bar's legislative/public affairs process or similar activities through local bar associations or other law-related groups.

(b) The criteria for the President's Public Service Awards is as follows: The nominee must have volunteered his or her time for the activity in which she or he was involved; the nominee must be an active member of the Oregon State Bar; the nominee must have made a significant contribution to the public through efforts involving pro bono services; coordination of local public service law-related events, such as those associated with Law Day; service with community boards or organizations or similar activities that benefit the public.

(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 (Section 4.2-4.4 above).

(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.

Policy 5.1 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.

Policy 6.700 Annual Membership Fees and Assessments

(a) 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.

Commented [AH2]: TECHNICAL QUESTION: Now that most bar dues are processed online, is this still necessary?

(b) 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.

(c) 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. Requests for waivers based upon Active Military Service, Peace Corps, VISTA or other qualifying programs 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.

Policy 7.100 Public Records Requirements

(a) The Chief Executive Officer will assign appropriate staff to respond to requests for public records. The Chief Executive Officer will advise the board of any public records disputes that are taken by the requestor to the attorney general for further consideration.

(b) The Chief Executive Officer will propose and the board will adopt a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.

Commented [AH3]: Is this necessary?

(c) The fee schedule shall be reasonably calculated to reimburse the bar for the actual cost of making the records available. The charges for staff time shall be computed on the basis of the actual salary of the employee or employees engaged in responding to a particular public records request.

(d) The bar may estimate charges for delivering the requested documents and require the requestor to pay the estimated charges prior to the start of staff work to respond to the request. If the estimated cost of producing the records is \$25 or more, the bar will provide the estimate in writing and will take no action on the request until the requestor confirms that the bar should proceed. Any estimated fees paid in advance that exceed the actual cost of the search and production of public records will be refunded.

(e) The bar may furnish copies of public records without charge or at a substantially reduced fee if the Chief Executive Officer or department manager determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

(f) Public records shall be made available in alternative formats to qualified individuals with disabilities at no additional or at a reduced cost, provided that compliance with the request will not result in undue financial or administrative burden.

(g) Except as provided otherwise herein, the following records of Client Assistance Office, Disciplinary Counsel's Office and the Disciplinary Board Clerk are open to inspection on request:

(1) Letters inquiring or complaining about the conduct of any member of the bar and all material submitted by inquirers, complainants, accused lawyers and other persons to the bar relating to such inquiries or complaints.

(2) All correspondence by bar employees with inquirers, complainants, accused lawyers, witnesses and other persons in the course of a disciplinary or Client Assistance Office investigation.

(3) Investigative reports and summaries concerning pending Client Assistance Office, disciplinary and reinstatement matters prepared by Client Assistance Office Counsel, Disciplinary Counsel, the SPRB or a bar investigator, to the extent they cover purely factual materials.

(4) The completed minutes of SPRB meetings.

(5) The formal complaint against a member of the bar, the accused lawyer's answer and all other documents in formal proceedings filed with the Disciplinary Board Clerk pursuant to the Rules of Procedure or statute.

(6) Letters of admonition issued by the SPRB when offered to an accused by Disciplinary Counsel.

(h) The following records are exempt from disclosure and will not be open to public inspection except as might otherwise be required by law:

(1) Investigative assignments made by Disciplinary Counsel or the SPRB to an investigator, to the extent they cover other than purely factual materials.

(2) Investigative reports or summaries concerning pending Client Assistance Office, disciplinary or reinstatement matters prepared by the Client Assistance Office, Disciplinary Counsel's Office, a bar investigator or the SPRB prior to a finding of probable cause in the matter, to the extent that they cover other than purely factual materials.

(3) The work product of bar counsel or Disciplinary Counsel.

(4) Communications between the Client Assistance Office and Disciplinary Counsel's Office, between bar counsel and Disciplinary Counsel's Office and between Disciplinary Counsel and the SPRB, regarding the merits of a prosecution or relating to matters of strategy to the extent they are privileged under OEC 503.

(5) Information of a personal nature submitted to the bar during a Client Assistance Office or disciplinary investigation, a reinstatement proceeding, pursuant to BR 3.2, 3.3 and 3.4 or otherwise, if the requirements of ORS 192.502(2) have been met. "Information of a personal nature" includes but is not limited to physical and mental health records, tax returns, trust and other bank account numbers, social security numbers, fingerprint cards, and credit reports.

(6) Communications between General Counsel's Office and the board, individual board members, the Chief Executive Officer or bar staff that are protected by the attorney-client privilege.

(7) Other records that the bar deems exempt from disclosure under the Public Records Law.

(i) 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 accused or applicant. Panels of the Disciplinary Board and any presiding official will comply with UTCR 3.180 when presented with requests to allow media coverage of proceedings.

(b) Meetings of 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 7.300 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.

[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. A request for a candidate statement or the submission thereof will be considered public information.

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.

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 appropriate legislation. In so doing, the Board will 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 11.200 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.

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 12.200 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 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.

(f) Professional Liability Coverage: The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Policy 12.300 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.

Policy 13.100 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 members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year.

(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) A quorum, consisting of a majority of the committee members, is required for the transaction of committee business. No recommendation of a committee to the Board of Governors is valid if made without a quorum present, but the absence of a quorum does not preclude a committee from studying or discussing any issue within the committee's charge. Action of the committee will be by majority vote of those voting.

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 14.100 Sections

(a) Each section should set dues at an appropriate level to pay for programs and activities. The Bar charges each section a per capita fee. This fee is recalculated periodically as determined by the Chief Executive Officer.

(b) A section 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. By October 15 a section may request a waiver from the BOG to maintain a larger fund balance by submitting a written request outlining the specific event or program for which the funds are needed. A section 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.

(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 may make donations to charitable causes or organizations only with prior approval of the Chief Executive Officer. The Chief Executive Officer will allow such donations on a showing by the section that the donation is germane to the Bar's purposes as set forth in [Section 12.1](#) of the Bar's Bylaws. The Chief Executive Officer will maintain a list of approved recipients.

(e) Special services of the Bar that are not included in the calculation of the per capita assessment may be made available at cost to the sections upon adequate notification to and negotiation with the Bar. Sections must give the Bar the first opportunity to provide the necessary publications production support services before contracting with outside organizations or individuals. Sections seeking to contract for any goods or services with outside organizations or individuals must contact the General Counsel's office of the Bar for preparation of appropriate contract documents and must obtain the Chief Executive Officer's prior approval of all such contracts.

(f) 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.

(g) 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 CLE

Seminars Department will establish policies sections must adhere to when co-sponsoring CLE events. These policies will address issues such as the division of event revenues and expenses between the section and the CLE Seminars Department, as well as the CLE topic, speakers, date and location.

(h) The Bar's CLE Seminars Department will provide registration services for all section CLE programs not co-sponsored by the CLE Seminars Department. The CLE Seminars Department will determine the cost to provide registration services and establish policies sections must follow. A section that plans a seminar without the CLE Seminars Department's co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar and paying any associated fees.

(i) 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 must not use the Oregon State Bar logo or the phrase Oregon State Bar CLE.

(j) 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.

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.

(h) The Bar may not enter into any agreement concerning, nor may it sponsor or co-sponsor, any travel or tour arrangement, by charter or otherwise, without the prior approval of the Board.

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
<http://www.osbar.org/docs/leadership/resources/ElectronicCommunicationsPolicies.pdf>

Commented [AH4]: ADDITION: Consider adding link to this policy as a Board policy.

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) Inquiries submitted to the Legal Ethics Committee should be anonymous, insofar as possible. To preserve anonymity, if the facts are inadequate to permit the formulation of an opinion or a direct answer, General Counsel's office may ask for submission of necessary additional facts. 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.

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 by the Oregon Supreme Court, in 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.

(F) "Accused" 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 accused'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 to prove that the accused engaged in the unlawful practice of law. The UPL Committee may reopen a closed matter if it receives additional information or evidence of the unlawful practice of law by the accused.

(b) Informational Letter.

This disposition is appropriate when the UPL Committee has insufficient facts evidence to prove that the accused has engaged in the unlawful practice of law, and believes that that the accused would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter

will notify the accused that the investigation is concluded, and state that the accused 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 clear and convincing evidence to establish that the accused engaged in the unlawful practice of law, (ii) the practice is ongoing or likely to recur, and (c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(2) Filing suit for contempt relief is appropriate when a) a court has entered an injunction against the accused b) the UPL Committee has clear and convincing evidence to establish that the accused continues to engage in the unlawful practice of law and c) a member of the public has been harmed or is likely to be harmed as a result of the accused'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 another agency or department 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) The accused is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;

(3) An agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation;

(4) The agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused, or;

(5) The 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 accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Committee.

[Policy 17.500 Referral to Bar Counsel](#)

When a new complaint of unlawful practice of law involves an accused 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 accused.

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.

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 19.200 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 19.300 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 Section 24.701. Appointment of a designee who is not a SLAC member will be at the discretion of the chairperson. Considerations for appointment of such a designee include, but are not limited to, the designee's qualifications, the designee's previous experience with the referred person or with a situation similar to that of the referred person and the location of the referred person and designee. The chairperson will confirm the appointment of a designee. The chairperson will advise the designee of his or her authority and obligations and will include a copy of the SLAC's rules and other pertinent SLAC information. The designee will be notified of SLAC meetings while the referral is pending and must give regular progress reports to SLAC. Those reports may be given in person, in writing, by telephone or through the chairperson. The appointment of a designee will remain in effect until the case is concluded or SLAC otherwise provides.

[Policy 19.400 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 19.500 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 19.600 State Lawyers Assistance Committee Investigations

(a) Within 30 days after notice has been given as provided in Subsection 24.403 of the Bar's Bylaws, the designee, either individually or with another designee, will meet with the referred lawyer to discuss the nature of the referral, SLAC's function, the general steps that will be taken, any questions that the referred lawyer may have about the process and the lawyer's explanation, opinion or questions about the referral.

(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 19.700 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 19.800 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 Subsection 24.503(H) 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 19.900 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.

[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.

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 Subsection 27.103(a), the Bar adopts the claim adjudication rules promulgated by the Oregon Department of State Lands at OAR 141-040-020; and OAR 141-040-0211 through OAR 141-040-0213. Where the rules reference the "Department" they shall be deemed to refer to the Bar.

(d) If a claim is approved pursuant to this Subsection, the 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.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: April 17, 2020
From: Legal Ethics Committee
Re: Meaning of “Bar-Sponsored” Language in ORPC 5.4(a)(5)

A. Background

A firm has requested the bar to sponsor a lawyer referral service operated by the firm. This may implicate ORPC 5.4(a)(5), which prohibits a lawyer from sharing fees with a non-lawyer except that “a lawyer may pay the usual charges of *bar-sponsored* or operated not-for-profit lawyer referral service...” ORPC 5.4(a)(5) (emphasis added).¹

B. Question Presented

What does “bar-sponsored” mean in ORPC 5.4(a)(5)?

C. Discussion

i. Plain language meaning

The rules do not define “bar-sponsored.” Further, there is no case law interpreting the term. We look then to the dictionary definition and any interpretations of similar rules in other jurisdictions. See *In re Conduct of Hockett*, 303 Or 150 (1987) (in the absence of a definition of ‘dishonesty’ the court looked to Black’s, Webster’s, and interpretations in other jurisdictions.)

Sponsor is defined by Black’s Law Dictionary (11th ed 2019) alternately as “**1.** Someone who acts as a surety for another. **2.** A legislator who proposes a bill. **3.** Civil law. Someone who voluntarily intervenes for another without being requested to do so. **4.** GODPARENT.”

Sponsor is defined in Webster’s Third New International Dictionary 2204 (unabridged ed. 2002). relevantly as “**1.** *Roman law* : one who binds himself to answer for another’s default : surety [...] **4.** one who assumes responsibility for some other person or thing...”. It defines the verb sponsor as “to be or stand sponsor for; accept responsibility for.” Sponsorship is defined as “the state of being a sponsor : act of sponsoring : official or financial support.” *Id.*

Rule 5.4(a)(5)’s use of the phrase “bar-sponsored or operated” suggests that “bar-sponsored” is not the equivalent of bar “operated.” Operate is defined by Webster’s Third New International Dictionary to mean, among other things:

¹ This committee does not know if the firm requesting the bar sponsor its proposed lawyer referral service will be charging fees to lawyers participating in their proposed service.

1 :to cause to occur: bring about by or as if by the exertion of positive effort or influence: INITIATE <such influences may ~ remarkable changes> **2 a**: to cause to function usu. by direct personal effort: WORK (~ a car) <operating a drill press> **b**: to manage and put or keep in operation whether with personal effort or not <operated a grocery store>

Id. at 1581.

ii. Other Jurisdictions

No other jurisdictions have a current provision similar to ORPC 5.4(a)(5).

iii. History

ORPC 5.4(a) was amended in 2012 after the adoption of a percentage fee model for the Lawyer Referral Service. According to the 2012 HOD Agenda (BOG Resolution No. 4) the amendment made clear that a lawyer's participation in the bar-operated lawyer referral service would not violate the ORCPs. There appears to have been no discussion as to what bar-sponsorship of a referral service meant or would look like. However, what the rule does make clear is that just as a lawyer may pay the usual charges of a bar-operated lawyer referral service and not violate fee-sharing prohibitions, a lawyer may also pay the usual charges of a bar-sponsored lawyer referral service.

D. Conclusion

The use of both "operated" and "sponsored" in ORPC 5.4(a) suggest that a lawyer referral service need not be an internal bar program. Given the lack of guidance in the history of the rule and lack of persuasive authority from other jurisdictions, the Bar has broad authority under the plain meaning of "sponsored" to determine what bar-sponsorship of a referral service would look like.

The Commons Law Center

April 1, 2019

Via Email: (hhierschbiel@osbar.org)

Ms. Helen Hierschbiel
Oregon State Bar
16037 SW Upper Boones Ferry Rd
Tigard, OR. 97224

Re: Instructions for OSB sponsorship of Lawyer Referral Service

Dear Ms. Hierschbiel,

In reviewing our strategic plan, the board of directors of the Commons Law Center (the "Commons") is very interested in scaling our legal services for our modest-means clients and expanding our access to justice programs. Unfortunately, the majority of Oregonians contacting the Commons for help with a legal problem do not qualify for services for a number of reasons. On a daily basis, our intake staff and volunteers connect these potential clients with legal aid programs, lawyers in private practice, or other services such as the online Legal Resource Guide.

As you know, under RPC 5.4(1)(5), a lawyer may pay the usual charges of bar-sponsored or -operated not-for-profit "Lawyer Referral Service." As a tax-exempt nonprofit Oregon corporation, the Commons is interested in starting a bar-sponsored Lawyer Referral Service. We write to seek sponsorship from the Oregon State Bar to operate as a bar-sponsored Lawyer Referral Service, thereby authorizing the Commons to collect a percentage of the legal fees generated by cases referred to participating lawyers.

We were not able to identify a formal mechanism to request such bar-sponsorship. We request your guidance on next steps to make this happen.

Sincerely,



Kimberly R. Burkland Pray
President, Board of Directors

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: February 12, 2021

From: Danielle Edwards, Director of Member Services

Re: Section Program Review Update

Action Recommended

No action recommended. Allow additional time for sections to provide comment regarding the proposed bylaw amendments.

Background

Last year the Board of Governors began a program review to ensure Bar resources were being used effectively and efficiently to support sections. During its September meeting, the Policy & Governance Committee approved goals and a process to conduct the review. During the meeting in November proposed changes to the OSB Bylaws and Standard Section Bylaws were reviewed by the P&G Committee and the BOG. The proposed amendments were shared with section leaders by email in December (see attached email) with a request to provide feedback by February 1.

The initial plan was to present feedback from sections to the BOG during this meeting. However, there has not yet been any written comment submitted. Based on drafted section minutes and comments from staff liaisons who attend meetings, a handful of sections have discussed the bylaw amendments. The lack of response from sections could be due to a number of challenges, including the change in section leadership that takes place on January 1. Furthermore, the notice to section leaders included a significant amount of information and the bylaw amendments could have been overlooked.

Due to the significant number of changes outlined in the proposed bylaws and the current relationship between sections and the bar, staff recommend allowing additional time for section comment. In addition, it is suggested that staff organize a meeting with section leaders who are interested in asking questions or providing verbal comment. Such a meeting could be arranged by early March and would then allow another month for section feedback before the April BOG meeting.

The following is the program review process with timeline indicators for each step. Attached is notice sent to section leaders in December and the P&G memo outlining the proposed bylaw changes.

Program Review Process

- Review background information and determine whether additional information is needed. (complete)
- Establish goals and process for program review. (complete)
- Review goals with sections. (Distributed to sections on August 28)
- Consider OSB bylaw amendments related to sections to further goals and functions. (Draft sent to BOG in November 2020)
- Consider Standard Section bylaw amendments to further goals and functions. (Draft sent to BOG in November 2020)

- Consider alternative section CLE programming support. (in process)
- Share proposed bylaw changes with section leaders and request feedback. (Proposed amendments distributed December 2020)
- Review and discuss feedback.
- Determine what changes, if any, to adopt.
- Final report and recommendations for the BOG by the February 12, 2021 BOG meeting.

Danielle Edwards

From: Danielle Edwards <memberservices@osbar.org>
Sent: Tuesday, December 22, 2020 4:22 PM
To: Danielle Edwards
Subject: OSB Section Program Review Update

The logo for the Oregon State Bar, featuring the text "Oregon State Bar" in a sans-serif font. The word "Oregon" is in a light purple color, "State" is in a dark green color, and "Bar" is in a light purple color. A solid dark green vertical bar is positioned behind the word "State".

Section 2020 Chairs, 2021 Chairs, and 2021 Chair-Elects:

Thank you for your service in your respective positions this year. We appreciate your time and leadership. As you know, the Board of Governors (BOG) and OSB staff have been engaged in a Section program review since the beginning of 2020. We appreciate the feedback some of you have provided thus far. As we continue to evaluate section bylaws and policies, I have a few updates since the last BOG meeting. Please review the topics below, and provide feedback by February 1. The BOG will review section input at the February 12, 2021 meeting.

Conference Call Provider

The OSB has chosen to end its contract with PGI, the current conference call provider for sections. Effective immediately, service will be discontinued. Member Services staff can assist in scheduling Executive Committee meetings in an OSB Zoom account on a first come basis. Alternatively, a section now has the opportunity to purchase their own Zoom Pro account through the OSB. Accounts will be \$20 per month and direct charging will be set up with OSB Accounting. Sections can opt in to this option at any time during the year, but must retain the Zoom account for a minimum of one year. If your section opts for this option, scheduling Executive Committee and subcommittee meetings should be done by a member of your EC and the OSB will continue to provide the required public meeting notice. Sections who would like to purchase an account should let me know as soon as possible.

Recording Zoom Meetings

Section executive committees and subcommittees are subject to the Public Meetings Law and HB 4212 which indicates that all public meetings, including section meetings, must be recorded. If your section uses the OSB Zoom account, we will ensure your meeting is properly recorded. If your section uses another account or platform to conduct their meeting, you will be responsible for ensuring the meeting is

recorded and the video is retained for 30 days or until draft meeting minutes have been submitted to OSB.

Hosting Zoom CLEs

Sections who opt-in and purchase a Zoom account through the OSB platform have the option to host live CLE programs on their account using the basic meeting feature. Please remember the section must use [OSB Registration Services](#) for virtual CLE programs as outlined in OSB Bylaw 15.602.

Diversity Action Plan

The OSB [Diversity Action Counsel](#) is in the process of developing a new strategic action plan. Section input is important to this process as the plan will be a roadmap for the next three years. Your perspective and feedback on section activities, goals, and challenges is vital to developing a plan that will help move the OSB and the profession forward. Please review the [current plan](#) and email me your thoughts about how sections can continue to incorporate diversity, equity, and inclusion into their work.

Section Bylaw Review

During its last meeting, the BOG continued discussing its program review of sections. Thank you to those of you who provided feedback after the BOG shared its [goals and process](#) for the program review. The BOG considered bylaw revisions and is now seeking feedback from sections before moving forward. In addition to several housekeeping matters, there are some impactful changes proposed relating to term limits, annual meeting and election processes, communication and legislative policies, and subcommittee creation. I encourage you to review the [BOG summary memo and drafted bylaws](#) and email your feedback to me at, dedwards@osbar.org by February 1.

MCLE Rule Changes

At its last meeting, the BOG voted to recommend Oregon Supreme Court approval of changes to the MCLE rules that would restructure accreditation application fees and attendance reporting processes, as well as clarify the MCLE Program Manager's authorization to audit CLE program sponsors. A [background memo and text of the proposed changes](#) are available for review. Comments on the proposed changes are welcome, and should be submitted in writing to feedback@osbar.org by January 11.

Thank you for your attention to these topics.

Regards,

Danielle Edwards

Pronouns: she, her, hers

Director of Member Services

503-431-6426

dedwards@osbar.org

Oregon State Bar | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224

If you would like to receive your e-mails at a secondary e-mail address go to www.osbar.org/secured/login.asp and log in using your bar number and password, then click on Communication Preferences and set up a secondary e-mail address.

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: November 20, 2020

From: Helen Hierschbiel, Chief Executive Officer
Amber Hollister, General Counsel
Danielle Edwards, Director of Member Services

Re: Section Program Review
Proposed Amendments to Article 15 of OSB Bylaws and Standard Section Bylaws

Action Recommended

Discuss proposed revisions to Article 15 of the OSB Bylaws and Standard Section Bylaws prior to circulation with Section Executive Committees.

Background

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

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

The Policy & Governance Committee has decided to review the section program in depth as part of its “All Program Review” process. It has established the following goals to guide its review:

1. Better align the OSB’s section program with the Bar’s mission and functions.
 - a) Establish a mission or purpose statement for the section program that is aligned with the Oregon State Bar mission.
 - b) Educate and engage with all sections about the sections’ evolving role within the bar and how sections help serve the OSB mission and functions.
 - c) Support increased diversity on Executive Committees and awareness when planning activities and programs. (See [2018-20 Diversity Action Plan](#) Membership Sphere, Goal 3, Strategy 2, Action Item 2.)
 - d) Clarify section communication policies to address bar speech issues related to blogs, newsletters, websites, and social media.
 - e) Clarify Bar policy covering what section activities and content require a *Keller* review (e.g., CLE activities and content).

¹ ORS 9.010.

² ORS 9.080.

- f) Explore ways to adapt the BOG and bar staff liaison structure to support the sections and their alignment with the Bar's mission.
2. Determine the appropriate level of OSB support to sections in the following areas:
- a) CLE Delivery. Consider appropriate level of staff support to sections to address changing methods in section CLE delivery and financial pressures on the bar.
 - b) Law Student Scholarships & Stipends. Determine whether or not sections should provide law student stipends or scholarships, and if so under what parameters.
 - c) Charitable Contributions. Reconsider charitable contributions and analysis of appropriate organizations. (See [OSB Bylaw 15.401](#) and the [existing list of approved charities](#).)

Implementation of these goals requires review and amendment of OSB Bylaws related to Sections as well as the standard section bylaws. Below is a summary of proposed changes intended to help accomplish these goals, with an attached redline. It also includes a number of housekeeping changes intended to provide greater clarity and reflect actual practice.

Proposed Amendments to Article 15 of OSB Bylaws

Section 15.1 Purpose

Revises the purpose of sections so that they align with the Bar's statutory mission.

Section 15.2 Formation and Sunset

Increases number of members required to form a section from 100 to 200, to ensure there is adequate member interest to sustain section. Clarifies Board may decline to form section if proposed section could be incorporated into another section.

Section 15.3 Bylaws

Provides sections are subject to standard section bylaws, OSB Bylaws and Board policies. Removes option for sections to create their own bylaws with Board approval.

Section 15.4 Finances

Rewrites section on dues for clarity. Moves sections on charitable donations to new subsection 15.701.

Section 15.5 Section Contracts and Administrative Services

As is current practice, provides that contracts and contract amendments must be reviewed by General Counsel and approved by the CEO before finalized. Provides sections must pay any damages incurred out of section funds, unless the Board specifically authorizes payment out of bar funds. This issue has become more pressing in light of pandemic cancellations.

Section 15.6 Continuing Legal Activities

Amendments for clarity.

Section 15.7 Grants and Donations

Ensures that section donations are *Keller* compliant and consistent with the Bar's statutory mission. Provides that sections may only fund stipends or scholarships administered by a charitable organization or the Bar's Diversity & Inclusion Department.

Section 15.8 Legislative and Policy Activities

Outlines the section's ability to take positions on legislative matters, consistent with *Keller*, and emphasizes the section's obligation to seek Board approval before taking any legislative position on behalf of the section or Executive Committee.

Section 15.9 Communications

Outlines the limits on section's ability to make policy statements, including during CLE events and programming, and in newsletters, websites, blogs, social media pages and listserves, consistent with *Keller*. Grants the CEO explicit authority to determine whether section statements are consistent with OSB Bylaws.

Proposed Standard Section Bylaw Changes

Article I Definition and Purpose

The proposed amendments are intended to better align the section mission with the bar mission, while still allowing the sections flexibility to adopt a statement of purpose that details how the section supports the bar's mission. Also, section 3 is added to provide greater clarity to sections about being part of the bar and the need to comply with Keller.

Article II Membership

Housekeeping changes are intended to streamline and more accurately reflect actual practice.

The Board tried to require sections to provide free membership for 50-year members and free CLE attendance for 50-year members. It was not well-taken by the sections and later amended to only encourage this activity. In practice, sections often offer free membership and discounted CLE admission to a number of different groups, including new lawyers and law students.

If the Board wants to specify groups that sections should offer comp membership to, staff recommends that the list be expanded. Alternatively, the Board could remove this provision, allowing the sections greater flexibility in determining to whom they offer free membership and CLEs.

Article III Meetings of Section

Removes the requirement to hold an annual business meeting to elect Executive Committee members and vote on changes to membership dues. Election of Executive Committee members will be conducted by ballot to increase accessibility and allow greater member participation. Membership dues amounts will be voted on by the Executive Committee with subsequent approval by the Board of Governors.

The requirement to hold meetings within the geographic boundaries of the state is consistent with public meetings law. During COVID, HB 4212 provides public bodies the ability to forgo a physical location in lieu of an electronic or virtual meeting. When HB 4212 is no longer in effect, sections will be permitted to hold virtual meetings and use the OSB Center as the physical location to meet public meeting requirements.

Co-sponsorship is already addressed elsewhere, in the OSB Bylaws.

Article IV Officers

The changes are largely housekeeping. Removal of references to section annual meetings. Removal of section 7 to comply with public meetings law.

Article V Section Executive Committee

These are largely housekeeping changes intend to clarify and address common questions that arise around public meeting law issues.

Removal of the provision allowing executive committee members to be paid for work as this raises Government Ethics concerns.

Removal of section 8 is intended to reduce large governing bodies which create more legal risk.

Article VI Terms of Office and Elections

Amends the nine-year limitation of service from consecutive years to a lifetime limit. Most of the proposed changes are intended to increase the diversity of the section executive committee. Staff is working with the ACDI for additional suggestions on improving the diversity of section executive committees. Additional bylaw revisions are expected.

Additional changes remove references to section annual meetings and outline the process and timeline for voting on the Executive Committee slate.

Article VII Committees

Restrictions on the creation of committees might help reduce issues with mission creep. On the other hand, executive committees should retain the flexibility to create committees as needed.

Recommended changes are to run the creation of any new committees through the CEO first, and require a charge that relates to the mission. We would provide preapproval for standard committees (legislative, CLE, etc.) to reduce the administrative burden on both the sections and bar staff.

Article VIII Legislative Activities

Removed several sections which were duplicative of OSB bylaws and should be in BOG policy rather than bylaws.

Sections raised concerns about not being able to conduct votes by email and respond quickly during the legislative cycle. Staff recommends delegating authority to the chair, as public meetings laws limit the ability of the entire committee to weigh in quickly. Further discussion is needed to determine where the details of the process ought to reside.

Article IX Receipts and Expenditures

Housekeeping changes.

Article X Notice of Meetings, Minutes and Reports

Staff recommends that we begin process where sections are responsible for distributing their own meeting reminders and exhibits rather than staff. Although this has been in the bylaws for quite some time, it has not been the organizational practice. This change speaks to the program review goal of determining the appropriate level of support to provide sections.

Sections argue that this bylaw implies they should have an accumulation of funds to protect them from unexpected loss. Since we now have a policy to encourage less than two years of dues in reserve, this bylaw creates confusion.

Article XI Amendments to Bylaws

Provide opportunity for bylaws changes to become effective on a date specified by the BOG.

Article XII Sunsetting the Section

Primarily housekeeping and modifications to remove annual meeting requirement.

Article XIII Rules of Order

Removed references to mail, mailing, or mail ballot due to public meetings law.

Next Steps

During its September 25 meeting, the Policy & Governance Committee approved the following Section Program Review Process.

- Review background information and determine whether additional information is needed. (complete)
- Establish goals and process for program review. (complete)
- Review goals with sections. (Distributed to sections on August 28)
- Consider OSB bylaw amendments related to sections to further goals and functions. (in process)
- Consider Standard Section bylaw amendments to further goals and functions. (in process)
- Consider alternative section CLE programming support. (in process)
- Share proposed bylaw changes with section leaders and request feedback.
- Review and discuss feedback.
- Determine what changes, if any, to adopt.
- Final report and recommendations for the BOG by the February 12, 2021 BOG meeting.

Article 15 Sections

Section 15.1 Purpose

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

Section 15.2 Formation and Sunset

Subsection 15.200 Petition

Any ~~100~~200 members of the Bar who wish to form a section in a particular area of law may submit a petition to the Board to create a section. The petition must state that the signators are committed to becoming members of the section, if the Board approves forming the section. ~~The~~

Subsection 15.201 Formation

Factors the Board must consider ~~creating in deciding whether to create~~ a section ~~when it receives the petition and determines that~~ ~~include, but are not limited to, whether~~ the proposed section ~~does not duplicate~~ ~~duplicates or could be incorporated into~~ another ~~section's activities or are~~ section and ~~whether the proposed section is consistent with the mission of~~ ~~legal interest.~~ ~~the bar.~~

Subsection 15.202 Merger, Reorganization, Sunset

The Board may merge, reorganize or abolish sections at the request of affected sections or as the Board deems appropriate. Factors that the Board must consider include, but are not limited to, the requirements outlined in Standard Section Bylaws, Article XII, Section 2.

Section 15.3 Policies and Bylaws

Sections are governed by ~~section executive committees, pursuant to~~ the Standard Section Bylaws ~~and Board policies~~ adopted by the Board. ~~Sections may propose and the Board may approve, modified bylaws commensurate with the section's needs, as well as these Bylaws.~~

Section 15.4 Finances

Subsection 15.400 Dues

~~(A) The Bar will assess and collect section dues at the same time that bar membership dues are collected. Section dues will be assessed and collected together with bar dues by the Bar.~~ (A) The Board must approve the dues for each section. Each section should set dues at an appropriate level to pay for programs and activities. ~~The Bar charges each section a per capita fee. This fee is recalculated periodically as determined by the Chief Executive Officer.~~ ~~The Bar will assess and collect section dues.~~

~~(B) A section 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. By October 15 a section may request a waiver from the BOG to maintain a larger fund balance by submitting a written request outlining the specific event or program for which the funds are needed. A section~~ (B) The Bar charges each section a per capita fee for administrative services. This fee is 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.

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.

Subsection 15.401 Donations

~~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 will allow such donations on a showing by the section that the organization is not engaged in political activity donation will, further the bar's statutory mission and the donation does not commit bar funds to issues that are divisive or result in creating factions within the profession and that the donation is germane to the Bar's purposes as set forth in Section 12.1 of these Bylaws and otherwise complies with law. The CEO may refer any donation request that the CEO determines may be the equivalent of the section making a policy statement to the Public Affairs Committee pursuant to Section 12.4. The Chief Executive Officer will maintain a list of approved recipients.~~

~~Sections may make donations to charitable organizations or donations to 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 or another third party. No scholarship or stipend may be awarded based on an applicant's status as a member of a protected class.~~

Section 15.5 Section Contracts and Administrative Services

(A) Sections seeking to contract for any goods or services with outside 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. Only the CEO or the CEO's designee may enter into verbal or written contracts on behalf of a section or the Bar, upon request of the section.

(B) 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.

(C) Special services of the Bar that are not included in the calculation of the per capita assessment may be made available at cost to the sections upon adequate notification to and negotiation with the Bar. Sections must give the Bar the first opportunity to provide the ~~necessary publications production support services before contracting with outside organizations or individuals.~~ ~~Sections seeking to contract for any goods or services with outside organizations or individuals must contact the General Counsel's office of the Bar for preparation of appropriate contract documents and must obtain the Chief Executive Officer's prior approval of all such contracts.~~

Section 15.6 Continuing Legal Education Activities

Subsection 15.600 CLE Seminars Scheduling

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.

Subsection 15.601 CLE Event Co-sponsorship with Bar

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 ~~CLE Seminars Department~~ CLE Seminars Department ~~CEO~~ CEO will establish policies sections must adhere to when co-sponsoring CLE events. ~~These policies will address issues such as the division of event revenues and expenses between the section and the CLE Seminars Department, as well as the CLE topic, speakers, date and location.~~

Subsection 15.602 CLE Event Registration

~~The Sections must use the Bar's CLE Seminars Department will provide~~ registration services for all section CLE programs not co-sponsored by ~~the CLE Seminars Department~~. The ~~CLE Seminars Department~~ CLE Seminars Department ~~CEO~~ CEO ~~Chief Executive Officer~~ will determine the cost to provide registration services and establish policies sections must follow when using bar registration services. ~~A section that plans a seminar without the CLE Seminars Department's co-sponsorship is~~ Sections are responsible for applying and paying for Minimum Continuing Legal Education credit for ~~the seminar and paying any associated fees.~~ seminars not co-sponsored with CLE Seminars.

Subsection 15.603 Oregon State Bar Logo

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 ~~must~~ may not use the Oregon State Bar logo or the phrase Oregon State Bar CLE.

Section 15.7 Grants and Donations

Subsection 15.700 Grants

Sections may apply for grants only with prior approval of the Board of Governors. The board will allow grant applications only upon a showing that the grant activity is consistent with the section's purposes and the mission of the bar. The board may disallow any application that the board does not believe is in the best interests of the bar. The grant application must be reviewed and approved by OSB General Counsel before submission to the grant-making organization. Any grant funds received by a section shall be deposited with the bar and will be distributed only upon request of the section treasurer and in accordance with the grant specifications. The section must periodically report to OSB General Counsel regarding the status of the grant project and any reports to the granting organization must be reviewed and approved by OSB General Counsel in advance of submission.

Subsection 15.701 Donations, Scholarships and Stipends

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 and the donation 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.

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. No scholarship or stipend may be awarded based on an applicant's status as a member of a protected class.

Section 15.8 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 reasonably-informed about the status of section legislative and policy-related activities.

Section 15.9 Communications

Section communications are communications of the Bar and are subject to the requirements outlined in Articles 10, 11 and 12 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.

Standard Section Bylaws

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Article I

~~Definition~~ Mission and Purpose

Section 1. Sections are entities of the Bar created by the Board of Governors to further the Bar's mission to serve justice and the public interest by promoting respect for the rule of law, improving the quality of legal services, and increasing access to justice. Sections provide Bar members who share interests in particular substantive areas of law with a forum for improving legal skills and knowledge, improving the law and administration of justice, exchanging ideas and information, and engaging in pro bono service and other activities to increase access to justice. ~~opportunities, and provide a forum to network, build relationships, and express views.~~

Section 2. With approval from the Board of Governors, a ~~Sections~~ may adopt a statement of purpose detailing the section's role in supporting the OSB mission.

Section 3. As entities of the Bar, Sections must operate within the OSB mission and goals and comply with the expenditure restrictions applicable to the Bar as set forth in Keller v. State Bar of California, 496 US 1 (1990) and related board policies.

~~Section 3. The Section shall not participate in or take a position with respect to the election or appointment of a candidate for any public office.~~

Section 4. As entities of the Bar, Sections are subject to OSB Bylaws and OSB Board Policies. To the extent Section Bylaws conflict with the OSB Bylaws or Board Policies, OSB Bylaws and Board Policies will control.

Article II

Membership

Section 1. Any active or inactive member of the Oregon State Bar may be a regular member upon payment of the section membership dues. Any active member of another state bar may be an out-of-state member. ~~Sections are encouraged to offer complimentary membership to 50-year members and to judges and their lawyer staff. Nonlawyers~~ Other persons may be associate members as provided in Section 2 of this Article. Only regular members may vote and hold office except as otherwise specifically approved by ~~the Section membership and~~ the Board of Governors.

Section 2.

(A) Associate membership shall be available to: (1) employees of an Oregon lawyer or employees of the legal department of a corporation or government entity who are supervised by an Oregon lawyer, (2) law students, and (3) members of related professions.

(B) Out-of-state members as defined in Section 1 and associate members as defined in Section 2(A) are automatically entitled to membership upon payment of section dues unless the Section Executive committee votes ~~at its annual meeting~~ to "opt out" and not include either out-of-state members or associate members.

(C) Out-of-state members and associate members shall certify their qualifying status upon initial application for membership and annually upon renewing their membership.

(D) Out-of-state or associate membership shall terminate immediately upon the termination of the member's qualifying status. There shall be no refund of dues in that event.

Section 3. Membership dues shall be set by the ~~membership of the Section~~ Executive Committee ~~at the annual meeting of the Section or by mail or electronic ballot~~, subject to subsequent approval of the Board of Governors. Membership dues shall not be prorated for any portion of a year. Dues may be waived for new admittees, law students or any other category designated by the Section. Membership dues ~~for members of the Oregon State Bar~~ shall be collected annually by the Bar ~~with Bar membership fees~~.

Article III

Meetings of Section Executive Committee

Section 1. Meetings of the Section ~~(including meetings of the Executive Committee and its committees)~~ are subject to the Public Meetings Law (ORS 192.610 et seq. and 192.630(4)). ~~ORS 192.630(4) requires that meetings of a public body~~ All Section Executive Committee meetings must be held within the geographic boundaries of the state and properly noticed. The Section Executive Committee shall notify the Bar at least twenty (20) days in advance of any meeting, or in the case of special meetings as soon as possible.

~~**Section 2.** The Section shall hold at least one membership meeting annually, prior to November 15, for the purpose of reporting to the section membership and electing officers and executive committee members, conducting Section business, which This annual membership meeting shall be known as the Section Annual Business Meeting. The Section Annual Business Meeting may be held electronically. Sections shall elect officers and executive committee members by November 15. The Section Annual Business Meeting Report shall include information about the Section's activities and use of dues for the previous calendar year, the activities and use of dues contemplated for the next year, the status of the Section's finances, its budget, long range plan and fiscal reserve policy.~~

~~**Section 3.** Special meetings of the Section may be scheduled from time to time by the Section Executive Committee.~~

~~**Section 4.** A quorum is required to conduct Section B business at all Section Executive Section Executive Committee meetings of the Section. At Section meetings other than Business Section Executive Committee meetings, those section members voting shall constitute a quorum and action shall be by majority of those voting.~~

~~**Section 5.** A report to the Section membership shall be presented at the meeting and shall include information about the Section's activities and use of dues for the previous calendar year, the activities and use of dues contemplated for the next year, the status of the Section's finances, its budget, long range plan and fiscal reserve policy.~~

~~**Section 6.** The Section shall sponsor or co-sponsor not fewer than one continuing legal education program every two years. The CLE program may, but need not, be held in conjunction with the Section's Annual Business Meeting. Sections are encouraged to offer complimentary CLE admission to 50-year members and to judges and their lawyer staff.~~

Article IV

Officers

Section 1. The officers of the Section Executive Committee shall be the Chair, Chair-Elect, Immediate Past Chair, Secretary, Treasurer and such other officers as may be determined to be necessary by the membership. Officers of the Section Executive Committees shall be active members of the Oregon State Bar. Section Executive Committees may establish eligibility requirements or other

procedures to ensure rotation of the Chair among specific ~~groups or specialty practice~~ areas of the membership, such as plaintiff or defense counsel.

Section 2. The Chair, or the Chair-Elect in the absence of the Chair, shall preside at all meetings of ~~the Section and of~~ the Section Executive Committee. The Chair shall appoint the officers and members of all committees of the Section Executive Committee pursuant to Article VII; plan and monitor the programs of the Section; keep the Section Executive Committee informed and carry out its decisions; and perform such other duties as may be designated by the Section Executive Committee.

Section 3. The Chair-Elect will become the Chair on January 1 regardless of the date of the ~~Section Annual Business Meeting or the date of the mailed or electronic ballot~~ election. The Chair-Elect shall aid the Chair in the performance of the Chair's responsibilities, and shall perform such other duties as may be designated by the Section Executive Committee. In the event of the death, disability, or resignation of the Chair, the Chair-Elect shall perform the duties of the Chair for the remainder of the Chair's term or disability.

Section 4. The Secretary shall ~~retain and maintain all books, papers, documents and other property pertaining to the work of the Section, and shall keep a true record of proceedings of record the minutes of~~ all meetings, ~~including recording the and votes of the Section and votes of the Section Executive Committee members at each meeting. All outcomes of Section member votes for Section Executive Committee members shall be included in Section Executive Committee minutes.~~ The Secretary shall provide a final copy of the minutes to the Bar for retention in accordance with law. ~~shall perform other duties as assigned by the Section Executive Committee.~~

Section 5. The Treasurer shall keep an accurate record of all receipts and expenditures by the Section as hereinafter provided; report on the Section's present and projected financial condition at each meeting of the Section Executive Committee; and prepare an annual projected budget for approval by the Section Executive Committee and the Board of Governors; ~~and submit a report of the Section's financial affairs and financial condition to the members at the Section Annual Business Meeting.~~

Section 6. Section Chairs shall serve as ex officio voting members of the Oregon State Bar House of Delegates. In the event the section chair holds another position that also serves as an ex officio member of the House of Delegates, the section chair shall designate an alternate to serve in the chair's stead at any House of Delegates meeting. In all other situations, the section chair may designate an alternate delegate to serve in the chair's stead at any House of Delegates meeting. An alternate delegate must be a person duly authorized in the section's bylaws or otherwise to act in the section chair's stead.

Article V

Section Executive Committee

Section 1. The Section Executive Committee shall be composed of the Chair, the Chair-Elect, the Immediate Past Chair, the Secretary, the Treasurer, and not fewer than two (2) nor more than twelve (12) Members-at-Large. The terms of the Members-at-Large shall be staggered as evenly as possible. ~~Suspended Pursuant to Section 6.3 of the OSB Bylaws, suspended~~ members may not serve on the Section Executive Committee.

Section 2. The Section Executive Committee shall supervise and control the affairs of the Section subject to these Bylaws, ~~and the Bar's OSB bylaws, and Board Policies.~~

Section 3. A quorum is required to conduct Executive Committee business. A quorum shall consist of a majority of the voting members of the Executive Committee. Action of the Section Executive Committee shall be by majority vote of those voting.

Section 4. The Chair may, and upon the request of three members of the Executive Committee shall, call meetings of the Executive Committee.

~~**Section 5.** Between meetings of the Section, the Section Executive Committee shall have full power to do and perform all acts and functions that the Section itself may perform. Voting on matters of Section business may not be done electronically must be done in accordance with public meetings laws.~~

~~**Section 65.** The Section Executive Committee may direct that a matter be submitted to the members of the Section for a vote by a mail or electronic vote ballot, or by a vote at the Section Annual Business Meeting; in any such event, binding action of the Section shall be by majority of those voting.~~

~~**Section 76.** No salary or compensation for services shall be paid to any member of the Section Executive Committee. except for those permitted by bylaw IX, Section 4. or member of any committee with the exception of the Editor and other staff of the Section newsletter (if applicable). Reimbursement may be allowed for travel and other out-of-pocket expenses for members of the Section Executive Committee and members of all Section standing and special committees if permitted by Section 7.5 of the OSB Bylaws and Board Policies.~~

~~**Section 87.** The membership of the Section shall have the right to rescind or modify any action or decision by the Section Executive Committee, except for filling a vacancy in the position of Officer or Executive Committee member, and also may instruct the Section Executive Committee as to future action. The Executive Committee shall be bound by any such action of the membership. The right of the membership to direct, modify, or rescind an act of the Section Executive Committee shall not include the power to invalidate contracts or payments previously made under direction of the Executive Committee. Any vote to direct, modify, or rescind an action of the Section Executive Committee must be taken at a meeting at which requires two-thirds of members voting approve the Motion.~~

Article VI Terms of Office and Elections

Section 1. No member may serve as a voting member of ~~on~~ the Section Executive Committee ~~for~~ more than nine ~~consecutive~~ years.

Section 2. Each term of office shall begin on January 1 ~~regardless of whether the election is held at the Section Annual Business Meeting or a mailed or electronic ballot election.~~

Section 3. A position on the executive committee, including an officer position, may be, at the option of the Executive Committee, deemed vacant if that member:

- A. Fails to attend two consecutive meetings, in the absence of an excuse approved by the chair prior to the meeting; or
- B. Fails to attend four consecutive meetings, even if excused.

Section 4. Except as provided by Article IV, Section 3, and except for the office of Chair-Elect, the Section Executive Committee shall fill vacancies by appointment ~~until January 1 of the next year any position that becomes vacant.~~

~~Section 5. Any officer or Member at Large appointed to fill an through the end of the calendar year. unexpired term shall serve the unexpired period. Such mMembers appointed shall then be eligible at the next Section Annual Business Meeting or mail or electronic ballot election for election for to a first full term at the next election, unless the member's election to thea new term will result in a violation of Section 1 of this article.~~

~~Section 6. At the Section Annual Business Meeting or a mail or electronic ballot election, tThe Section membership shall elect by electronic ballot:~~

- ~~A. A Chair-Elect, Secretary and Treasurer, each to serve a term of one year; and~~
- ~~B. Members-at-Large to serve terms of two years or less on the Section Executive Committee.~~

~~Advisory Members may be elected by the section membership to serve terms of one year on the Executive Committee.~~

~~Section 7. The Chair-Elect will succeed to the office of Chair on January 1 and serve a term of one year. If the office of Chair-Elect is vacant at the Section Annual Business Meeting or a mail or time of the electronic ballot election, then a Chair shall be elected by the members. No officer shall serve two successive terms in the same office, except the Treasurer. A Member-at-Large may serve no more than four consecutive years as a Member-at-Large.~~

~~Section 8. At least sixty (60) days prior to the Section Annual Business Meeting or a mail or electronic ballot election, tThe Section Executive Committee shall appoint a nominating committee of not less than three members of the Section, no more than two-thirds of whom may be on the Executive Committee. The nominating committee shall make and report to the Executive Committee Chair at least thirty (30) days prior to the Section Annual Business Meeting or the date of a mail or electronic ballot election a slate including one nomination for each position to be filled by election. The nominating committee shall use reasonable efforts to ensure that the members nominated reflect the diversity of the Section membership, the Oregon State Bar and community at large, taking into account all relevant factors including without limitation practice area, office location, age, gender, race, ethnicity, disability and sexual orientation.~~

~~Section 9. To the extent possible, no more than one person from the same law firm, company or department of a public agency may serve on the Executive Committee at the same time.~~

~~Section 10. If elections are held at the Section Annual Business Meeting, the report of the nominating committee. The approved slate shall be distributed to the Section membership for electronic vote no later than December 15. along with the notice of the time and place of the Section Annual Business Meeting at least fourteen (14) business days in advance of the meeting. Section members must be provided at least fourteen (14) days to vote. Ballots must include an opportunity for write-in votes.~~

~~Additional nominations for any position may be made from the floor at the Section Annual Business Meeting. Elections for contested positions may be by written ballot. The results of all votes and the manner in which each member voted must be public, and no secret ballots are permitted. Each contested position shall be set forth and voted upon separately. In a contested election, the candidate receiving the highest number of votes shall be elected.~~

~~Section 11. Upon approval of the Section Executive Committee, elections may be by mail or electronic ballot of the Section membership provided that: (1) write-in votes are allowed, (2) ballots are returned to an appropriate Section officer for tabulation, and (3) the results are certified to the Bar Center no later than November 15.~~

Article VII Committees

Section 1. With approval of the CEO or designee, ~~the~~ Section Executive Committee may establish as many standing committees or subcommittees as deemed necessary and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all standing committees.

Section 2. ~~In addition to the standing committees provided above~~ With approval of the CEO or CEO's designee, the Executive Committee may appoint as many special committees or subcommittees for particular purposes as deemed appropriate and may set the names, functions, and duration of such committees. The Chair, with the approval of the Section Executive Committee, shall appoint the Chair and members of all special committees.

Section 3. The Section Executive Committee must adopt a charge for each standing or special committee established that clearly identifies how it furthers the section's mission and purpose.

Section 4. All Section standing committees and subcommittees are subject to the notice and minutes requirements of the Oregon Public Meetings Law, ORS Chapter 192.

Article VIII Legislative and Policy Activities

Section 1. ~~Legislative activity of the Section, whether initiating legislation or taking positions in support or opposition of pending legislation shall be in compliance with Article 12 of the OSB Bylaws and these bylaws. Sections that wish to sponsor legislation or take a position on any bill, rule or public policy issue must comply with Articles 11, 12 and 15 of the OSB Bylaws and bar policy.~~ The Section shall not represent to the legislature or any committee thereof a position or proposal or any bill or act as the position of the Section without the majority approval of the Section Executive Committee and the approval of the Board of Governors, except as provided ~~otherwise below in the OSB Bylaws and bar policy~~ Board Policy.

Section 2. ~~The Section shall submit proposals for new legislation, together with the full text of the proposals to the Public Affairs Director by April 1, or such date as the Public Affairs Director shall designate. The proposal shall indicate whether the Section requests that it be presented to the legislature under the sponsorship of the Oregon State Bar or of the Section. The Board of Governors will inform the Section whether the legislation should go forward under the sponsorship of the Section or under the sponsorship of the Bar, and whether it will be presented to the House of Delegates or the membership for approval. If the Board of Governors declines to submit the Section's proposal for Bar sponsored legislation to the House of Delegates or the membership, any member of the Section may submit the matter to the House of Delegates or the membership in accordance with ORS 9.148(3) and (4) and Article 3 of the OSB Bylaws.~~

Section 3. ~~During regular legislative sessions the Section Executive Committee may, by majority vote, tentatively approve a position in favor of or in opposition to any pending bill within its general subject area. The proposal shall be submitted to the Bar's Public Affairs Director or the Chair of the Board of Governors Public Affairs Committee. After receipt of the proposal, the chair of the committee shall have 72 hours to approve the position or to refer it to the entire Public Affairs Committee. If the chair or committee approves the proposal, the action then becomes an official position of the Section and representatives of the Section may testify or make other appropriate statements.~~

~~**Section 4.** When special need is demonstrated, the Public Affairs Committee may expedite the introduction of new Section bills or amendments. The Public Affairs Director shall be kept informed about the status of Section legislative activity.~~

Section 2. After the Section Executive Committee and Board have approved a proposal, the section chair or chair's designee may act on subsequent time-sensitive legislative or policy issues, after consultation with the Public Affairs Department, ~~related~~ consistent with ~~to~~ the approved proposal. The section chair or chair's designee must all times keep the Public Affairs Department and Section Executive Committee informed about the status of Section legislative activity.

Section 3. The Section shall not participate in or take a position with respect to any ballot measure or the election or appointment of a candidate for any public office.

Article IX Receipts and Expenditures

Section 1. Membership dues shall be collected by the Oregon State Bar and any other receipts of the ~~is~~ Section shall be remitted promptly to the Oregon State Bar.

~~**Section 2.** The Oregon State Bar shall regularly assess the Section an amount to cover both direct and indirect costs of the Section's activities performed by the Oregon State Bar staff. The fee is recalculated periodically as determined by the Chief Executive Officer. A section with a fund balance that exceeds two years of section membership fees as of December 31 of any given year will be charged the full per capita fee for the following year. A section with a fund balance, as of December 31, that is equal to or less than two years of section membership fees will receive a 50 percent subsidy on the assessment for the next dues year.~~

Section 3. Expenditure of the balance of Section funds, ~~after such assessment,~~ shall be as determined by the Executive Committee. Section funds shall be disbursed by the Oregon State Bar as authorized in writing by the Section's Treasurer using forms and following procedures established by the Bar. If the Treasurer is unavailable for authorization, the Section Chair may authorize disbursement of Section funds followed by written notice to the Treasurer of the action taken. Reimbursement of expenses incurred by the Treasurer or by the Treasurer's firm must be authorized in writing by the Section chair. Expenditures of Section funds shall not exceed the available Section fund balance, nor shall expenditures be in violation of laws or policies generally applicable to the Oregon State Bar.

Section 3. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors.

~~**Section 4.** Contracts for Section newsletter editors or other providers of personal services must be reviewed and signed by the Oregon State Bar Executive Director or the Director's designee must be reviewed and approved pursuant to Section 15.5 of the OSB Bylaws.~~ Individuals who attend a section program or event for the purpose of providing a significant service to the section are eligible for expense reimbursement pursuant to Section 7.5 of the OSB Bylaws, with approval from the Executive Committee.

Section 5.

The Section serves as an education, communication and networking forum in the areas of law or other law related activity for which the Board of Governors approved its establishment. If the Section receives support from the Bar on other than a fee for service basis, it shall operate within

~~the OSB mission and goals and comply with the expenditure restrictions applicable to the Bar as set forth in *Keller v. State Bar of California*, 496 US 1 (1990) and related board policies.~~

Article X Notice of Meetings, Minutes and Reports

Section 1. The Chair or Secretary shall distribute notice of scheduled Section Executive Committee meetings together with an agenda and minutes of the previous meeting to all Section Executive Committee members and to the Bar at least ~~ten (10) business~~ seven (7) days prior to such meetings, or if ~~ten-seven~~ days' notice is not practicable, then such lesser notice as is practicable. Minutes of all meetings of the Section and of the Section Executive Committee shall be distributed to all members of the Section Executive Committee and to the Bar no later than thirty (30) days after the meeting and are subject to amendment and approval at the next meeting of the Section or the Section Executive Meeting.

Section 2. Whenever the Section desires to request action by the Board of Governors, the requested action shall be reflected in the minutes and shall in addition be set forth in a letter accompanying the minutes and delivered to the Board of Governors in care of the Chief Executive ~~Director/Officer~~. If the vote on the requested action is not unanimous, the votes for and against shall be set forth in the minutes and the dissenting members shall be afforded the opportunity to explain their positions.

Section 3. Not later than February 1, the Chair shall submit a report to the OSB outlining the section's planned activities, meeting dates for the year, and the chair and goals for each committee and subcommittee.

Section 34. Not later than December 1, the Chair shall file with the Chief Executive ~~Director/Officer~~ of the Oregon State Bar a concise report summarizing the activities of the current year and anticipated activities for the ensuing year.

Section 45. A proposed annual budget and proposed annual dues for approval by the Board of Governors shall be provided to the Chief Executive ~~Officer/Director~~ no later than October 15 of each year if it contains a proposal for a change in membership dues, or no later than December 1 of each year if no change in membership dues is proposed. ~~Alternatively, this budget information may be included with the Section's annual report submitted December 1, pursuant to Section 3 of this Article.~~

Section 5. The proposed budget shall have attached to it a short description of the Section's long range plans for programs and activities. ~~which require accumulation of funds and the Executive Committee's reserve plan, including the target reserve calculated to protect the Section from foreseeable financial loss.~~

Section 6. At the request of the Board of Governors, the Section Chair shall present a report in person to the Board of Governors concerning the activities of the Section for the current and succeeding years.

Article XI Amendments to Bylaws

Section 1. These Bylaws may be amended by the Board of Governors. Notice of intent to promulgate and pass Bylaw Amendments shall be given to the Section Executive Committee Chair in sufficient time to allow for review and comment. Bylaw amendments passed by the Board of Governors become effective upon passage or on a date specified by the Board of Governors.

~~Section 2. These Bylaws may be amended by a~~ The Section may make recommendations to the Board of Governors for bylaw amendments upon by a majority of those voting of the Executive Committee. in a mail or electronic ballot or at any membership meeting of the Section to become effective upon subsequent approval of the Board of Governors. Notice of intent to ~~amend promulgate and vote on~~ bylaws recommendations and the text of proposed amendments shall be distributed to all Section members at least fourteen (14) ~~business~~ days prior to the Executive Committee meeting ~~or mail or electronic balloting.~~

Article XII Sunsetting the Section

Section 1. A Section Executive Committee may recommend that the Board of Governors sunset the section if it has accomplished its goals or is otherwise deemed no longer necessary. A sunset recommendation submitted to the Board of Governors must include a proposal for distribution of any section assets.

Section 2. The Section has a duty to its members, and at a minimum each year, must:

- A. Hold regular Executive Committee meetings.
- B. Appoint a Nominating Committee.
- ~~C. Hold a Section Annual Business Meeting.~~
- D. Elect officers and executive committee members at large by ~~November~~ December 15 of each year.
- E. Submit an annual budget for the Board of Governors approval.
- F. File an annual report.
- G. Sponsor or co-sponsor not fewer than one continuing legal education program every two years.

If the Section fails to meet any of the above minimum requirements, ~~or~~ has less than 100 members, ~~or does not sponsor or co-sponsor at least one CLE program every two years,~~ it is subject to restructuring or sunsetting by the Board of Governors, pursuant to OSB Bylaw 15.2.

Article XIII Rules of Order

Section 1. Except as otherwise provided herein, meetings of this Section shall be conducted in accordance with the most recent edition of Robert's Rules of Order.

~~Section 2. All references in these Bylaws to "mail" or "mailing" or "mail ballot" shall also include electronic email to a member or addressee who has an email address on file with the Oregon State Bar.——~~

Open Session Minutes

BOG Policy & Governance Committee

Meeting Date: January 8, 2021
Location: Zoom Video Conference
Chair: Kamron Graham
Vice-Chair: Kate Denning
Attendance: Gabriel Chase, Kate Denning, John Grant, Rob Milesnick, Curtis Peterson, Joe Piucci, David Rosen
Staff: Helen Hierschbiel, Amber Hollister, Cathy Petrecca, Susan Grabe, Kateri Walsh, Mike Williams
Other: David Wade, Liani Reeves

1. 2021 PGC Work Plan. Kamron Graham introduced the work plan for the year. Helen Hierschbiel provided more background on details of the plan and noted that Open Data Policy and Development of KPIs had been removed from the plan. John Grant provided more background on the Open Data Policy relating to the courts and justice system. With that in mind, Helen Hierschbiel suggests moving the Open Data Policy to the Public Affairs Committee WorkPlan and eliminate KPIs as an operational matter. Kate Denning confirmed that PAC would consider the Open Data Policy. With those changes, John Grant moved to adopt the 2021 Work Plan and Robert Milesnick seconded. The vote was unanimous in favor.

2. Bar Policy on Notice of Regulatory Changes. Amber Hollister introduced the recommended bar policy on notice of regulatory changes as set forth in her memo. This is formalizing a process that we already use, in the interest of greater transparency and consistency. Kate Denning moved and Rob Milesnick seconded to adopt the policy. Joe Piucci asked where the notice is published. Amber Hollister said it is posted on the website, and Helen Hierschbiel noted that typically an email is sent to all members with a link to the location. John said he is all in favor of this because it also gives the public better visibility. The vote was unanimous in favor.

3. Bar Policy on Public Comment at BOG Meetings. Helen Hierschbiel presented the proposed policy on setting parameters for allowing public comment at BOG meetings. Liani Reeves provided additional background. Joe Piucci moved and David Rosen seconded adoption of the policy. No discussion. The vote was unanimous in favor.

4. Salary Cap for LRAP loans. Cathy Petrecca gave some background about the Loan Repayment Assistance Program and presented the LRAP Committee recommendation to raise the salary cap for eligibility of the loan from \$65,000 to \$70,000. Joe Piucci asked whether the committee considered raising it to \$75,000? Cathy said no, that the committee did not want to raise it too much all at once because there is some sensitivity to these loans. Joe Piucci expressed concern that the salary ceiling was not capturing all the individuals in need. Rob Milesnick asked when the last time the assessment was increased. Cathy said it was in 2015. Helen Hierschbiel noted that the LRAP loans are a matter of controversy among some members, who perceive them to be unfair because given only to individuals who actually have jobs in public service—not provided to lawyers who are in solo practice who may be providing a lot of pro bono service. John Grant moved and Curtis Peterson seconded to approve the recommended increase to \$70,000. The vote was unanimous in favor. The PGC would like LRAP Committee to consider raising the salary cap to \$75,000 in the near future.

5. Evidence-Based Decision-Making Policy. John Grant presented the request for an evidence-based decision-making policy. Helen Hirschbiel asked for more detail on vision for implementation. John Grant said that he would like to be able to hold other groups to this policy as well. Kate Denning noted this is very important. David Rosen says it would be helpful to understand how decisions are already being made. Gabe asked where does the data come from and are there budget constraints. John gave additional background on the Futures Task Force Report and Recommendations. Helen Hirschbiel suggested the policy may need some additional edits with these comments in mind. Helen Hirschbiel will work with John Grant on revisions and bring back a revised policy at the next meeting.

6. HOD Authority. Helen Hirschbiel presented the issue of conflict in authority between the HOD and the BOG. The issue for the committee is whether to make any changes to address the conflict. Kate Denning said if this has never come up, why are we poking the bear. John Grant said we should have open conversation about it. Joe Pucci agreed with Kate that the relationship between the HOD and BOG is not great, and if this issue has not come up, then we should not try to institute a fix. Kamron Graham asked what the time frame is on making a decision. Helen Hirschbiel recommended that the Committee make a decision at its February meeting, or April at the latest.

7. OSB Bylaw Overhaul. Deferred to next meeting.

8. Bar Sponsorship of Lawyer Referral Services. Deferred to next meeting.

9. Approve minutes of November 20, 2020 meeting. John Grant moved and Kate Denning seconded approval of the minutes. Joe Pucci and David Rosen abstain. The remaining participants voted in favor. Motion passed.