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Oregon State Bar Bylaws

(As amended by the Board of Governors through April 27, 2012)

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Article 1 Purpose of Bar and Definitions

Section 1.1 Definition

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

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

Section 1.2 Purposes

The Bar fulfills that mission through the following functions :

- (A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.
- (B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.
- (C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.
- (D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.
- (E) We are leaders helping lawyers serve a diverse community.
- (F) We are advocates for access to justice.

Article 2 Board of Governors

Section 2.1 Duties and Responsibilities

Subsection 2.100 General

- (a) The Board of Governors governs the Bar, except as provided in ORS 9.139. In doing so, the Board determines the general policies of the Bar and approves its budget each year. The Executive Director, appointed by and acting under the supervision of the Board, implements, administers and supervises the Bar's operation and program activities within these Bylaws and ORS Chapter 9.
- (b) The Board operates as a review body, a supervisor of top management performance and a representative body of all members. As such, the Board must plan for the welfare of the total Bar ahead of other considerations.
- (c) Each board member is unique and contributes special talents to the successful governance of the Bar. Expressing viewpoints and sharing opinions on issues before the Bar is important.

(d) Each lawyer-board member represents a geographic constituency. As a representative, a lawyer-board member is expected to communicate with constituents about board actions and issues and to represent constituent viewpoints to the Board.

(e) In addition to each lawyer-board member's individual responsibility for communication with his or her constituency as set out in subparagraph (D) above, lawyer members of the Board and staff will have the responsibility to meet with local associations and other lawyer groups. Each year the President and Executive Director will develop a plan to visit the groups mentioned above with substantial participation by both the President and the Executive Director.

(f) Board members are committed to attend all board meetings and other functions in person except when, in a board member's judgment, an emergency or compelling circumstance arises that prevents participation. Board members should notify staff of the desire to participate in board meetings by telephone when personal attendance is precluded by an emergency or compelling circumstance. Staff will arrange the telephone link at bar expense based on those requests.

Subsection 2.101 Election

(a) The election of lawyer-members of the Board will be conducted according to Article 9 of the Bar's Bylaws.

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

Subsection 2.102 Board Committee and Other Assignments

At or shortly after the annual orientation and retreat, board members will be invited to indicate their preferences for board committee and other assignments. Members of the senior class will be invited to identify one or more board committees they would like to chair. The executive director and president-elect will develop a slate of assignments based on the preferences. Senior class members shall have priority in the choice of assignments, but the preferences of all member will be honored to the extent possible and appropriate. The proposed slate will be circulated to the board and any board member may request a change of assignments. The president-elect will make reasonable effort to accommodate any change requests, but the president-elect's decision will be final.

Subsection 2.103 Judicial Campaigns

The members of the Board must refrain from public involvement in judicial campaigns and appointments that in any way identifies them as members of the Board, officers of the Bar, or otherwise representing the Oregon State Bar.

Subsection 2.104 Separation of Powers

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

Subsection 2.105 Amicus Curiae Briefs

A section or committee that wishes to enter an *amicus curiae* appearance before any trial court or appellate court must obtain prior approval from the Board. The request must be in writing and must include a synopsis of the question involved, the posture of the case, the position to be taken in the *amicus* appearance, and the anticipated cost of appearing *amicus curiae* including lawyer fees, if any. The question involved must directly or substantially affect admission to the practice of law, the practice of law, discipline of members of the bench or bar, the method of selecting members of the judiciary or other questions of substantial interest to the Bar or a committee or section. The Board will determine whether the question involved can be adequately presented to the court without the *amicus* appearance of the committee or section. All costs for appearance by a section must be paid by the section; if the Board approves the filing of an *amicus* appearance by a committee, the Bar will pay any costs for the appearance.

Subsection 2.106 Indemnification

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

Subsection 2.107 Defense of Disciplinary Complaints and Proceedings

(a) The bar will defend any of its current and former officers, employees and agents (hereafter "Accused"), whether elected or appointed, against any complaint of professional misconduct arising out of an act or omission occurring in the performance of his or her official duties on behalf of the bar as provided in this bylaw.

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

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

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

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

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

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

Section 2.2 Officers

Subsection 2.200 Duties

(a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

(b) President-Elect

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

(c) Vice Presidents

The Vice Presidents perform duties as the Board directs.

Subsection 2.201 Election

(a) President and Vice-Presidents Election

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

(b) President-Elect

Any lawyer member of the second-year class may be a candidate for the office of President-elect by notifying the Executive Director by September 1. Each candidate must submit with said notice a statement outlining the candidate's qualifications, reasons for seeking the position, and vision for the bar. A Nominating Committee, consisting of the fourth-year class and the current President-elect, will interview each candidate and will meet with the remaining board members to discuss their view about each candidate's respective qualifications. The Nominating Committee will announce its candidate for President-elect at least 30 days prior to the last regularly scheduled board meeting of the calendar year. The Nominating Committee's selection will be the sole candidate for President-elect unless at least six members nominate another candidate by written petition delivered to the Executive Director not less than 15 days prior to the last regularly scheduled board meeting of the calendar year.

(c) Voting

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

Subsection 2.202 Removal

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

Section 2.3 Public Members

In addition to the 14 resident active members of the Bar required by ORS 9.025, four public positions exist on the Board of the Bar.

Subsection 2.300 Appointment

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

Subsection 2.301 Powers and Duties

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

Subsection 2.302 Removal

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

Subsection 2.303 Vacancies

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

Section 2.4 Meetings

Subsection 2.400 Robert's Rules of Order

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

Subsection 2.401 Regular Meetings

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

Subsection 2.402 Special Meetings

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

Subsection 2.403 Emergency Meetings

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

Subsection 2.404 Minutes

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

Subsection 2.405 Oregon New Lawyers Division Liaison

The Oregon New Lawyers Division ("ONLD") has a non-voting liaison to the Board, who must be a member of the ONLD Executive Committee. The ONLD liaison is appointed by the chair of the ONLD Executive Committee to serve for a one-year term. No person may serve more than three terms as ONLD liaison. If the ONLD liaison is unable to attend a meeting of the Board, the ONLD chair may appoint another member of the ONLD Executive Committee to attend the meeting.

Section 2.5 Expenses

Subsection 2.500 General Policy

All provisions of Section 7.5 of the Bar's Bylaws (Expense Reimbursements) apply to the Board of Governors with the following additions. Officers of the Board who, because of their office, must occupy a suite or special room other than the standard room occupied by most board members will be entitled to be reimbursed for the extra expense. Members of the Board who host board dinners will be reimbursed the actual cost of the dinner regardless of whether it is held in the board member's home or at a restaurant.

Subsection 2.501 Conferences

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

Subsection 2.502 Gifts

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

Section 2.6 Conflicts of Interest

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

Subsection 2.600 Definitions

As used in Section 2:

(a) "Actual conflict of interest" means that the person, a relative of the person or a business with which the person or a relative of the person is associated will derive a private pecuniary benefit or detriment as a result of an action, decision or recommendation of the person in the course of bar-related activities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection 2.601 Prohibited Actions

Regardless of whether an actual or potential conflict is disclosed:

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

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

(c) No bar official, or relative or member of the household of a bar official may solicit or receive, during any calendar year, any gift or gifts with an aggregate value of more than \$50 from any single source that could reasonably be known to have an economic interest, distinct from that of the general public, in any

matter subject to the decision or vote of the bar official acting in the bar official's official capacity. This provision does not apply to bar officials who are subject to the Oregon Code of Judicial Conduct.

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

Subsection 2.602 Disclosure of Conflict

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

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

(b) If the bar official is the Executive Director, she/he must notify the Board of Governors, through the President, of the nature of the conflict and request the Board of Governors to dispose of the matter giving rise to the conflict. Upon receipt of the request, the President will designate within a reasonable period of time an alternate to dispose of the matter, or will direct the Executive Director to dispose of the matter in a manner specified by the Board of Governors.

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

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

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

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

Subsection 2.603 Board Members as Witnesses in Bar Proceedings

As provided in BR 5.3(c), a current member of the Board of Governors must not testify as a witness in any bar admission, discipline or reinstatement proceeding except pursuant to subpoena. If requested by a party to be a witness in a bar proceeding, board members should urge the party to present the anticipated testimony through other witnesses. However, the parties ultimately decide whether a board member will be subpoenaed to testify as a witness in a bar proceeding.

Section 2.7 Judicial Selection

Subsection 2.700 General

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

Subsection 2.701 Statewide and Circuit Court Elections

For statewide and circuit court elections, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar's Bylaws. The ballot will contain all the candidates who will appear on the public election ballot. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture. In any general election that includes contested judicial positions, the Bar will conduct a poll only if there was no prior poll in the primary election, there has been a significant reduction in the number of candidates that appeared on the primary election ballot or it appears that the votes were relatively spread out among most of the candidates so that another poll could potentially produce an entirely different result from that of the primary election poll.

Subsection 2.702 Circuit Court Appointments

For circuit court judicial appointments, the Bar will conduct a poll of the members in the affected geographic area in accordance with the election procedures set forth in Article 9 of the Bar's Bylaws at the request of the Governor of the State of Oregon or the Board. If the Governor's Office or the Board requests a poll, the ballot must include the name of any eligible member of the Bar who has filed a candidate statement with the Bar by the appropriate deadline. Each preference poll will contain the following information on each candidate: Name, law firm name (if applicable), principal office address, date admitted to the Bar, professional and community activities, professional history, other pertinent information and a picture.

Subsection 2.703 Statewide Judicial Appointments

(a) For judicial appointments to a statewide court, no bar poll will be taken, but bar members will be notified of the impending appointment and will be asked to inform the Board of their interest. If an appellate selection process has been concluded within three months preceding the announcement of a new appellate vacancy, the Board has the option of not conducting a separate process, but re-submitting the previous list of highly qualified candidates to the Governor without notification to members.

(b) The Governor's Office will deliver copies of the completed applications to the bar. The Board will make recommendations to the Governor from the pool of candidates who submit information to the Governor's Office for appointment to fill vacant positions on the Court of Appeals, Supreme Court or the Oregon Tax Court. For a vacancy on the Oregon Tax Court, the Board will participate in the process only if requested by the Governor. Upon completion of the due diligence review, the Board's Committee on the Judiciary will recommend a list of candidates suitable for consideration by the Governor to the Board, based on the statutory requirements of ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.445 for the Oregon Tax Court, as well as information obtained in the review process, and as screened in using, at a minimum, the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, health, financial responsibility and public service. The Board will then determine the final list of candidates to submit to the Governor. A lawyer who seeks appointment to the same position within two years of first having received a "suitable for consideration by the Governor status" will not be required to submit another application or to be re-interviewed. Candidates in this category must inform the Board of any changes in information previously submitted. The Board reserves the right to request and receive additional information from any candidate prior to deciding whether to resubmit the candidate's name to the Governor. The chair of the Board's Committee on the Judiciary (along with members of the committee as determined by the committee) will also provide a written or oral summary of the committee's information about each candidate to the Office of General Counsel for the Governor. The summary will also include comments regarding candidates not submitted for consideration.

(c) The Board will appoint on a yearly basis, pursuant to Subsection 2.102 of the Bar's Bylaws, a committee to make candidate qualification recommendations to the Board using the criteria set forth in this section. Meetings of the committee, including interviews of candidates, are public meetings, except for

portions of meetings during which reference reports are presented and discussed. The term "reference reports," for purposes of this section, means information obtained by committee members and staff from persons listed as references by the candidates and information obtained by committee members and staff from other persons knowledgeable about candidates as part of the candidate background check process. The committee will discuss reference reports in executive session pursuant to ORS 192.660(1)(f). The committee will vote on its recommendations to the Board in a public meeting. The selection process will include, but is not limited to, review of the written applications; interviews of each candidate, unless waived; contacts with judges or hearings officers before whom the candidate has practiced; contacts with opposing counsel in recent cases or other matters; contacts with references; and review of writing samples.

Section 2.8 Executive Director

Subsection 2.800 Duties

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

Subsection 2.801 Evaluation

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

Subsection 2.802 Service of Notice

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

Subsection 2.803 Board Member Contact with Staff

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

Article 3 House of Delegates

Section 3.1 Duties and Powers

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

Section 3.2 Delegates

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

Section 3.3 Resolutions

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

Section 3.4 Meeting Agenda

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

Section 3.5 Parliamentarian

The Board must designate a parliamentarian for each House meeting. The parliamentarian should be knowledgeable about parliamentary procedure and familiar with the Bar's Bylaws. The parliamentarian will serve without compensation; however, the Bar may pay the expenses for the parliamentarian to attend the House meeting as allowed in Subsection 7.501 of the Bar's Bylaws.

Section 3.6 Initiative Petitions and Referenda

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

Section 3.7 Location

The meetings of the Bar's House of Delegates must be held within the geographical boundaries of the State of Oregon.

Article 4 Awards

Section 4.1 General Policy

The Board will select award recipients from among the nominations received from local bars, committees, sections, individual members, affiliated groups and bar groups.

Section 4.2 President's Membership Service Award

The criteria for the President's Membership Service Award is as follows: The nominee must have volunteered his or her time for the activity in which he or she was involved; the nominee must be an active member of the Bar; the nominee must have made a significant contribution to other lawyers through efforts involving Continuing Legal Education programs or publications, committees, sections,

boards or the Bar's legislative/public affairs process or similar activities through local bar associations or other law-related groups.

Section 4.3 President's Public Service Award

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

Section 4.4 President's Affirmative Action Award

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

Section 4.5 President's Special Award of Appreciation

The President's Special Award of Appreciation is a discretionary award of the President of the Bar, with the concurrence of the Board, to be presented to a person who has made recent outstanding contributions to the bar, the bench and/or the community. The award will be made in conjunction with the OSB Awards Dinner or House of Delegates events within the following guidelines. In any given year, there may be no award, one award or more than one award. The recipient may be a lawyer or a non-lawyer. The President will present his or her proposed award recipient to the Board at the same time the Board considers the Bar's other awards.

Section 4.6 Award of Merit

The Award of Merit is the highest honor that the Bar can bestow. The recipient may be (1) an Oregon lawyer who has made outstanding contributions to the bench, the bar and the community-at-large, and who exhibits the highest standards of professionalism or (2) a non-lawyer who has made outstanding contributions to the bar and/or bench, and who exhibits the highest standards of service to the community-at-large. The award does not have to be granted every year and only one award may be bestowed in any year.

Section 4.7 Wallace P. Carson, Jr. Award for Judicial Excellence

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state's judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge; 2) who has made significant contributions to the judicial system; and 3) who is a model of professionalism, integrity, and judicial independence.

Section 4.8 President's Public Leadership Award

The criteria for the President's Public Leadership Award are as follows: The nominee must not be an active or inactive member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

Section 4.9 President's Sustainability Award

The criteria for the President's Sustainability Award are as follows: The nominee must be an active or inactive member of the bar or be an Oregon law firm; the nominee must have made a significant contribution to the goal of sustainability in the legal profession in Oregon through education, advocacy, leadership in adopting sustainable business practices or other significant efforts.

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

Section 5.1 Selection

Candidate statements for the House of Delegates of the American Bar Association ("ABA") must be in writing. The Executive Director will prepare forms for the candidate statements and supply the forms to applicants. The applicants must file the forms with the Executive Director not more than 90 nor less than 30 days before the election held in conjunction with the Oregon State Bar House of Delegates election. Election of ABA delegates must be conducted according to Article 9 of the Bar's Bylaws. The ABA delegates will be elected from the state at large and the term of office is two years. ABA delegates must be in-state active members of the Bar. The Board must fill a vacancy in the office of ABA delegate due to a delegate's resignation, death or any other reason in the same manner as provided in ORS 9.040(2) for board members.

Section 5.2 Voting

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

Section 5.3 Expenses

The Oregon State Bar will reimburse Oregon State Bar delegates to the ABA House of Delegates their individual expenses in attending the ABA annual and mid-year meetings. Expenses subject to reimbursement under this section do not include those reimbursed by the ABA to individual delegates, and are limited to an amount established each year by the Board of Governors. Bar reimbursement of delegate expenses must not exceed each delegate's proportionate share of the total amount established by the Board of Governors each year.

Article 6 Membership Classification and Fees

Section 6.1 Classification of Members

Subsection 6.100 General

Members of the Bar are classified as follows:

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

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

Subsection 6.101 Active Pro Bono Status

(a) Purpose

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

(b) Eligibility for Active Pro Bono Status

The Active Pro Bono category of active membership is available to lawyers in good standing: Who agree to provide pro bono legal services to indigent clients referred by pro bono programs certified under Section 13.2 of the Bar's Bylaws; who do not engage in the practice of law except for providing pro bono services specified above or in volunteer service on the State Professional Responsibility Board, a Local Professional Responsibility Committee, the Disciplinary Board or as bar counsel; who agree to report annually to the Oregon State Bar the number of hours of pro bono service they provide; and who obtain professional liability coverage through the Professional Liability Fund or the program referring the pro bono cases.

(c) Membership Fees

Active Pro Bono members are assessed a fee that is equivalent to the inactive membership fee plus the Client Security Fund assessment.

(d) Procedure

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

(e) Reporting Requirement for Active Pro Bono Status

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

(f) Transfer from Active Pro Bono Status

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

Subsection 6.102 Transfer of Classification of Membership

An inactive member may be enrolled as an active member only by complying with the Bar Act, the Rules of the Supreme Court, the Rules of Procedure of the Bar and paying required fees. An active member may voluntarily transfer to inactive status on certification by the member that the criteria of that classification are met and on payment of required fees.

Subsection 6.103 Reinstatement

A final vote by the Board on an application for reinstatement submitted under BR 8.1 of the Rules of Procedure requires notice at a prior board meeting unless two-thirds of the entire Board waives such requirement. If the Board, in its review and investigation, determines that an applicant for reinstatement as an active member of the Bar has not been an active member continuously for a period of more than five years, the Board may recommend to the Supreme Court of the State of Oregon that, as one of the conditions precedent to reinstatement, if it is otherwise recommended, the applicant (1) be required to establish his or her competency and learning in the law by receiving a passing grade on the Oregon Bar Examination as defined under the Rules of the Supreme Court for Admission of Attorneys next following the date of filing of such application for reinstatement or (2) be required to complete a specified number of credit hours of accredited Continuing Legal Education activity before or within a specified time after the applicant's reinstatement.

Section 6.2 Register of Members

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

Section 6.3 Rights of Members

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

Section 6.4 Annual Membership Fees and Assessments

The payment date for annual membership fees and assessments is set by the Board. If the payment date falls on a Saturday, a legal holiday or a day that the bar office is closed for any reason, including inclement weather or natural disaster, the due date of such fees and assessments is the next day that the

bar office is open for business. As used in this section, "legal holiday" means legal holiday as defined in ORS 187.010 and 187.020, which includes Sunday as a legal holiday. The Board may establish a uniform procedure for proration of membership fees based on admission to practice during the course of the year. No part of the membership fees will be rebated, refunded or forgiven by reason of death, resignation, suspension, disbarment or change from active to inactive membership after January 31. However, a bar member who, by January 31, expresses a clear intent to the Bar to transfer to inactive status and pays the inactive membership assessment by that date, but does not timely submit a signed Request for Enrollment as an Inactive Member, may be allowed to complete the inactive transfer without payment of the active membership assessment, if extenuating circumstances exist. The Executive Director's decision regarding the existence of sufficient extenuating circumstances is final.

Section 6.5 Hardship Exemptions

In case of proven extreme hardship, which must entail both physical or mental disability and extreme financial hardship, the Executive Director may exempt or waive payment of annual membership fees and assessments of an active or inactive member. Hardship exemptions are for a one-year period only, and requests must be resubmitted annually on or before January 31 of the year for which the exemption is requested. "Extreme financial hardship" means that the member is unemployed and has no source of income other than governmental or private disability payments. Requests for exemption under this bylaw must be accompanied by a physician's statement or other evidence of disability and documentation regarding income.

Section 6.6 Waivers of Fees and Assessments

The Executive Director, may, each year, waive or exempt annual membership fees and assessments for members in active military service, the Peace Corps, VISTA or other volunteer programs serving the national interest or the legal profession, and for which the member receives only a subsistence income, stipend or expense reimbursement that is the member's principal source of income. Requests for waivers must be received on 15 days before the date that membership fees and assessments are due each year. Waivers will not be granted unless the lawyer's service encompasses the majority of a year except in the case of military waivers, which may be granted for less than a year under special circumstances such as a war of unknown duration.

Article 7 Financial Matters

Section 7.1 Management of Funds

Subsection 7.100 General Policy

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

Subsection 7.101 Audit of the Books

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

Subsection 7.102 Borrowing

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

- (1) To borrow from any bank, or other lending agency, on the terms agreed on between the officer and the lender and approved by the Board, a sum deemed prudent and necessary to effectuate the mission of the Bar.
- (2) To execute and deliver to any lender or other depository, the promissory note or notes or renewals thereof of the Bar at rates of interest and on terms as may be agreed on.
- (3) To mortgage, pledge or encumber and deliver to the lender, as security for the payment of loans, any savings of the Bar, regardless of form, on deposit with the lender.

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

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

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

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

Subsection 7.103 Check Signatures

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

Subsection 7.104 Credit Policy

Generally, credit will be extended to all members of the Bar. However, credit will not be extended further to accounts that are 90 days past due. Credit may be denied to members who have had delinquent accounts in the past. The Chief Financial Officer must approve charges that exceed \$5,000. Credit will not be extended for payment of annual membership or regulatory fees. The Bar may take any reasonable and financially prudent methods to collect on accounts, including accounts of members of the Bar, that are 90 days past due.

Subsection 7.105 Write-offs

The Executive Director has the authority to write off bar receivables that he or she has determined are uncollectible or for other financial reasons should be written off. In the calendar quarter after the fiscal year end, the Chief Financial Officer will prepare a list of all receivables over \$500 that the Executive Director has written off. The list will be submitted to the Board at the first meeting of the second calendar quarter. The list should include the reason for the write-off.

Section 7.2 Annual Budget

The Executive Director will develop a draft annual budget for review and approval by the Budget and Finance Committee. The Budget and Finance Committee will submit its recommendation for final approval to the Board.

Subsection 7.200 Approval by Board of Governors

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

Subsection 7.201 Contingency Fund

A contingency fund will be established within the annual operating budget of the Bar, as a line item equal to one percent of the annual expenditure budget. The contingency fund is to be used for unanticipated expenditures that were not identified in the normal budget process. All expenditures from the contingency fund must be approved by the Board.

Subsection 7.202 Approval by Supreme Court

The Board will establish each year the budget of the Bar's discipline and Minimum Continuing Legal Education programs in conjunction with the budgets of the other activities of the Bar. The discipline and Minimum Continuing Legal Education components of the Board's preliminary budget for the following year must be submitted to the Chief Justice of the Oregon Supreme Court for review and approval by the court. Any changes made by the court in the preliminary budgets of the Bar's discipline and Minimum Continuing Legal Education programs must be incorporated into the final budget approved by the Board.

Subsection 7.203 Grants

The bar does not accept proposals for grants or other contributions to non-profit or charitable organizations, including law-related organizations. The bar may provide financial support to the Classroom Law Project (CLP) and the Campaign for Equal Justice (CEJ) or any other organization that, in the sole discretion of the Board of Governors, furthers the mission of the bar. The amount allocated to any such organization is determined in the consideration and adoption of the bar's annual budget and may change from year to year based upon the overall financial needs of the bar.

Section 7.3 Reserve Policy

Subsection 7.300 Purpose

The Bar maintains separate funds for the general and designated operations of the Bar and for its financial welfare. The separate funds are the General Fund, the Client Security Fund, the Affirmative Action Program, Legal Services and all sections funds. A distinct and separate fund balance will be maintained for each fund.

Subsection 7.301 General Fund

The General Fund will maintain cash reserves sufficient to assure fulfillment of obligations to the membership and provide funds for unforeseen future contingencies. The reserves will be used to sustain an acceptable level of operation and continue service to the membership if the standard level of operations is interrupted by unforeseen events. It is also used to offset the effects of an operational reversal until expenditures can be adjusted and to fund specific future capital enhancements and improvements in the operation of the Bar.

Subsection 7.302 Reserve Funds

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

(a) General Operating Reserve Fund: Established and maintained within the annual budget to assure continued operation of the Bar in the event of a non-dues revenue reversal or a catastrophic event.

(b) Capital Reserve Fund: established by policy decisions based on predetermined activities to replace, replenish or preserve capital assets or capital improvements that are purchased or made infrequently, to meet current regulatory requirements or provide enhanced services to the membership. Capital reserve items are capital assets that cost more than \$5,000 or items whose implementation or purchase extend into more than one fiscal year or whose purchase is planned for a future year.

(c) Each fund will maintain a separate and distinct level of cash reserves, although the reserve funds may be merged for investment purposes to obtain a higher return on the total funds invested. The operating reserve of the General Fund will be a minimum of \$500,000. The capital reserve level will be determined by the Board based on predetermined activities.

Section 7.4 Investment Policy

Subsection 7.400 Purpose

This investment policy is established to provide direction and limits for the Bar's investment manager in investing all cash assets held by the Bar. The funds are to be invested in a manner that ensures the protection of the Bar's cash assets and provides a dependable source of operating revenue. The investment objectives are in order of importance: to ensure the safety of the assets, to ensure sufficient liquidity and to obtain the highest possible rate of return. The policy consists of objectives for the Bar's short-term and long-term investments.

The objective of the **Short-term Investment** policy is to provide for short-term investment of cash to be used within the Bar's current fiscal year, generally one year or less. The objective shall be to minimize or eliminate risk while achieving a reasonable yield within the range of short-term expectations.

The objective of the **Long-term Investment** policy is to provide for long-term growth and stability of all reserves, designated, and contingency funds. The funds are invested to maximize the return on the investment, consistent with an appropriate level of risk and subject to the generation of adequate current income. This investment fund shall be diversified to provide reasonable assurance that investment in a

single security, a class of securities, or industry will not have an excessive impact on the Bar. Long-term investment strategy should achieve reasonable yields while minimizing exposure to risk.

Subsection 7.401 Investment Management

The Executive Director or the Chief Financial Officer is authorized and directed to deposit, sell, convert or withdraw cash on deposit in excess of that required for current operations and to invest those funds in accordance with the Bar's investment policy using expert advice and assistance as he or she may require. The Bar will maintain a list of all authorized institutions that are approved for investment purposes.

Management and Monitoring of Performance

Investment Committee. An "Investment Committee" consisting of members of the Budget & Finance Committee and the Bar's Chief Financial Officer shall monitor the investment policy and portfolio.

Investment(s). The Committee may engage one or more fee-for-service investment managers with varying styles and expertise and delegate individual investment decisions to such investment managers within the guidelines of this policy and the specific direction of the Committee. The investment managers may contact the designated liaison of the Committee, who shall be the Bar's Chief Financial Officer between meetings of the Committee to implement or suggest changes in investments or strategy. If necessary, the Committee may meet by telephone to consider changes in investments or strategies. The selection and allocation of funds to individual statement managers will be made by the Committee.

Committee Meetings. The investment manager(s) shall prepare quarterly reports of the portfolio's performance. The Committee will meet at least quarterly to monitor the performance of the assets.

Performance Standards. The investment committee will evaluate investment managers using a number of factors including performance relative to the most applicable benchmarks, quality of communications with the investment committee, and adherence to the Bar's investment policy.

Annual Review. This investment guidelines and policies shall be reviewed at least annually by the Budget & Finance Committee.

Subsection 7.402 Approved Investments

Investments will be limited to the following obligations and subject to the portfolio limitations as to issuer:

- (a) The State of Oregon Local Government Investment Pool (LGIP) no percentage limit for this issuer.
- (b) U.S. Treasury obligations - no percentage limitation for this issuer.
- (c) Federal Agency Obligations - each issuer is limited to \$250,000, but not to exceed 25 percent of total invested assets.
- (d) U.S. Corporate Bond or Note - each issuer limited to \$100,000.
- (e) Commercial Paper - each issuer limited to \$100,000.
- (f) Mutual funds that commingle one or more of the approved types of investments.
- (g) Mutual funds of U.S. and foreign equities.
- (h) Federal deposit insurance corporation insured accounts.
- (i) Individual public-traded stocks, excluding margin transactions, short sales, and derivatives.
- (j) Small capitalization international equities.
- (k) Emerging markets fixed income.

Security	Minimum credit quality
Interest bearing deposits of banks, savings and loans and credit unions	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by U.S., local, city and state governments and agencies	A-/A3 as defined by Standard & Poor's and Moody's
Money Market Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Money Market Mutual Funds	The issuing financial institution must be rated "well capitalized" as defined by the financial institution's regulator. Those that are not "well capitalized" will be limited by the level of their deposit insurance.
Obligations issued or guaranteed by the U.S. Federal government	Not applicable
Obligations issued or guaranteed by U.S. Federal agencies	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by U.S. government-sponsored enterprises	AAA/AAA as defined by Standard & Poor's and Moody's
Obligations issued or guaranteed by local, city and state governments and agencies.	A-/A3 as defined by Standard & Poor's and Moody's
Obligations of U.S. corporations	A-/A3 as defined by Standard & Poor's and Moody's

Subsection 7.403 Limitations

At the discretion of the Budget & Finance Committee, the entire investment portfolio may be invested in any combination of the Local Government Investment Pool, U.S. Treasury obligations or federal agency obligations. The maturities of the investment obligations will be the investment manager's estimate of the Bar's cash needs, subject to the specific fund liquidity requirements. No maturity period will exceed 84 months.

Subsection 7.404 Prudent Person Standard

The standard of prudence to be used by the investment manager in managing the overall portfolio will be the prudent investor rule, which states: "Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived."

Section 7.5 Expense Reimbursements

Subsection 7.500 General Policy

Bar employees and members of the Board of Governors, State Professional Responsibility Board, Disciplinary Board, New Lawyers Division Board or any other special task force or commission named by the Board of Governors will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors. Requests for expense reimbursement must be received in the Accounting Department not later than 30 days after the expense has been incurred. If an expense reimbursement form is submitted more than 30 days after the expense is incurred, it must be supported by an explanation for the delay. The Chief Financial Officer may deny any late-submitted request for which the justification is deemed insufficient. A person whose request for reimbursement is denied may request that the Executive Director review the decision. Supporting documentation in the form of original receipts or copies of original receipts must be submitted with all requests for reimbursement of expenses while acting on official bar business.

Subsection 7.501 Eligible Expenses

Eligible reimbursable expenses while on official business include the following:

- (a) Out-of-State Travel:

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

(b) Transportation:

Use of a personal automobile is reimbursed at the allowable IRS rate. Airfare is reimbursed at the actual cost of coach fare unless the flight is at least three hours and an upgrade to business class can be obtained for \$100 or less. Actual cost of taxi, bus or other public transportation is reimbursable. Actual cost of car rental at economy car rate when other transportation is not readily available.

(c) Lodging:

Actual cost for a moderately priced, double-occupancy room, except when the location of the meeting or conference requires other arrangements. Receipts for lodging must be attached to the reimbursement form.

(d) Meals:

Reimbursement for meals will be made at actual cost of the meal provided that the expense is supported by itemized receipts and meets the standard of reasonableness. A request for reimbursement for meals without receipts will be reimbursed according to the rates published under the Federal Travel Regulations as put out by the U.S. General Service Administration for federal government travel. Meals purchased for members of the Bar or other persons in the course of official bar business will be reimbursed at actual cost with submission of itemized receipts and an explanation provided it meets the standard of reasonableness. Official dinners of the Bar or law-related groups which staff, BOG members or volunteers and their spouses or guests are expected to attend will be paid for by the Bar and, if not, will be eligible for reimbursement.

(e) Miscellaneous Costs:

Telephone, postage, office expense, registration fees and other legitimate business expenses will be reimbursed at actual cost with submission of receipts or an explanation of the business purpose of the expense. Bar funds must not be used to pay the cost of alcoholic beverages.

Subsection 7.502 House of Delegates Meetings

(a) Elected delegates and ex officio delegates from sections and local bars will be reimbursed for their transportation to and from the annual HOD meetings. The reimbursement is limited to roundtrip mileage up to 400 miles at the allowable IRS rate. Requests for mileage reimbursement must be submitted on a form approved by the Bar within 30 days after the meeting.

(b) Public member delegates will be reimbursed for their transportation, meals and lodging as provided in Subsection 7.500 and 7.501.

Section 7.6 Location of Office

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

Article 8 Public Records/Meetings

Section 8.1 Public Records

Subsection 8.100 General Policy

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

Subsection 8.101 Public Record Requests and Bar Fees for Public Records Searches and Copies

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

(b) The executive director will propose and the board will adopt a fee schedule for public records requests. The fee schedule will include a per-page charge for paper records and a schedule of charges for staff time in locating records; reviewing records to delete exempt material; supervising the review of original

records; summarizing, compiling, and tailoring records to the request; and any related activity necessary to respond to requests for public records.

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

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

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

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

Subsection 8.102 Public Disclosure of Client Assistance Office, Discipline Counsel's Office and Disciplinary Board Clerk Records

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

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

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

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

(4) The completed minutes of SPRB meetings.

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

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

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

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

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

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

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

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

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

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

(c) The Board of Governors may direct that member discipline histories be posted on the bar's web site or otherwise electronically. The nature of the information included and the period covered will be as determined by the Board of Governors from time to time.

Section 8.2 Public Meetings

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

Subsection 8.202 Judicial Proceedings

(a) Disciplinary and contested reinstatement hearings and hearings conducted pursuant to Title 3 of the Rules of Procedure, are open to the public, subject to the authority of the presiding official to maintain proper decorum and to exclude witnesses at the request of the Bar, an accused or applicant. Panels of the Disciplinary Board and any presiding official will comply with UTCR 3.180 when presented with requests to allow media coverage of proceedings.

(b) Meetings of Local Professional Responsibility Committees and the SPRB, and the deliberations of Disciplinary Board trial panels are closed to the public, pursuant to the exemption set forth in ORS 192.690(l) for judicial proceedings.

(c) Meetings of the Board of Governors relating to disciplinary and reinstatement matters are closed to the public, pursuant to the exemption set forth in ORS 192.690(1) for judicial proceedings. Meetings of the Board of Governors may also be closed to the public in whole or part for consideration of any matter for which a closed session is authorized under ORS 192.660

Article 9 Election Procedures

Section 9.1 Date of Elections

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

In the case of an uncontested election for the Board of Governors, a candidate will be declared elected thirty-one days after the final day on which 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.

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

The election for representatives to the ABA House of Delegates will be held annually on the third Monday in April in conjunction with the election to the OSB House of Delegates. Bar members who wish to appear on the ballot must present a candidate statement to the executive director of the Bar at least 30 days before the election.

Section 9.2 Ballots

The Executive Director will prepare ballots whenever a contest exists and the ballots will be accompanied by the candidate statement that includes the candidate's name, law firm, principal office address, current full-face photograph, law school from which graduated, date of admission in Oregon, state and local bar activities, offices and other pertinent information. The statement must be submitted on a form prepared by the Bar, which will also indicate that the information supplied by the candidate has not been edited or verified by the Bar. A request for a candidate statement or the submission thereof will be considered public information

Section 9.3 Voting

Members eligible to vote will be provided a secure link to the candidate statements and an online ballot. Ballots will be tabulated electronically using a secure voting system to assure no duplicate entries. Any

member of the Bar will be permitted to be present while the ballots are canvassed. The Executive Director will announce the results of the balloting and will notify each candidate of the results of the election.

Article 10 Diversity

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

Article 11 Communications

Section 11.1 General Policy

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

Section 11.2 Editorial Policy

The Executive Director may establish editorial standards for bar communications and material permitted by the Bar to be included in its communications concerning such matters as advertising, political communication, profanity and obscenity, letters to the editor, use of artwork, photographs and illustrations, story placement, headlines and scheduling, advertising content and rates and similar topics. The Executive Director has sole discretion to determine whether material submitted meets the standards set forth in or adopted pursuant to this policy and to accept or reject material submitted to the Bar for publication based on that determination. Editorial standards must comply with Article 10 Diversity.

Section 11.3 Media Relations

The Bar will be responsive to the needs of the media and will identify persons to speak for the Bar. All statements made to the media, whether oral or by news release, must be informational in nature and must avoid statements of personal opinion or positions not considered or adopted by the Board. The President is the official chief spokesperson for the Bar. If public appearances or statements by the chairperson or other officer or member of any bar committee are deemed necessary, prior authority must be obtained in advance from the President.

Section 11.4 Campaign Advertisements

Judicial candidates and candidates for Board of Governors, House of Delegates and American Bar Association positions may advertise at standard charges in the Bar Bulletin, but partisan political advertising is not allowed. Partisan political announcements or endorsements will not be accepted for publication as letters to the editor or feature articles.

Section 11.5 Membership Surveys and Questionnaires

(A) Any survey or questionnaire to all members of the Bar from a section or non-bar person or group must have the prior approval of the Board regarding purpose and content.

(B) A survey to specific groups of the membership from bar staff must have the prior approval of the President or President-elect. A survey to all members of the Bar must have the prior approval of the President or President-elect.

(C) A section may survey its own membership without prior approval.

Article 12 Legislation and Public Policy

Section 12.1 Guidelines

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

Section 12.2 Initiation of Legislation

Subsection 12.200 House of Delegates and Membership

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

Subsection 12.201 Board of Governors

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

Section 12.3 Legislative Process

Because of the nature of the legislative process, the Board or its Public Affairs Committee retains the right to set priorities regarding the enactment of legislation, to propose amendments or consent to amendments to legislation and to sponsor or take positions on appropriate legislation. In so doing, the Board will make a reasonable effort to do the following:

Encourage as wide a participation of the membership as possible in formulating positions on legislative issues; inform members, especially sections and committees, of the Bar's legislative positions; respect divergent opinions of subgroups within the legal profession; provide assistance to bar sections and committees; avoid committing bar funds to issues that are divisive or result in creating factions within the profession; present major issues to the House of Delegates for approval; ensure that the Public Affairs Committee encompasses a balance of interest within the Bar and ensure that the Public Affairs Committee consults frequently with the Board.

Section 12.4 Committees and Sections

Any committee or section wishing to sponsor legislation or take a position on any rule or public policy issue will inform the Public Affairs Program, and through that office, the Board, of the exact nature of the legislation proposed. A copy of the bill, proposed rule or policy will be presented for consideration and approval of the Board. A committee or section of the Bar may not represent to the legislature or any individual, committee or agency thereof, a position or proposal or any bill or act, as the position of that committee or section of the Bar without the majority approval of the members of that committee or, in the case of a section, the executive committee and the prior approval of the Board, except as follows. During a legislative session or during the interim, a bar committee or the executive committee of any section must contact the Bar's Public Affairs Program before taking any position on a bill, rule or public policy issue within its general subject area. The chair of the Board's Public Affairs Committee will determine, within 72 hours of notice of the issue, whether it is appropriate for the Bar to take an official position or to allow the section or committee to take a position as requested. The full Public Affairs Committee or the full Board may be consulted before a final decision is made. Bar staff and the Public Affairs Committee of the Board will make every effort to accommodate committees and sections that wish to express positions on relevant issues. The Public Affairs Program shall be kept informed about the status of such positions and related activities.

Section 12.5 Professional Liability Fund Legislation

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

Section 12.6 Objections to Use of Bar Dues

Subsection 12.600 Submission

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

Subsection 12.601 Refund

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

Subsection 12.602 Arbitration

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

Article 13 Pro Bono

Section 13.1 Aspirational Standard

Pro bono publico or pro bono service includes all uncompensated services performed by lawyers for the public good. Such service includes civic, charitable and public service activities; as well as activities that improve the law, the legal system and the legal profession. The direct provision of legal services to the poor, without an expectation of compensation, is one type of pro bono service. Each lawyer in Oregon should endeavor annually to perform 80 hours of pro bono services. Of this total, the lawyer should endeavor to devote 20 to 40 hours or to handle two cases involving the direct provision of legal services to the poor, without an expectation of compensation. If a lawyer is unable to provide direct legal services to the poor, the lawyer should endeavor to make a comparable financial contribution to an organization that provides or coordinates the provision of direct legal services to the poor.

Section 13.2 Program Certification

Subsection 13.200 Procedure

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

Subsection 13.201 Criteria

(a) Purpose:

The pro bono program must be sponsored by a national, state or local bar association, a court with jurisdiction in Oregon or an incorporated, non-profit or governmental organization, and must provide legal services without fee, or expectation of fee, or for a substantially reduced fee to one or more of the following:

- (1) Persons of limited means.
- (2) Underserved populations with special legal needs.
- (3) Charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means or underserved populations with special legal needs.

(b) Compensation:

The pro bono program must not provide any compensation to the participating lawyers, except to cover filing fees or other out-of-pocket expenses or to provide professional liability insurance for the pro bono activity.

(c) Fees:

The pro bono program must deliver legal services to clients at no fee or for a substantially reduced fee. Nominal administrative fees are allowed. Donations from clients, whether encouraged or not, are not considered fees. The pro bono program should prohibit or limit the handling of cases that are clearly fee-generating, and provide for the referral of such cases.

(d) Quality Control:

The program must demonstrate that it has the necessary expertise and quality control to administer a program involving volunteer lawyers. This should include appropriate matching of pro bono lawyers to cases, an effective grievance procedure and adequate tracking and record keeping systems regarding pro bono involvement.

(e) Diversity:

The program must comply with Article 10 of the Bar's Bylaws (Diversity), both in regard to participating lawyers and clients.

(f) Professional Liability Coverage

The program will provide professional liability coverage for otherwise uncovered attorney volunteers when those attorneys provide legal services to pro bono clients.

Subsection 13.202 Volunteer Recognition

Recognition under this paragraph is intended to provide encouragement, in tangible form, to those Oregon Pro Bono programs and their volunteer lawyers, who help meet the need for legal services by providing direct representation to low-income individuals. As part of its annual planning process, the Board will consider the ways in which the Bar can acknowledge the volunteer efforts of Oregon lawyers, particularly those lawyers who provided at least 40 hours of pro bono services through programs certified under this policy. In so doing, the Board will seek input from bar staff and appropriate bar committees.

Article 14 Committees

Section 14.1 Standing and Special Committees

Standing or special committees of the Bar or any member or officer of those committees may be appointed or discharged by the President or the Board.

Section 14.2 Joint Committees

The Board has from time to time agreed to create joint committees between the Bar and other professional groups to develop better understanding between the two groups and to assist in resolving problems of mutual concern. These joint committees comprise a certain number of bar members and a certain number of members of other professional associations. All Bar Bylaws relating to committees apply to these joint committees. Lawyer members who participate in these joint committees are prohibited from engaging in any activity that seeks to restrain other groups of professionals from engaging in lawful professional activities.

Section 14.3 Committee Responsibilities

Committees are established so that members can study issues within the committee's charge and make recommendations to the Board. Before January 1 of each year the Board will forward a committee charge to the chair of each committee. This charge outlines the committee's ongoing general activities as well as specific issues to be considered for the year. The Board will consult with the previous committee members before adopting the committee charge. Committees may also recommend issues to the Board to be included in the charge at any time.

Section 14.4 Membership

All members of standing committees must be active members of the Bar. All members of standing committees typically serve on a three-year rotating basis. The Board may reappoint members to a committee, if the Board makes a finding of extraordinary circumstances that warrant a reappointment. Each year the Board appoints new members constituting one third of each committee. Terms begin on January 1. The Board will solicit member preference for serving on committees throughout the year. The Board appoints members to fill vacancies that occur throughout the year. These vacancies occur because members resign or are unable to participate fully in the committee. The board may appoint advisory members or public members, as it deems appropriate.

Section 14.5 Financial Issues

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

Section 14.6 Legislation

Each committee must designate a member of the committee as a contact for legislative information and involvement. This member is to work with and coordinate all activities with the Director of Public Affairs and the Public Affairs Committee of the Board.

Section 14.7 Administrative Services

The Bar's meeting rooms will be available on a first-come first-served basis. All committees are encouraged to use the Bar's meeting rooms whenever possible. The Bar will assist committees with providing meeting notices in accordance with the requirements of the Public Meetings Law. If the Bar does not produce the meeting notice, the committee member who produces the notice must provide a copy to the Bar. The Bar will assign a bar liaison to each committee. The bar liaison serves as a resource of

information for the committee. Each committee will have a contact person who is a member of the Board. It is not anticipated that the board member will attend the meetings of the committee on a regular basis.

Section 14.8 Committee Reports

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

Section 14.9 Quorum for Meetings

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

Article 15 Sections

Section 15.1 Purpose

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

Section 15.2 Formation

Any 100 members of the Bar who wish to form a section in a particular area of law may submit a petition to the Board to create a section. The petition must state that the signators are committed to becoming members of the section, if the Board approves forming the section. The Board must consider creating a section when it receives the petition and determines that the proposed section does not duplicate another section's activities or area of legal interest. The Board may merge, reorganize or abolish sections at the request of affected sections or as the Board deems appropriate. Factors that the Board must consider include, but are not limited to, the section's membership falling below 100 members, failure to conduct Continuing Legal Education activities or failure to hold regular meetings.

Section 15.3 Bylaws

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

Section 15.4 Finances

Subsection 15.400 Dues

The Bar will assess and collect section dues at the same time that bar membership dues are collected. Section dues will be assessed and collected together with bar dues by the Bar. The Board must approve the dues for each section. Each section should set dues at an appropriate level to pay for programs and activities. The Bar charges each section a per capita fee equal to 50 percent of the cost of providing services to the sections. This fee is recalculated periodically as determined by the Executive Director. No section may maintain a separate bank account. Each section's receipts and expenditures are handled by the Bar and accounted for in the section's monthly financial statement provided by the Bar. Interest on section accounts accrues to the Bar's General Fund and is used to offset the calculation of the per capita fee.

Subsection 15.401 Donations

Sections may make donations to charitable causes or organizations only with prior approval of the Executive Director. The Executive Director 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 these Bylaws. The executive Director will maintain a list of approved recipients.

Section 15.5 Administrative Services

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

Section 15.6 Continuing Legal Education Activities

Subsection 15.600 CLE Publications and Seminars Scheduling

The Bar, is the informational clearinghouse for the CLE activities of each section. Each section should advise the Bar's CLE Publications and Seminars Departments of any proposed CLE activities at the earliest possible date and in accordance with timelines established by the CLE Committee.

Subsection 15.601 CLE Event Co-sponsorship with Bar

If a section decides to seek co-sponsorship for a CLE event, it is encouraged to first contact Bar's CLE Seminars Department. If the CLE Seminars Department is unavailable to co-sponsor the seminar event, the section then may seek co-sponsorship with other organizations. The CLE Seminars Department will establish policies for bar co-sponsorship of section CLE events. These policies will address issues such as event revenues and expenses, topic, speakers, date and location.

Subsection 15.602 Oregon State Bar Logo

A section that plans a seminar or a publication without the Bar's co-sponsorship must indicate clearly on all publicity, printed seminar materials and publications that the seminar or publication is a section endeavor and the sponsoring section. The section must not use the Oregon State Bar logo or the phrase Oregon State Bar CLE. A section that plans a seminar without the Bar's co-sponsorship is responsible for applying for Minimum Continuing Legal Education credit for the seminar.

Section 15.7 Grants

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

Article 16 Continuing Legal Education

Section 16.1 Purpose

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

Except as otherwise provided herein, participating members of the Bar will not receive compensation for services on behalf of CLE Seminars or Legal Publications, beyond a modest memento or other recognition and payment of expenses within board guidelines.

Section 16.2 OSB Continuing Legal Education Seminars Program

Subsection 16.200 Reduced and Complimentary Registrations; Product Discounts

(a) Complimentary registration for CLE seminars and scheduled video replays where the CLE Seminars Department is the content provider is available to the following OSB lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(b) Complimentary registration does not include the cost of lunch or other fee-based activities held in conjunction with a CLE seminar.

(c) Reduced registration for webcasts where the CLE Seminars Department is the content provider is available for the following lawyer members: Active Pro Bono members, lawyer-legislators, 50-year members, judges, and judicial clerks.

(d) For purposes this policy, "judges" means full or part-time paid judges and referees of the Circuit Courts, the Court of Appeals, the Tax Court, the Supreme Court, and of tribal and federal courts within Oregon. Complimentary registration at any event for judicial clerks will be limited to one clerk for each trial court judge and two clerks for each appellate court judge.

(e) Complimentary registration for Active Pro Bono members is limited to eight (8) hours of programming in any one calendar year, which may be used in increments.

(f) Reduced registration, tuition assistance and complimentary copies of programs may be available to certain other attendees, at the sole discretion of the CLE Seminars Director.

(g) Discounts for and complimentary copies of archived CLE Seminars products in any format where the CLE Seminars Department is the content provider may be available at the sole discretion of the CLE Seminars Director.

(h) Seminars and seminar products in any format where the CLE Seminars Department is not the content provider are not subject to any discounts, complimentary registration or complimentary copies except at the sole discretion of the CLE Seminars Director.

Subsection 16.201 Expenses of Speakers and Planners

CLE seminar speakers and planners will be admitted free to the seminar and receive seminar materials without charge. CLE seminar speakers and planners are eligible for reimbursement for necessary travel expenses subject to the Bar's travel reimbursement policies.

Section 16.3 OSB Legal Publications Program

Subsection 16.300 Benefit of Membership

The BarBooks™ online library comprises all Legal Publications products as well as other materials as the Bar deems appropriate to include from time to time. BarBooks™ is a benefit of active membership in the Oregon State Bar and is available for purchase by inactive members, non-members, and libraries.

Subsection 16.301 Discounts on Print Books

Discounts on the purchase of OSB print legal publications, when available, will be allowed to the following: Law school bookstores, law professors when teaching a course using the particular publication, libraries, and members of the Bar within one year following their admission.

Subsection 16.302 Volunteer Copyright Agreement

Each volunteer author of a legal publication will sign a Volunteer Copyright Agreement under which the author retains the copyright in his or her chapter, and grants to the Oregon State Bar a nonexclusive right to include the chapter within the Publication as a collective work; to use, distribute, or sell the collective work in any manner the OSB deems appropriate; to revise the collective work, including his or her chapter, for use, distribution or sale as a subsequent edition of the collective work, a revision of the collective work, or as an entirely new publication; with the Oregon State Bar and its licensees having similar rights to use, distribute, or sell the collective work in any manner they deem appropriate.

Article 17 Member Services

Section 17.1 Administrative Services

Administrative services, such as mailing services, mailing lists and labels and photocopying will be provided to member and nonmember groups at the cost of providing the service or product. Priority is given to official bar business.

Section 17.2 Insurance

Providers of Bar-sponsored insurance may use the Bar's logo in their advertising and promotional material with the prior approval of the Executive Director. They may also indicate approval or endorsement by the Board in such material if the Board has approved or endorsed the insurance. Inactive membership status does not affect the eligibility of a member for bar-sponsored insurance.

Section 17.3 Bar-sponsored Tours

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

Article 18 Discipline

Section 18.1 State Professional Responsibility Board

Subsection 18.100 Duties

The State Professional Responsibility Board ("SPRB") is authorized to exercise its powers and authority pursuant to statute, the rules of procedure and the Bar's bylaws. The SPRB will meet regularly pursuant to the call of the chairperson to consider complaints and other matters within its jurisdiction. The SPRB will receive the counsel and advice of the Office of Disciplinary Counsel of the Bar. Disciplinary Counsel will regularly report to the Board of Governors regarding actions taken by the SPRB. The SPRB may proceed with business if a quorum of six members is present at any meeting and act by a vote of a majority of those present.

Subsection 18.101 Composition

The SPRB will consist of eight resident active members of the Bar and two at large public members appointed by the Board of Governors. The Board of Governors annually will appoint one member of the SPRB to act as its chairperson. All lawyer members of the SPRB are appointed for terms of not more than four years from the following regions: two members from region five and one member from each of the other Board of Governors regions. The two public members are appointed for terms of not more than four years. No member may serve more than four years. The Board of Governors may replace members of the SPRB as the need arises.

Subsection 18.102 Expenses

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

Subsection 18.103 Notice to the Accused

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

Subsection 18.104 Disclosure of Contacts

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

Section 18.2 Letters of Admonition

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

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

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

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

Section 18.3 Recovery of Costs/Collection of Judgments

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

Section 18.4 Disciplinary Correspondence

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

Section 18.5 Removing Lawyers from the Lawyer Referral Service Panel of Lawyers

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

Section 18.6 Suspension of Service

Subsection 18.600 Applicability to BOG, LPRC and SPRB

The service of members of the Board of Governors, local professional responsibility committees, and the State Professional Responsibility Board against whom charges of misconduct have been approved for filing by the State Professional Responsibility Board is suspended until the charges filed against them have been resolved. If a member is suspended as a result thereof, the member may not resume service on the board or committee until the member is once again authorized to practice law or as otherwise provided by ORS 9.025(5)(a). Charges of misconduct include those authorized to be filed pursuant to BR 3.4.

Section 18.601 LPRC and SPRB Replacements

In the case of a local professional responsibility committee or the State Professional Responsibility Board, the Board of Governors may appoint a temporary replacement to serve until the member suspended under this bylaw is again able to serve. The temporary replacement will have the same rights and responsibilities as any other member of the entity.

Section 18.602 Board of Governors Replacement

Upon the suspension of a member of the Board of Governors pursuant to Bar Bylaw 18.6, the board will promptly notify all members from the affected region. Sixty days after the date of suspension, the board will seek the advice of the members of the House of Delegates from the region whether to appoint a temporary replacement for the suspended member, and if so, the name of a suggested temporary replacement who is qualified. If a name is suggested, the board will appoint the suggested candidate as the temporary replacement effective at the next regularly scheduled board meeting. The temporary

replacement will serve under the same terms and conditions as the suspended member until the suspension is lifted or the term of the board member ends.

Article 19 Legal Ethics Questions and Opinions

Section 19.1 General Counsel's Office

Subsection 19.100 Submission and Questions

All legal ethics questions from members or the public regarding the propriety of a course or act of professional conduct or the intent or interpretation of a rule or statute regulating the professional conduct of members of the Bar must be submitted or referred to General Counsel's office. Legal ethics questions may be submitted in writing by mail, e-mail, fax or by telephone.

Subsection 19.101 Determination by General Counsel

General Counsel's office will determine whether the matter appears to present or involve a question of ethics or professional conduct and whether it states facts sufficient to permit the formulation of an opinion based on the facts stated. General Counsel's office may ask the inquirer to submit necessary additional facts or may advise the inquirer that no question of ethics or professional conduct is presented or involved.

Subsection 19.102 Ethics Advice to Bar Members

General Counsel's office will endeavor to assist bar members in analyzing the ethics of the inquirer's prospective conduct and may provide reactions to the questions presented. Ethics questions and responses thereto are not confidential and communications with General Counsel's office are not privileged. No attorney-client relationship is intended or created by such communications with the Bar. Members submitting ethics questions must specify a deadline by which they need a response from the Bar. General Counsel's office will endeavor to meet the member's deadline, but General Counsel's office always has at least three business days after receiving a member's question to provide a written response to the member.

Subsection 19.103 Application of Oregon RPC 8.6

For Oregon RPC 8.5 to apply to a request for ethics assistance, a member must put his or her ethics question in writing. "In writing" includes letters, faxes or e-mails. General Counsel's office will respond in writing, by fax, e-mail or regular mail, as time allows. The Bar will retain all written ethics assistance requests and General Counsel's office responses for at least five years and those requests are public records. General Counsel's office has the discretion to decline to provide a written response, if it determines that the question should be considered by the Legal Ethics Committee due to the difficulty, complexity or novelty that the question raises or the difficulty or complexity of an appropriate response. Members must provide General Counsel's office and the Legal Ethics Committee with accurate, and as complete as possible, explanations of the facts underlying their ethics questions. General Counsel's office may ask the inquirer to submit additional or clarifying information and the timeframe for response as set forth in Subsection 19.102 of the Bar's Bylaws does not begin until General Counsel's office receives the requested information.

Section 19.2 Limitation of Advice

Responses and opinions provided by General Counsel's office, the Legal Ethics Committee and the Board of Governors are limited to and deemed to address only the facts as submitted by the inquirer.

Section 19.3 Legal Ethics Committee

Subsection 19.300 Response to Inquiries

A bar member may request that a question be submitted to the Legal Ethics Committee. The chair of the Committee will assign those requests and questions submitted directly to the Committee to one or more committee members to prepare a response. Inquiries submitted to the Committee should be anonymous, insofar as possible. To preserve anonymity, if the facts are inadequate to permit the formulation of an opinion or a direct answer, General Counsel's office may ask for submission of necessary additional facts. On receipt of those additional facts, General Counsel's office will promptly submit them to the assigned member of the Committee. The Committee may, in its discretion, write opinions on subjects that the

Committee believes would be helpful to the membership, whether or not the Committee receives a specific inquiry on the subject. Such opinions will be handled in the same fashion as opinions based on specific questions.

Subsection 19.301 Formal Opinion Process

The Committee will review and discuss all responses prepared by individual members and will, by majority vote, determine whether the response should be referred to the Board of Governors to be issued as a formal opinion or whether it should be issued by the Committee as a letter of direct advice to the inquirer. The Committee will establish and will periodically review guidelines for determining the appropriate form of response. Members may use formal opinions and letters of direct advice issued by the Committee in the same manner and to the same effect under Oregon RPC 8.6 as written responses from General Counsel's office. When the Committee approves an opinion and recommends formal publication, General Counsel's office will place a copy of the opinion on the Board's next meeting agenda. All dissents, comments of substance or minority opinions will also be placed on the Board's agenda. The Board will review the proposed opinion and either approve it for formal publication, refer it back to the Committee for further study or revision or direct that no opinion be issued in the matter. The Board may also distribute the opinion to the membership for comment before making a final decision. All opinions that the Board designates to be issued as formal opinions will be published in Oregon Formal Ethics Opinions (OSB 2005) and on the Bar's website.

Article 20 Unlawful Practice of Law

Section 20.1 Definitions

For the purpose of these Rules of Procedure, the following definitions apply:

- (A) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.
- (B) "Unlawful practice of law" means the practice of law, as defined by the Oregon Supreme Court, by persons who are not members of the Bar and are not otherwise authorized by statute to do so. It is unlawful for a person who is not an active member of the Bar to engage in the practice of law within the State of Oregon, whether or not for compensation or in connection with any other activity, unless specifically authorized by law or rule. The practice of law includes, but is not limited to, any of the following: Holding oneself out, in any manner, as an attorney or lawyer authorized to practice law in the State of Oregon; appearing, personally or otherwise, on behalf of another in any judicial or administrative proceeding or providing advice or service to another on any matter involving the application of legal principles to rights, duties, obligations or liabilities.
- (C) "Documents" includes, but is not limited to, contracts, deeds, mortgages, satisfactions, leases, options, certificates of assumed business name, articles of incorporation and other corporate documents, bulk-sales affidavits, wills, trusts, notes and pleadings and other papers incident to legal actions and special proceedings.
- (D) "Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.
- (E) "Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of acts or conduct that concern or are related to acts or conduct that may represent the unlawful practice of law.
- (F) "Accused" means the person or persons who are the subject of a complaint to the committee.
- (G) "Complaint" means the matter, thing or occurrence that represents a file opened by the Committee for the investigation of an accused person or any person or activity associated with one or more accused persons under the allegations contained in a file or any activity related thereto.

Section 20.2 Practices Subject to Investigation

The following conduct by persons who are not members of the Bar is subject to investigation by the Committee, pursuant to ORS 9.164:

- (A) Use of stationery or other written material describing the person as a lawyer.
- (B) Appearance on behalf of another in court or administrative proceedings without statutory authority.
- (C) Correspondence on behalf of another when the correspondence is a jurisdictional prerequisite for legal action or customarily precedes legal action, such as demand letters.

(D) Negotiation on behalf of another for the settlement of pending or possible legal actions.

(E) Drafting or selecting documents for another or giving advice to another in regard thereto when informed or trained discretion must be exercised in selecting or drafting a document to meet the needs of another.

(F) Any exercise of an intelligent choice or informed discretion in advising another of his or her legal rights or duties.

(G) Representing to the public that the person is authorized to practice law.

(H) Use of printed or electronic materials, advertisements or other solicitations describing services that can reasonably be construed as legal services.

(I) Any other action for another that requires legal skill or judgment.

Section 20.3 Practices Not Subject to Investigation

The Committee may decline to investigate allegations of unlawful practice of law in the following instances: When the allegations of unlawful practice of law are not made to the Committee in writing or when the allegations of unlawful practice of law consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

Section 20.4 Practices Subject To Prosecution

The Committee may request the Board to authorize a suit, pursuant to ORS 9.166, to enjoin unlawful practice of law when after investigation by the Committee, it appears that: There is at least one person, identified by the Committee, who has been injured by a person unlawfully practicing law, who has received legal services from a person who is not a member of the Bar or who has personal knowledge of facts constituting the unlawful practice of law or the unlawful practice of law is an ongoing activity; or an accused in any other respect has violated ORS 9.160. The Committee may, at its discretion, for good cause, decline to request authorization from the Board to enjoin the unlawful practice of law pursuant to ORS 9.166 in favor of other resolutions provided in these rules.

Section 20.5 Practices Not Subject to Prosecution

The Committee may, at its discretion, decline to request authorization to enjoin unlawful practice of law pursuant to ORS 9.166 when, after investigation by the committee, it appears that: The unlawful practice of law is not an ongoing activity; the investigator has been unable to obtain sufficient evidence to substantiate the allegation of unlawful practice of law or the investigator has been unable to obtain sufficient evidence to support a suit for injunction pursuant to ORS 9.166. The investigator may, after authorization by vote of a majority of the Committee, conclude an investigation by negotiating an agreement with an accused wherein the accused agrees to discontinue the unlawful practice of law. The agreement will be subject to and not become effective until approval by the Board.

Section 20.6 Other Investigators

The Committee may recommend hiring a person who is not a member of the Committee to perform further investigation on consideration of the following factors: The number of persons who have been injured by a person unlawfully practicing law or who have received legal services from a person who is not a member of the Bar; the probable nature and extent of damages to the persons receiving legal services from a person who is not a member of the Bar; the need for additional facts and witnesses to substantiate the allegation of unlawful practice of law for the purpose of a suit for injunction pursuant to ORS 9.166 and the recommendation of the investigator and the Committee's inability to compel discovery.

Section 20.7 Processing Unlawful Practice of Law Complaints

Subsection 20.700 Investigation

On receiving a complaint of unlawful practice of law meeting the requirements of Section 20.2 of the Bar's Bylaws, the committee chairperson will assign the complaint a case number and assign it to a committee member for investigation. The committee member will review the documentation accompanying the complaint and will contact the complainant, affected parties and witnesses. The committee member may not employ any methods in his or her investigation that do not comply with the Rules of Professional Conduct. Within 60 days after receiving a complaint of unlawful practice of law, the investigator will

submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition. The chairperson of the Committee may grant extensions of time to submit a report of investigation as the chairperson deems reasonable.

Subsection 20.701 Dispositions

Actions to be taken at the discretion of the Committee:

(a) Dismissal without prejudice.

This disposition is appropriate when the accused did not commit the unlawful practice of law.

(b) Notice Letter.

This disposition is appropriate when insufficient facts exist to establish that the accused has committed the unlawful practice of law, but the accused's activities are such that the Committee believes it appropriate to notify the accused of the provisions of ORS 9.160

(c) Cautionary Letter.

This disposition is appropriate when the Committee asserts that the accused is engaged in activities involving the unlawful practice of law, but either (1) the practice is neither ongoing nor likely to recur, or (2) the Committee determines that the matter is inappropriate for prosecution.

(d) Resolution by agreement.

This disposition is appropriate when the Committee asserts that the accused committed the unlawful practice of law, but is willing to enter into an agreement to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board of Governors.

(e) Referral to Board of Governors for prosecution under ORS 9.166.

This disposition is appropriate when the Committee asserts that the accused committed the unlawful practice of law, the practice is ongoing or likely to recur and the accused is unwilling to enter an agreement to discontinue the unlawful practice of law; or, for any other reason, the Committee concludes that prosecution under ORS 9.166 is warranted.

(f) Appointment of Outside Investigator or Referral to Other Agency.

This disposition is appropriate when the Committee is unable to obtain sufficient information to make an informed recommendation or when the Committee otherwise elects to refer the matter to another investigator or agency.

(g) Referral to Bar Counsel

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

Subsection 20.702 Actions of Unlawful Practice of Law Committee

The Committee will consider reports of investigations at its first meeting after submission of a report. On a vote of a majority of members, a quorum being present, the Committee must: Adopt the report as written or modify the report or continue the matter for further investigation and revisions to the report. The committee chairperson must document in writing the Committee's final findings and disposition of each complaint. The chairperson or his or her delegate, must, in writing, inform the complainant and the accused of dismissals without prejudice. A cautionary letter authorized by the Committee gives notice to the accused that the Committee has evidence that the accused is engaged in activities that the Committee maintains involve the unlawful practice of law. The cautionary letter may provide information on the limits of the law and may demand that the accused cease activities that the Committee asserts constitute the unlawful practice of law. On a vote of a majority of members of the Committee, a quorum being present, a complaint of unlawful practice of law must be referred to the Board for authorization to file an action under ORS 9.166.

Subsection 20.703 Board of Governors

On authorization by the Board to pursue an action under ORS 9.166, the Bar may obtain counsel to prosecute the action and will report periodically to the Committee and Board on the status of the litigation.

Counsel for the Bar may settle unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board. To the extent necessary, the Committee will assist counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection 20.704 Prevention and Education

The unlawful practice of law statutes cannot be adequately enforced by investigation and prosecution alone. Prevention of unlawful practice of law is also a focus of committee activity. Thus, in addition to the disposition options outlined above, the Committee may engage in public outreach and education to prevent and educate the public about the unlawful practice of law. Also, when the Committee becomes aware of a person or entity engaged in activities likely to involve the unlawful practice of law based on the Committee's experience, the Committee may send a letter to the person or entity regarding the limits of the law on the provision of legal services.

The Committee may also, in its discretion, write informal advisory opinions on questions relating to what activities may constitute the practice of law. Such opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that may be of concern to or investigated by the Committee. All such opinions must be approved by a majority vote and submitted to the Board of Governors for final approval prior to publication.

Subsection 20.705 Records

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar.

Subsection 20.706 Other Agencies

The Committee may refer to, cooperate with or consult other agencies whether federal, state or local having an interest in the subject matter of any complaint before the Committee or having information or resources that would benefit the Committee's investigation. Referral to, joint prosecution with or requests for information or investigation are appropriate under circumstances that include, but are not limited to the following:

(a) When the allegations concerning a claim of unlawful practice of law would also support or form a part of an activity prohibited by law, ordinance or statute; whether civil or criminal and recognized as a responsibility of the applicable federal, state or local agency.

(b) When the person accused of the unlawful practice of law or a person acting with the accused, is or has been the subject of an investigation, action, injunction or other similar review by a federal, state or local agency and the matter complained of relates directly or indirectly to the matter, person or activity reviewed or investigated.

(c) Whenever an agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation alone or in combination with the Bar.

(d) Whenever the agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused.

Article 21 Client Security Fund

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

Article 22 Fee Arbitration

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

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

(C) Except as provided in (E) below, or unless all parties to an arbitration agree otherwise: all records, documents, papers, correspondence and other material submitted by the parties to General Counsel or to an arbitration panel during the course of an arbitration proceeding and any award rendered by an arbitration panel is not subject to public disclosure.

(D) Arbitration hearings conducted pursuant to the Bar's fee arbitration procedure will be closed to the public unless all parties to an arbitration agree otherwise. Witnesses who will offer testimony on behalf of a party may, however, attend the arbitration hearing.

(E) Notwithstanding subsection (B), (C) and (D), arbitrators must disclose to Disciplinary Counsel any knowledge obtained during the course of an arbitration proceeding of an apparent violation of the Rules of Professional Conduct or ORS Chapter 9 committed by an attorney and all records, documents, papers, correspondence and other material submitted to General Counsel or to the arbitration panel during the course of the proceeding and any award rendered by the panel must be made available to Disciplinary Counsel for the purpose of investigating alleged ethical violations.

Article 23 Professional Liability Fund

Section 23.1 Board of Directors

The Professional Liability Fund ("PLF") will conduct its business through a Board of Directors appointed by the Board of Governors. The PLF Board consists of nine members, seven of which must be active, resident members of the Bar and two of which must be non-lawyers. The terms of office of PLF Board members is five years, as staggered by the Board of Governors, with the term of office of each board member beginning on January 1 of each year. The Board of Governors may remove any member of the PLF Board without cause and must fill the positions that become vacant as expeditiously as possible to ensure continuity in the governance of the PLF. Persons appointed to fill vacancies on the Board of Directors serve the unexpired term of the member who is replaced. If a replacement appointment to an unexpired term is for two (2) years or less, the Board of Governors may thereafter reappoint that person to a term of up to five years. In considering the length of the reappointment, the Board will take into account the experience level of the PLF Board of Directors and the effect on the rotation cycle of the Board of Governors.

Section 23.2 Authority

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

Section 23.3 Operation

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

Section 23.4 Reports

The PLF must present an annual report to the bar membership at the annual meeting of the House of Delegates and must report periodically to the membership.

Section 23.5 Relationship with the Board of Governors

Subsection 23.500 Liaisons

(a) It is the goal of the Board of Governors that there be free, open, and informal communication between the Board of Governors and PLF Board of Directors. Constructive communication among Board of

Governors members, bar management, PLF Board of Directors members and PLF management is encouraged; however, in such communication it is recognized that the authority to manage the PLF is vested in the PLF Board of Directors.

(b) Each year the President of the Bar appoints the President-elect of the Bar, an additional lawyer member of the Board, and one public member of the Board to serve as liaisons with the PLF Board of Directors. The additional lawyer member of the Board serves at least two years as liaison and will be replaced by a new lawyer member of the Board who will serve at least two years.

(c) At least one of the Board's PLF liaisons must be present at each meeting of the PLF Board of Directors and each attending Board of Governors PLF liaison must make every effort to attend those meetings in person rather than by telephone.

(d) One or more of the Board's PLF liaisons must make a report at each meeting of the Board of Governors regarding the significant activities of the PLF and any matters regarding the PLF requiring action by or the attention of the Board of Governors.

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

Subsection 23.501 Reports

The PLF must regularly provide to the BOG the following:

(a) All financial statements when completed;

(b) All minutes of meetings of the Board of Directors of the PLF or committees of the Board of Directors, excepting the parts that are made confidential by Oregon Revised Statutes;

(c) All reports of investment performance and changes in investments;

(d) All proposed changes in the primary and excess coverage plans with an explanation of the reasons for and effects of the changes;

(e) On or before September 1 of each year, the proposed assessments for primary and excess coverage along with the actuarial reports and the information described in Subsection 23.600 of the Bar's Bylaws to enable the Board of Governors to understand and evaluate the proposed assessments;

(f) All closed claim reports prepared in a manner consistent with the confidentiality requirements of ORS 9.080(2)(a);

(g) All projections, forecasts, prospective financial statements and the like prepared by or for the PLF;

(h) Any other information that the Board of Governors may request to assist it in discharging its responsibility to the membership of the Bar.

Subsection 23.502 Release of Information

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

Subsection 23.503 Prohibition Against Prosecuting Claims

(a) Board of Governors members will neither prosecute nor defend PLF covered claims, but may mediate the claims at the request of the parties.

(b) The policy set forth in (a) above does not extend to the prosecution or defense of PLF covered claims by lawyers in board members' firms, as long as the board member is screened from any form of participation or representation in the matter. To ensure such screening:

(1) The board member must prepare and file an initial affidavit with the Executive Director of the Bar attesting that while his or her firm is handling a PLF covered claim, the board member will not participate

in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member. The board member must also prepare and submit a compliance affidavit to the Executive Director of the Bar describing the board member's actual compliance with these undertakings promptly on final disposition of the matter or representation.

(2) The board member's firm must also prepare and file an initial affidavit with the Executive Director of the Bar attesting that all firm members are aware of the requirement that the board member be screened from participating in or discussing the matter or other representation. The firm must also prepare and file with the Executive Director of the Bar a compliance affidavit indicating the firm's actual compliance with the procedures for screening the board member promptly on final disposition of the matter or representation.

(3) The initial affidavits called for by Subsection 23.503 (B)(1) and (2) Bar's Bylaws must be filed with the Executive Director of the Bar no later than 14 days following the acceptance of a case involving a PLF covered claim by a board member's firm. Acceptance of a case for purposes of Subsection 23.503 is the day that the attorney-client relationship is established. The compliance affidavits required by Subsection 23.503 (B)(1) and (2) must be filed with the Executive Director no later than 14 days following the final disposition of the matter or representation.

(4) The compliance affidavits called for by Subsection 23.503 (1)-(3) need not be filed with the Executive Director if a board member's term on the Board of Governors ends before the final disposition of the matter or representation.

(c) Nothing in this section relieves members of the Board of Governors or their firms from ethical responsibilities, particularly those contained in Oregon RPC 1.7(a)(2).

Subsection 23.504 Annual Meeting

The Board of Governors will invite the PLF Board of Directors and the PLF management to meet annually with the Board of Governors to: Discuss the results of the business of the PLF for the preceding calendar year; discuss the PLF's long-range plans and goals; generally inform the Board of Governors of the condition of the PLF and discuss matters of common interest to the Board of Governors and the PLF. The meeting must include a report by the Personal and Practice Management Committee of the PLF pursuant to PLF Policy 6.150(C). This meeting must occur as soon as practicable after completion of the year-end financial reports of the PLF, or by April 1st of each year, whichever is earlier.

Subsection 23.505 Audit

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

Subsection 23.506 Location of Office

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

Subsection 23.507 Staff Responsibility

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

Section 23.6 Assessment

Subsection 23.600 Principles

The Board of Governors recognizes that assessments for coverage are derived by the prudent application of actuarial principles, responsible evaluation of past and present operations and investments of the PLF and judgments about future revenue and losses. Assessments vitally affect the members of the Bar and the public, which must rely on the general availability of a wide range of legal services. The PLF has the responsibility to submit proposals to the Board of Governors for all recommended assessments supported

by a report evidencing: The actuarial principles and assumptions used in the proposed assessment, the evaluations of the past and current operations and investments of the PLF with respect to their effect on the proposed assessment, the judgments and assumptions employed about future revenue and losses, and all other factors that the PLF believes will or may affect the adequacy and appropriateness of the proposed assessment. The Board of Governors must review the proposed assessment, the PLF's reports, and such other information as may be appropriate. On completion of the review, the Board of Governors must adopt assessments that it reasonably believes to be actuarially prudent and reasonably believes will provide assurance of continued financial stability of the PLF.

Subsection 23.601 Appeals by Members

(a) Review by the Professional Liability Fund Board of Directors

The PLF Board of Directors must establish and maintain a procedure to permit members to appeal to the PLF Board for relief from any amount claimed by the appealing member to have been improperly assessed against that member. The procedure must assure that:

(1) All notices of assessments and invoices for assessments to members include language that gives notice to the assessed member of the right to appeal to the PLF, the appeal procedure to be followed, and the time limits to perfect the appeal.

(2) The PLF Board of Directors' decision on appeal is communicated to the appealing member in writing by certified mail or registered mail with return receipt requested, and that all written notices communicating denial of relief requested on appeal must include the following language or its substantive equivalent:

"You have the right to request the Board of Governors of the Oregon State Bar to review the action by the PLF Board of Directors in denying the relief requested by your petition. To be entitled to Board of Governors review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of this letter. The Executive Director's address is PO Box 231935, Tigard, OR 97281-1935. A request for Board of Governors review constitutes and evidences your consent for the Board of Governors and others designated by the Board to review all pertinent files of the PLF relating to you. Review by the Board of Governors is de novo and on the record. Only the grounds set forth in your petition to the PLF Board of Directors and the written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, upon its own motion, requests additional materials from the member and from the PLF. The Board of Governors will notify you in writing of its decision and the decision is final. A request for Board of Governors review does not relieve you from paying the assessment, nor does a review pending before the Board of Governors suspend or toll the default date. Please remember that you must pay your total assessment by the default date to avoid the imposition of late payment penalties and suspension proceedings. If an adjustment is necessary as a result of the review, you will receive an appropriate refund together with statutory interest."

(3) Assure that all steps necessary are taken by the PLF Board of Directors and staff to facilitate the Board of Governors review of the action by the PLF Board of Directors in denying relief requested in the petition.

(b) Review by the Board of Governors.

(1) Any member who, after properly and timely filing a petition, is denied requested relief by the PLF Board of Directors has a right to request the Board of Governors to review the action of the PLF Board of Directors in denying the relief requested in that petition. To be entitled to such review, a written request for review must be physically received by the Executive Director of the Oregon State Bar within 30 days after the date of the written notice from the PLF to the member denying the requested relief. Review by the Board of Governors on a timely filed request is de novo and on the record. In making the determination whether to affirm the action of the PLF Board of Directors, only the grounds asserted in the petition and written materials that were available to the PLF Board of Directors will be reviewed, unless the Board of Governors, on its own motion, requests additional materials from the member and from the PLF.

(2) The President of the Oregon State Bar must appoint a committee of at least three of the members of the Board of Governors, which must meet and review the appropriate materials and make a recommendation to the Board whether to affirm the action of the PLF Board of Directors. The Board of Governors must make a determination and notify the member in writing of its decision, including any adjustment to the assessment. The decision of the Board of Governors is final.

(3) A request for Board of Governors review does not relieve a member from the obligation to pay the contested assessment, nor does a review pending before the Board of Governors suspend or toll the default date or delay the imposition of late payment penalties or suspension proceedings. If the Board of Governors review results in an adjustment to the assessment requiring a refund to the member, the PLF must pay the member an appropriate refund together with statutory interest thereon.

Article 24 Attorney Assistance

Section 24.1 Creation and Purpose

There is hereby created, pursuant to ORS 9.568, the State Lawyers Assistance Committee ("SLAC") and the Professional Liability Fund Personal and Practice Management Assistance Committee ("PLF-PPMAC"). The purpose of the SLAC is to supervise and assist lawyers whose performance or conduct may impair their ability to practice law or their professional competence. The purpose of the PLF-PPMAC is to provide voluntary personal and practice management assistance to lawyers.

Section 24.2 Authority

Subsection 24.200 State Lawyers Assistance Committee

The SLAC has authority:

- (a) To receive, review, investigate, process and resolve all complaints and referrals to SLAC regarding lawyers whose performance or conduct may impair their ability to practice law or their professional competence.
- (b) To require lawyers within SLAC's jurisdiction to submit to a professional assessment and diagnosis and to comply with any remedial program that SLAC has established. A remedial program may include conditions on the law practice and other law-related activities of any lawyer found to be within SLAC's jurisdiction. Conditions may include, but are not limited to, requiring a lawyer to obtain medical or psychological treatment at his or her expense and to discontinue the practice of law and/or law-related activities pending completion of such treatment.
- (c) To monitor a lawyer's compliance with the recommended measures of a remedial program.
- (d) To maintain records regarding a lawyer's assistance referrals.
- (e) To prepare an annual report to the Board of Governors.
- (f) To recommend, for approval by the Board of Governors, such rules as may be necessary to properly operate SLAC.
- (g) To appoint local bar members as it may deem appropriate for carrying out the work and purpose of SLAC.

Subsection 24.201 Professional Liability Fund Personal and Practice Management Assistance Committee

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

Section 24.3 Composition

Subsection 24.300 State Lawyers Assistance Committee

SLAC will be comprised of not more than 12 members, including two public members, appointed by the Board of Governors. Terms will be for four years or as otherwise deemed necessary by the Board to maintain staggered terms and to fill vacancies. The lawyer members of SLAC will be active members of the Bar reflecting as closely as possible the geographic distribution of bar members. The Board of Governors will designate one of the lawyer members as chair and one to serve as secretary, each to serve a term of two years. The underlying terms of either secretary or chair will be extended for one additional year so as to coincide with the underlying terms of office, if necessary. Rules for the provision of assistance by SLAC will be as set forth in this bylaw.

Subsection 24.301 Professional Liability Fund Personal and Practice Management Assistance Committee

The PLF-PPMAC consists of the members of the PLF's Board of Directors. The PLF will have authority to promulgate rules concerning the provision of assistance by the PLF-PPMAC which, on approval by the Board of Governors, will govern its activities.

Section 24.4 State Lawyers Assistance Committee Review and Intake

Subsection 24.400 Complaints and Referrals

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

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

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

"If you are a member of the Bar, please review Oregon RPC 8.3(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.

Subsection 24.401 Designees

SLAC members, lawyers and other persons assisting SLAC and employees thereof working on a matter related to the Lawyers Assistance Program authorized by ORS 9.568 are designees of SLAC. Designees are subject to SLAC rules, including the confidentiality requirements set forth in Section 24.701. Appointment of a designee who is not a SLAC member will be at the discretion of the chairperson. Considerations for appointment of such a designee include, but are not limited to, the designee's qualifications, the designee's previous experience with the referred person or with a situation similar to that of the referred person and the location of the referred person and designee. The chairperson will confirm the appointment of a designee. The chairperson will advise the designee of his or her authority and obligations and will include a copy of the SLAC's rules and other pertinent SLAC information. The designee will be notified of SLAC meetings while the referral is pending and must give regular progress reports to SLAC. Those reports may be given in person, in writing, by telephone or through the chairperson. The appointment of a designee will remain in effect until the case is concluded or SLAC otherwise provides.

Subsection 24.402 Preliminary Assessment and Intake

Upon receipt of a referral, the chairperson will assign the matter to one or more designees to conduct a preliminary assessment and make a recommendation to the committee. The Intake designee will gather relevant information regarding the referral including, but not limited to, interviewing the referred lawyers

and the person who made the referral, and any other person who may have knowledge about the lawyer's ability to practice law or professional competence.

Prior to making initial contact with the referred lawyer, the SLAC designee will notify the Oregon Attorney Assistance Program (OAAP) of the referred lawyer's name. If the OAAP informs the SLAC designee that the referred lawyer poses a substantial and imminent risk of harm to the referred lawyer or others, the SLAC designee will wait a reasonable amount of time before contacting the referred lawyer and will coordinate and communicate with OAAP about how to make contact with the referred lawyer.

If, based on the preliminary assessment, the committee determines that the lawyer's professional competence or ability to practice law may be impaired, SLAC will have jurisdiction over the matter. Otherwise, the matter will be dismissed without further action.

Subsection 24.403 Notice to Referred Lawyer

Prior to assuming jurisdiction, SLAC will notify the referred lawyer and provide an opportunity to respond. If jurisdiction is assumed, the chairperson will assign the matter to a designee for case development, notify the referred lawyer of the matter and direct the lawyer to meet with the designee. Notices to the referred lawyer will include a reminder that failure to respond to or cooperate with SLAC is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority. If a case is not opened, the chairperson will notify the source of the referral that the matter is being dismissed without further SLAC action.

Section 24.5 State Lawyers Assistance Committee Investigations

Subsection 24.500 Meeting with Referred Lawyer

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

Subsection 24.501 Release of Information

The designee may require the referred lawyer to authorize the release of relevant medical or other background information regarding the referred lawyer to SLAC or to a professional selected to evaluate the referred lawyer. Medical or background information is relevant, if it relates to the referred lawyer's professional competence or ability to practice law. The referred lawyer may voluntarily provide additional information.

Subsection 24.502 Professional Evaluation

The designee may require the referred lawyer to obtain a medical or other diagnostic evaluation from a professional or a panel of professionals selected by SLAC. The scope of the medical or other diagnostic evaluation will be limited to issues related to the referred lawyer's professional competence or ability to practice law. The designee may inform the medical or other professional of the general nature of SLAC's concerns but will not disclose to the professional the identity of the referral source or any other confidential information. The lawyer must bear the expenses of the medical or other diagnostic evaluation, except that SLAC may advance the costs in cases of demonstrated financial hardship.

Subsection 24.503 Remedial Action Plan

(a) Based on all the information gathered by the designee, SLAC will consider and determine whether the referred lawyer's performance or conduct may be impairing the lawyer's professional competence or ability to practice law. If SLAC finds that the lawyer's performance or conduct may not impair the lawyer's professional competence or ability to practice law, the matter will be dismissed and the lawyer notified of the disposition of the matter. If SLAC finds that the lawyer's professional competence or ability to practice law is impaired, SLAC will so advise the referred lawyer in writing and require the lawyer to participate in a remedial program of monitoring, treatment, counseling or training.

(b) The referred lawyer will have the opportunity to participate in determining the nature and extent of the remedial program to be undertaken, but SLAC's decision regarding the program is final.

(c) SLAC will set forth the remedial measures to be undertaken in a written agreement to be signed by the lawyer. The agreement will contain the referred lawyer's acknowledgement that failure or refusal to

cooperate in the remedial program is grounds for discipline under Oregon RPC 8.1(c) and may be reported to the proper authority.

(d) SLAC may require the lawyer to submit periodic reports from persons responsible for implementing the remedial program or who have information about the lawyer's compliance.

(e) The referred lawyer must pay the costs of the remedial program that SLAC requires.

(f) The designee will monitor the referred lawyer's participation in the remedial program and will report regularly to SLAC.

(g) The remedial program may be revised from time to time, as SLAC deems appropriate, and may include an extended period of monitoring.

(h) When SLAC determines that the referred lawyer has successfully completed the remedial program and that the lawyer's ability to practice law and professional competence is no longer impaired, the case will be closed.

Section 24.6 State Lawyers Assistance Committee Records

The chairperson will maintain an intake log as a permanent record of SLAC. In it will be noted each referral to SLAC, the date of the referral, the name of the person making the referral, the name of the referred lawyer, action taken on the referral and the ultimate disposition of the referral. Written materials regarding a referral which does not result in a case being opened, will be kept with the intake log. The designee to whom a case is assigned will create a file and will maintain all reports, correspondence, records and other documents pertaining to the case. The designee is responsible for maintaining the confidentiality of the file and the information it contains while the file is in the designee's possession. The file on a case will be closed when the referral is dismissed, on notice to Disciplinary Counsel of non-cooperation or as provided in Subsection 24.503(H) of the Bar's Bylaws. Closed files will be maintained permanently in locked storage at the Bar's offices. SLAC will notify the referring person of the general disposition of the referral, but not of its detailed findings or the remedial measures taken.

Section 24.7 Other State Lawyers Assistance Committee Policies

Subsection 24.700 Non-cooperation

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

Subsection 24.701 Confidentiality

SLAC records and any information provided to or obtained by it or its designees including, without limitation, medical information, is confidential. Those records and information are not subject to public disclosure and are inadmissible as evidence in any disciplinary or civil proceeding. Pursuant to ORS 9.568(4), the confidentiality does not apply to information relating to a lawyer's non-cooperation with SLAC or its designees or to information obtained by the Bar from any other source not connected with the referral to SLAC. Pursuant to Subsection 24.402 of the Bar's Bylaws, the SLAC chairperson or designee may release the name of the referred lawyer to the OAAP. SLAC may also release statistical data, pursuant to Subsection 24.703 of the Bar's Bylaws.

Subsection 24.702 Duty to Report Unethical Conduct

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

Subsection 24.703 Statistical Data

SLAC will prepare a written annual report of its activities. The report will include statistical data such as: the total number of referrals received by SLAC, the number of direct referrals, the number of referrals received from the State Professional Responsibility Board, the number of referrals to the Client Assistance Office as a result of non-cooperation with SLAC, the number and types of cases in which assistance was provided through SLAC, the number of cases completed during the reporting period and other information that will assist the Bar in evaluating the workload and effectiveness of the SLAC program. The report will

not include any information that could jeopardize the confidentiality of persons participating in SLAC's programs. The report will be delivered to the Bar annually as an attachment to SLAC's annual report.

Subsection 24.704 Public Meetings

SLAC meetings are exempt from the provisions of ORS 192.610 to 192.690, pursuant to ORS 9.568(3)(b). OAAP staff may be invited to attend SLAC meetings, including case review of referred lawyers, if appropriate releases have been signed by the referred lawyers.

Article 25 Law Student Associates

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

Article 26 Sustainability

The Bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because Bar operations and the practice of law impact the environment and society generally, the Bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the Executive Director will designate a sustainability coordinator for Bar operations, will encourage continuous sustainability improvement in Bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in addressing competing economic, social and environmental priorities that impact future generations. The Bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

Article 27 Unclaimed Lawyer Trust Account Funds

Section 27.100 Purpose

This policy is established to provide direction and limits for the administration, disbursement, and claims adjudication of unclaimed lawyer trust account funds appropriated to the Bar. For the purposes of this section, "unclaimed lawyer trust account funds" are defined to mean all funds allocated to the bar pursuant to ORS 98.386(2).

Section 27.101 Administration

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

(b) All unclaimed lawyer trust account funds shall be invested in the manner described at Section 7.4. The Legal Services Committee may provide recommendations on the investment of unclaimed lawyer trust account funds to the Investment Committee.

Subsection 27.102 Disbursement

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

(1) Claimants for the payment of claims allowed under ORS 98.392(2), pursuant to Subsection 27.103; and

(2) The Bar, for expenses incurred by the Bar in the administration of the Legal Services Program, only if the Executive Director determines such disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

(b) The Budget & Finance Committee, after seeking the advice of the Legal Services Committee, may recommend that the Board make disbursements of unclaimed lawyer trust account funds appropriated to

the Bar to the Legal Services Program established under ORS 9.572 for the funding of legal services. The Board is authorized to make disbursements hereunder only if the Board determines the disbursements will not impair the Bar's ability to make payments for claims allowed pursuant to Subsection 27.103 from unclaimed lawyer trust account funds.

Subsection 27.103 Claim Adjudication

(a) When the Oregon Department of State Lands forwards a claim for unclaimed lawyer trust account funds to the Bar for review, a special committee appointed by the Board shall review the claim and approve or deny the claim. 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 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.

(c) If a claim is approved pursuant to this Subsection, the special committee shall notify the claimant and the Executive Director.

(d) If a claim is denied, the special committee shall notify the claimant and the Executive Director. 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.

(e) A claimant may appeal the denial of a claim by making a request in writing addressed to the Executive Director of the Bar, within 60 days after the date of written notice of denial of the claim. A request for appeal shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted. The Board will review each request for appeal at its next scheduled board meeting following receipt of the request and respond through the Executive Director in writing. The Board's response will include an explanation of the Board's reasoning.

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

(g) If the Board approves a claim on appeal, the Board shall notify the claimant and the Executive Director.

(h) 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.

(i) On a monthly basis, the Executive Director or the Executive Director's designee shall provide a listing of the resolution of claims to the Department of State Lands.

Article 28 Amendment of Bylaws

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