

**OREGON STATE BAR**  
**PROFESSIONAL LIABILITY FUND**  
**July 2023**  
**BYLAWS AND POLICY MANUAL**

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**Revised July 1, 2023**

**(Showing all amendments adopted by the PLF Board of Directors and approved or ratified by the Board of Governors through June 30, 2023.)**

# **JULY 2023 BYLAWS AND POLICY MANUAL**

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# Note

*Substantive revisions to the PLF Bylaws and Policy Manual are indicated with the dates of approval by the PLF Board of Directors and OSB Board of Governors. The approval dates appear at the end of each section where a revision was adopted. This is to assist in identifying the meetings at which changes to the PLF Bylaws and Policies were adopted by the two boards. Minor revisions that did not change the meaning of text are not noted in this way.*

# **BYLAWS OF THE PROFESSIONAL LIABILITY FUND**

## **Preamble**

The Professional Liability Fund ("PLF") does hereby adopt the following as its Bylaws.

## **ARTICLE 1 PARTICIPATION IN PLF**

1.1 Every active member of the Oregon State Bar ("OSB"), and every attorney temporarily admitted to perform legal services under OSB Rules for Admission 13.70, who is engaged in the private practice of law with a principal office in Oregon is required to participate in the mandatory coverage of the PLF unless otherwise exempt.

(BOD 5/14/93; BOG 8/13/93; BOD 10/22/04; BOG 11/20/04; BOD 12/10/21; BOG 02/18/22)

## **ARTICLE 2 ASSESSMENTS**

2.1 The Board of Directors will determine at least annually the assessment for the ensuing Primary Coverage Plan Period.

(BOD 10/22/04; BOG 11/20/04; BOD 08/10/12; BOG 11/10/12; BOD 4/16/21; BOG 4/16/21)

## **ARTICLE 3 DIRECTORS**

3.1 The PLF will be administered by a Board of Directors of nine persons selected by the Board of Governors of the Oregon State Bar. Seven persons will be and two persons will not be OSB members. Each Director will serve for a term of five years and until a successor is appointed. Unless otherwise specified, a Director's term begins on January 1 of the year following appointment and continues for 5 years.

3.2 If a position becomes vacant, the Board of Governors will appoint a successor to that position for the unexpired period of the term.

3.3 (A) Any Director who has missed two consecutive regularly scheduled Directors meetings or three meetings in any six-month period must provide an explanation upon request. If such Director fails to respond to the Board of

Directors' request, or if a majority of the Board of Directors deems such explanation insufficient, the Board of Directors may suspend the Director and notify the Board of Governors that it requests that the Director be removed pursuant to Article 23.1 of the Oregon State Bar bylaws. In the event that at the next scheduled meeting of the Board of Governors, the Board elects not to remove the Director, the Director will resume his or her place on the PLF Board.

(B) In addition to removal pursuant to Section 3.3 of this Article, a Director may be suspended for cause only at a meeting called for the purpose of suspending the Director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is to suspend the Director. A two thirds majority is required to suspend the Director. Representative examples of cause include breaches of fiduciary duty to the PLF, the prosecution of the Board member by the State Professional Responsibility Board, a criminal conviction, a court sanction, or any such other conduct that comprises the integrity of the Board member or that causes at least a two-thirds majority of the Board to conclude that such conduct will be detrimental to the PLF. If a Director is suspended, the Board of Directors will notify the Board of Governors that it requests that the Director be removed pursuant to Article 23.1 of the Oregon State Bar bylaws. In the event that at the next scheduled meeting of the Board of Governors, the Board elects not to remove the Director, the Director will resume his or her place on the PLF Board.

(C) Any Board member who accepts employment or whose firm accepts employment that is prohibited by Article 11 of the PLF Bylaws will be removed from the Board by a majority vote of the Board.

3.4 By October 31 of each year the Board of Directors will forward to the Board of Governors a list of recommended Director nominees equal to or greater than the number of available positions on the Board in the coming year. The Board will seek nominees according to qualifications determined by the PLF Board. These may include,

but are not limited to, consideration of gender, minority status, firm size, ability, experience, type of law practice, and region.

3.5 At the request of two-thirds of the members of the Board of Directors, the Board of Governors may appoint the immediate past PLF Chief Executive Officer to the Board of Directors for a period not to exceed one year following their resignation or retirement from the PLF CEO position. The former PLF CEO will be a non-voting, tenth member of the Board of Directors.

(BOD 7/16/93; BOG 8/13/93; BOD 6/30/97; BOG 7/26/97; BOD 1/28/00; BOG 6/2-3/00; BOD 8/25/00; BOG 9/22/00; BOD 12/12/03; BOG 1/31/04; BOD 10/22/04; BOG 11/20/04; BOD 8/4/05; BOG 8/19/05; BOD 12/8/06; BOG 2/22/07; BOD 12/16/19; BOG 04/17/20; BOD 06/05/20; BOD 4/16/21; BOG 4/16/21; BOD 04/14/23; BOG 04/14/23)

#### ARTICLE 4 OFFICERS

4.1 The officers of the PLF Board of Directors will consist of a Chairperson, Vice Chairperson, and Secretary.

4.2 The PLF Board officers are elected and may be removed by a majority of the PLF Board of Directors.

4.3 Each PLF Board officer serves one calendar year.

4.4 The Chairperson will preside at all meetings of the Board of Directors and will have the authority to exercise the power of the Board between meetings of the Board. The Chairperson will perform all other duties as are incident to the office or are properly required by the Board of Directors.

4.5 The Vice Chairperson will perform the duties of the Chairperson in the absence or disability of the Chairperson and such other duties as may be assigned by the Chairperson or the Board. The Vice Chairperson will also be the Chairperson-Designate and will be the sole nominee for Chairperson at the next election of officers unless at the time of the election, at least five members of the Board vote to permit additional nominations.

4.6 The Secretary will be responsible for maintaining appropriate and accurate minutes of

the meetings of the Directors and will perform such other duties as may be assigned by the Chairperson or the Board.

(BOD 10/22/04; BOG 11/20/04; BOD 4/16/21; BOG 4/16/21)

#### ARTICLE 5 MEETINGS AND RECORDS

5.1 The PLF Board of Directors will meet at least quarterly and will meet more often upon call of the Chairperson, or in the Chairperson's absence, any three members of the Board of Directors. Meeting locations and all notices of the time and place of meetings will be consistent with Oregon law. PLF Board and committee meetings may be held by telephone conference call or other appropriate electronic means.

5.2 A majority of the PLF Board of Directors will constitute a quorum and, except for amendment of bylaws, a majority of those attending will be required to take any action on behalf of or by the PLF Board.

5.3 The records of the PLF pertaining to any particular claim or potential claim, and records and actions relative to the defense of any such claim will be exempt from disclosure under ORS 192.502, and any related meetings of the PLF Board will be executive sessions held under ORS 192.660.

(BOD 10/22/04; BOG 11/20/04)

#### ARTICLE 6 COMMITTEES

6.1 The Chairperson may appoint an Executive Committee consisting of at least three members of the Board of Directors. Such Executive Committee will have authority to act for the full Board of Directors. Actions of the Executive Committee must be ratified by the full Board at its next meeting or by a memorandum signed by all of the members of the Board. The Executive Committee will keep accurate minutes of all matters considered and actions taken by the Executive Committee and the minutes reflecting all such actions will be reported to the next meeting of the PLF Board of Directors.

6.2 The Chairperson of the Board of Directors may, from time to time, appoint other committees as needed for the conduct of PLF business.

6.3 The Chairperson of the PLF Board will appoint the Vice-Chairperson of the Board, an additional member of the Board who is an OSB member, and one public member of the Board to serve as liaisons with the OSB Board of Governors. The additional member who is an OSB member should serve for at least two years as liaison and will be replaced by a new member who is an OSB member who should serve for at least two years.

(A) At least one of the liaisons will be scheduled to attend each meeting of the Board of Governors; and

(B) The liaisons will be scheduled to report at each meeting of the PLF Board regarding significant activities of the Board of Governors and any matters regarding the Board of Governors requiring action by or the attention of the PLF Board unless a liaison from the Board of Governors or the CEO of the Bar so reports.

(BOD 6/30/00; BOG 6/30/00; BOD 10/22/04; BOG 11/20/04 BOD 4/16/21; BOG 4/16/21; BOD 04/14/23; BOG 04/14/23)

## ARTICLE 7 AMENDMENTS

7.1 These bylaws may be amended at a meeting of the PLF Board of Directors after reasonable written notice of the proposed amendment has been given to each Director in advance of the meeting. The affirmative vote of two-thirds of all Directors will be required for amendment.

(BOD 10/22/04; BOG 11/20/04 BOD 4/16/21; BOG 4/16/21)

## ARTICLE 8 COMPENSATION

8.1 PLF Board of Directors members will not be entitled to any compensation for their services in carrying out their duties, except for such compensation as may be provided by policy approved by the PLF Board of Directors and ratified by the OSB Board of Governors. Each

Director will be reasonably reimbursed for actual expenses for travel, lodging, and related expenses when engaged in the business of the Board.

(BOD 4/2/99; BOG 6/5/99; BOD 8/6/99; BOD 10/22/04; BOG 11/20/04)

## ARTICLE 9 OPERATIONS

9.1 The PLF Board of Directors will have the authority to employ and discharge, with the participation of the OSB Board of Governors, a Chief Executive Officer of the PLF. The Board of Governors will have direct input into the evaluations of the Chief Executive Officer of the PLF. The Chief Executive Officer of the PLF will have the authority to supervise and administer the PLF and to employ and discharge PLF staff as necessary.

9.2 The PLF may employ, retain and fix the compensation of, or contract for the services of, such managers, legal counsel, consultants, accountants, computer analysts, actuaries, other experts, clerical personnel, defense panel members, and such other persons as are reasonably necessary for the conducts of its affairs. The PLF may contract with any entity or individual, including a bar association, a public body, department of the state, or private persons for the performance of services or the use of facilities. The Chief Executive Officer of the PLF or designee may enter into contracts and lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with, and dispose of real and personal property in connection with handling and settlement of claims. Real property will be acquired and conveyed in the name of the Oregon State Bar.

9.3 The PLF will be audited annually or at such intervals as may be determined by the Board of Directors.

(BOD 6/30/00; BOG 6/30/00; BOD 10/22/04; BOG 11/20/04)

## ARTICLE 10 LIABILITY OF DIRECTORS

10.1 A Director will perform the duties of a Director, including duties as a member of any

committee of the Board upon which the Director may serve in good faith, in a manner such Director believes to be in the best interests of the PLF and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances.

10.2 In performing the duties of a Director, a Director will be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by:

(A) One or more officers or employees of the PLF whom the Director believes to be reliable and competent in the matters presented,

(B) Counsel, independent accountants, actuaries, computer analysts, or other persons as to matters which the Director believes to be within such person's professional or expert competence, or

(C) A committee of the Board upon which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence so long as, in any such case, the Director acts in good faith, after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

10.3 A person who performs the duties of a Director in accordance with section 10.1 will have no liability based upon any alleged failure to discharge such person's obligations as a Director.

10.4 Indemnification and defense of directors, officers, employees or agents against certain expenses, judgments, fines or settlements; conditions:

(A) The PLF 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 law. The term "officers, board members, directors, employees and agents" of the PLF includes subordinate groups established by the PLF to perform its authorized

functions. This provision does not apply to outside counsel retained by the PLF. The right to defense and indemnity is set forth below.

(B) The PLF has a duty to defend any past or present: officer; board member; director; employee; or agent (hereinafter "Defendant") against any claim or suit arising from any act, error or omission that occurred in the performance of such Defendant's duties on behalf of the PLF, or arising from such Defendant's employment with the PLF.

(C) The PLF has a duty to indemnify any Defendant for any and all damages awarded against such Defendant arising from any act, error or omission that occurred in the course and scope of such Defendant's performance of duties for the PLF, or employment with the PLF, whether or not such damages are awarded as a result of any claim for "bad faith" and/or punitive damages, unless the act, error or omission on which any such damages are based was the result of dishonest, fraudulent, criminal, intentionally malicious or knowingly wrongful conduct on the part of the Defendant. In the event the PLF denies any duty to indemnify, the Defendant shall be entitled to seek a declaratory judgment in a Court of Law whereby the Court will make a separate determination, independent of any findings in the underlying litigation, as to whether any acts, errors or omissions by the Defendant, resulting in the damage award, were dishonest, fraudulent, criminal, intentionally malicious or knowingly wrongful.

10.5 Defense and Indemnity relating to disciplinary matters.

(A) The PLF will defend any of its current and former officers and employees (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 PLF 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 PLF and not within the scope of subsection (B) of this bylaw, the Accused may file a written request for a defense with the Chief Executive Officer, or if the request is by the Chief Executive Officer, the Chair of the Board of Directors. The CEO or Chair, as the case may be, will thereupon present his or her recommendations to the Board of Directors 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 Directors will approve such terms and conditions of payment for the defense as it deems appropriate under the circumstances, including the Board's right to selection 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 PLF, 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 PLF 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 PLF 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 PLF for all funds it has paid on account of the defense. The Board may condition the provision of a defense under this bylaw on the Accused's agreement to make such reimbursement upon the Board's good faith determination that the Accused has engaged in such conduct.

(F) If the Accused in a disciplinary proceeding is found to have violated the rules of professional conduct, a disciplinary statute or disciplinary regulation, the Accused must reimburse the PLF 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 agency having disciplinary jurisdiction over the Accused. If the discipline is a reprimand, the Board may waive the reimbursement requirement. When considering whether to waive the reimbursement requirement the Board of Directors will consider as a mitigating factor whether the action upon which the reprimand is based was a policy or procedure of the PLF.

(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 PLF 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 PLF 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.

(BOD 6/17/05; BOG 6/24/05; BOD 10/11/13; BOG 11/23/13)

## ARTICLE 11 CONFLICT OF INTEREST

11.1 In order to properly and effectively manage and administer the PLF and to retain the confidence of members of the Bar and the public, the following conflict of interest rules apply:

(A) No member of the PLF Board of Directors nor member of a director's firm will defend a Covered Party for the PLF in a malpractice claim which is within the coverage provisions of PLF Coverage.

(B) No member of the Board of Directors of the PLF and no member of a director's firm will (1) accept or continue employment which includes in whole or in part a claim (including a third party claim) against a Covered Party within the coverage provisions of the PLF, (2) act as personal counsel

for any Covered Party concerning a claim which is or may be within the coverage provisions of the PLF, or (3) represent any party in litigation against or involving the PLF.

(C) In the event that a Board member's firm begins representation prohibited by sections (A) or (B) of this section the Board member must notify the Chair of the Board, and within 30 days, the firm must fully withdraw from such representation. The Board member may not receive any monetary gain from the representation. In the event that the firm fails to withdraw in the time provided, the Board member is required to resign from the board.

(BOD 10/22/04; BOG 11/20/04; BOD 12/8/06; BOG 2/22/07; BOD 04/14/23; BOG 04/14/23)

## ARTICLE 12 MISCELLANEOUS

The rules contained in the current edition of Robert's Rules of Order Newly Revised will govern the PLF in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the PLF may adopt.

(BOD 10/22/04; BOG 11/20/04)

# **PROFESSIONAL LIABILITY FUND BOARD OF DIRECTORS POLICIES**

## **CHAPTER 1 GENERAL POLICIES**

### **1.100 ESTABLISHMENT AND AMENDMENT OF POLICIES**

The Board of Directors of the Professional Liability Fund and the Bar Board of Governors adopt the following policies to govern the operations of the Fund. These policies may be amended from time to time by the Board of Directors in the same manner as other business is conducted according to the Bylaws of the Oregon State Bar Professional Liability Fund, and may be supplemented by other policies established by resolution of the Board. The PLF may also make exceptions to these policies on a case-by-case basis as warranted, and no rights are vested in any person by reason of the existence of these policies.

### **1.150 APPLICABLE OREGON STATUTES; APPLICABLE BOARD OF GOVERNORS BYLAWS, POLICIES, AND RESOLUTIONS**

The Professional Liability Fund will operate in compliance with ORS 9.080, 9.191, 9.200, and other applicable statutes, and with all bylaws, policies, and resolutions of the OSB Board of Governors pertaining to the Fund.

### **1.250 MISSION STATEMENT AND GOALS OF THE PROFESSIONAL LIABILITY FUND**

**STATEMENT OF MISSION:** The mission of the Professional Liability Fund is to provide primary professional liability coverage to OSB members in the private practice of law. In doing so, the public is served. We also provide additional coverage and services that support our primary coverage program.

**GOAL NO. 1** – To provide the mandatory professional liability coverage consistent with a sound financial condition, superior claims handling, efficient administration, and effective personal and practice management assistance.

### **GOAL NO. 2 - Full Funding of Claims and Net**

**Position:** To maintain full funding of estimated claim liabilities net of reinsurance. In addition to full funding, a positive net position may be maintained to stabilize assessments.

### **GOAL NO. 3 - Relationship to Board of Governors**

**and Bar Staff:** To maintain a positive relationship with the Bar Governors and Bar staff to create support and confidence for the Fund, and to realize cost savings and economies from joint action while maintaining a necessary degree of autonomy.

### **GOAL NO. 4 - Support of OSB members :**

To maintain an active communication with OSB members in order to understand and serve their needs.

### **ADMINISTRATION GOAL NO. A-1 -**

**Administration and Staffing Costs:** To keep administrative costs as low as possible, consistent with superior management and employing the best staff available.

### **ADMINISTRATION GOAL NO. A-2 - Staff Training**

**and Advancement:** To improve the knowledge, ability, and morale of the staff by providing opportunities for training and advancement on a cost-effective basis.

### **CLAIMS GOAL NO. C-1 - Claims Handling:**

Claims will be handled in a professional, ethical, and efficient manner which is consistent with the Fund's Primary Coverage Plan, applicable statutes and case law, the Oregon Code of Professional Responsibility, and the Statement of Professionalism. The Professional Liability Fund's claims evaluation, defense, settlement, and repair practices will comport with these standards. The Professional Liability Fund will instruct the members of its Defense Panel to follow the standards set forth in Claims Goal No. C-1.

### **PERSONAL AND PRACTICE MANAGEMENT**

### **ASSISTANCE GOAL NO. PPMA-1 - Decreasing**

**Legal Malpractice:** To decrease the severity and frequency of legal malpractice, with a corresponding reduction in indemnity payments and defense costs.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-2 - Coordination**

**with Bar Education Programs:** To increase the effectiveness of the Fund's personal and practice management assistance programs through coordination and participation with the Bar's education programs.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-3 - Oregon**

**Attorney Assistance Program:** To promote and increase the effectiveness of the Oregon Attorney Assistance Program.

**PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE GOAL NO. PPMA-4 - Coordination**

**with Bar Assistance Programs:** To increase the effectiveness of the Fund's loss prevention activities through coordination with the Bar's assistance programs.

**EXCESS PROGRAM GOAL NO. E-1 - Excess Liability**

**Program:** To manage an excess liability program within the Professional Liability Fund which operates at no expense to the mandatory primary fund and provides optional layers of excess coverage on a stable, long-term, underwritten basis.

**1.300 BUSINESS PRACTICES**

The Professional Liability Fund will utilize the best business practices developed by the private insurance industry and private law firms, and to tailor those practices to benefit the operation of the Professional Liability Fund.

(BOD 6/26/92; BOG 9/22/92; BOD 7/16/93; BOG 8/13/93; BOD 8/11/95; BOG 11/12/95; BOD 6/23/00; BOG 6/30/00; BOD 7/31/03; BOG 9/18/03; BOD 5/14/04; BOG 6/11/04; BOD 8/27/04; BOG 10/13/04; BOD 10/22/04; BOG 11/20/04; BOD 10/16/15; BOG 11/20/15; BOD 4/16/21; BOG 4/16/21; BOD 04/14/23; BOG 04/14/23)

**CHAPTER 2  
BOARD OF DIRECTORS AND  
ADMINISTRATION**

**2.100 RESPONSIBILITY FOR MANAGEMENT  
OF THE PROFESSIONAL LIABILITY FUND**

The Professional Liability Fund, as a function of the Oregon State Bar as authorized by statute, will be under the control of the Board of Governors as described in ORS 9.080 and applicable Professional Liability Fund and Board of Governors Policies. The administration of the Professional Liability Fund will be under the direction of the Board of Directors of the PLF acting through a Chief Executive Officer hired by the Board of Directors. Employees of the Professional Liability Fund will be under the direct supervision of the Chief Executive Officer. The Chief Executive Officer of the Professional Liability Fund will be responsible for day to day supervision and administration of the Fund and for employment and discharge of such staff as the Chief Executive Officer deems necessary to properly operate the Fund.

**2.110 PERSONNEL MANUAL**

The Chief Executive Officer will adopt and revise from time to time personnel policies which will apply to all personnel of the Fund.

**2.150 EVALUATION OF PLF CEO**

The evaluation process for the PLF CEO is as follows:

- (A) An evaluation will be conducted at least annually. The Board Chair may appoint an evaluation committee to manage this process;
- (B) The Board Chair or evaluation committee will solicit input from all members of the BOD, the PLF staff, and all members of the BOG; and
- (C) The results of the evaluation will be provided to the members of the BOD and to the

BOG liaisons to the PLF. A confidential written summary of the results will be placed in the CEO's personnel file.

## **2.200 REPORTING TO BOARD OF GOVERNORS AND MEMBERSHIP**

(A) The Professional Liability Fund will report on its financial position at least quarterly to the Board of Governors. Such financial reporting will include budget reports, balance sheets, and statements of operations. Where applicable, such financial reports will include comparative statements for the corresponding previous period of time.

(B) The Professional Liability Fund will furnish to the Board of Governors all audited or unaudited statements as may be prepared by its auditors and any comments furnished to the Professional Liability Fund by its auditors.

(C) Investment reports will be submitted to such members of the Board of Governors as are designated by the Board of Governors immediately after submission to the Board of Directors.

(D) Status reports of activities of the Fund will be made to the Board of Governors by a PLF Board liaison to the Board of Governors or the Chief Executive Officer upon request.

## **2.250 TRAVEL, EXPENSE, AND REIMBURSEMENT POLICY**

(A) Board members and the Chief Executive Officer are encouraged to promote the aims of the Professional Liability Fund, whether by meeting with interested individuals (whether or not they are OSB members) or by attending national meetings on the subject of professional errors and omissions coverage so long as attendance at the meetings does not involve undue time or expense or hinder the Chief Executive Officer's ability to manage the Fund. If Board members or the Chief Executive Officer attend a meeting at the request of another

bar association or other group, reimbursement from the meeting sponsor should be obtained if possible.

(B) Board members (as designated by the Chairperson of the Board of the Professional Liability Fund) may attend meetings of the National Association of Bar Related Insurance Companies (NABRICO) or relevant American Bar Association committees on legal malpractice. Generally, Board members attend the NABRICO meeting in the second and fourth years of their terms.

(C) Board and committee members (as designated by the Chairperson) may be requested to accompany the Chief Executive Officer to meet with representatives of the national insurance market to assist in negotiations with any reinsurance carrier for the Professional Liability Fund.

(D) Board members are required to attend Board meetings in various locations throughout the state of Oregon and to attend Oregon State Bar Board of Governors meetings when acting as liaisons between the two Boards (see PLF Bylaws 6.3). The Chief Executive Officer will attend all such meetings.

(E) The PLF will reimburse Board members for travel, meals, lodging, daycare and other child-related expenses, and business connected miscellaneous expenses when they are on approved travel or business. Spousal/Domestic Partner expenses are included for Board members. Reimbursement for the spouse/domestic partner of the Chief Executive Officer is not included. Supporting documentation is required for air, bus, train and rental car transportation, lodging, and certain miscellaneous expenditures. Personal expense items will not be reimbursed. Reimbursable expenses will include:

(1) Lodging: Standard double room unless the location of a meeting or conference requires other arrangements. If meetings are to be held in lodging assigned to Directors, an

appropriate suite with meeting facilities is authorized.

(2) Meals: At actual cost. Any request for reimbursement must include the parties present and the subject matter, if applicable. PLF funds will not be used to pay the cost of alcoholic beverages.

(3) Transportation:

(a) Use of personal automobile - reimbursed at allowable IRS rate;

(b) Actual cost of air coach fare; if unavailable or if required by meeting schedule or other special circumstances approved by the Chairperson, business class or first class will be honored with appropriate explanation.

(c) Actual cost of car rental, taxi, bus or other public transportation;

(4) Miscellaneous Charges:

(a) Telephone: PLF credit card will be used for all PLF-related telephone calls or they may be charged along with a master lodging bill. Reasonable charges for telephone calls by Directors or Chief Executive Officer to his or her home will be reimbursed.

(b) Postage, office expense, registration fees, other business expenses: Reimbursed at cost with explanation of purpose of expense.

(c) Services and gratuities: Business-related tips, gratuities and valet service will be reimbursed.

(d) Other Miscellaneous Charges: Other necessary and reasonable expenses incurred in connection with attendance at meetings or conferences will be reimbursed if approved by the Chairperson or Board.

(5) All requests for reimbursement (other than mileage) must have either a receipt or a Board Expense Replacement Receipt.

(F) (1) Directors and the Chief Executive Officer will be entitled to retain as compensation any mileage credit awarded by the airline(s) on which they travel, and any “vouchers” or “coupons” for free flights received in exchange for being “bumped” from a flight. Directors and the Chief Executive Officer may not delay their business travel, fly other than by the most direct route possible, or purchase tickets that are of greater cost to the PLF than are otherwise readily available in order to insure the receipt of mileage credit or other airline inducements. Other travel arrangements that do not create any additional cost to the PLF are permitted.

(2) Directors and the Chief Executive Officer will be entitled to retain as compensation any product or service usage incentives received as a result of using a product or service in connection with reimbursable expenses covered by this policy. Directors and the Chief Executive Officer may not make their travel arrangements or purchase products or services for the purpose of obtaining these incentives if it would result in any greater expense for the PLF.

(3) Directors and the Chief Executive Officer may also retain as part of their compensation any airline mileage credits or other credits awarded in connection with the use of their personal airline or other “affinity” credit card when the card is used for business travel, regardless of whether the travel expense is reimbursed by the PLF.

(4) The value of compensation to Directors under this subsection will not exceed \$500.

## **2.300 COMMITTEES**

(A) The following are the PLF Board of Directors committees:

(1) Claims: Carries out the duties specified in Policy 4.200(C). Conducts quarterly review of all pending claims with defense costs or indemnity reserves of \$50,000 or more. Advises the Chief Executive Officer on a periodic basis concerning (a) selection and removal of Defense Panel members, (b) review, revision, and development of Defense Panel policies and procedures as needed, and (c) the need for and content and scheduling of Defense Panel workshops. Conducts periodic review of claims handling.

(2) Coverage: Formulates recommendations for changes in the Primary Coverage Plan, Excess Plan and Pro Bono Plan and related PLF Policies for consideration by the Board of Directors.

(3) Excess Program: Advises CEO regarding underwriting decisions for a PLF Excess Program as outlined in Chapter 7. Recommends changes to Excess Program policies. Because some meetings of the Excess Committee may be for the purpose of considering and discussing the information contained in the applications submitted by firms as well as the confidential claims information maintained by the PLF, the meetings of the Excess Committee may be held in executive session under the Public Meetings Law, ORS Ch. 192, pursuant to the provisions of ORS Ch. 192 and other applicable sections.

(4) Executive: Acts on behalf of the Board of Directors pursuant to Article 6.1 of the PLF Bylaws.

(5) Finance and Investments: Reviews the PLF's annual budget and recommends proposed budget to the Board of Directors. Reviews actuarial reports and estimates of the PLF's estimated claim liabilities and makes recommendations to the Board of Directors regarding financial presentation of claim liabilities. Monitors Fund investments and presents recommendations for changes in investment policy to the Board of Directors. Makes recommendations to the Board of Directors

regarding the selection of the independent financial auditor; reviews each financial audit report and recommends any actions based on those reports.

(6) Long Range Planning/Communications: Develops issues for discussion by the Board of Directors at periodic annual long range planning meeting and presents the issues at the meeting.

(7) Risk Management: Makes recommendations regarding loss prevention programming and practices.

(8) Personal and Practice Management Assistance: Consists of the entire PLF Board of Directors and is created by ORS Ch. 9.568. Provides personal and practice management assistance through the Oregon Attorney Assistance Program (OAAP) and the Practice Management Advisor Program (PMAP) as described in PLF Policy 6.150.

(9) Special Issues Committee: At the discretion of the president of the Bar and the chair of the PLF Board of Directors, the PLF Board of Directors and the Board of Governors may appoint a committee comprising equal numbers from each board to (a) discuss any potential controversial claims defense strategy sought to be used in a PLF claim or defense; (b) when a lawsuit is filed or a written claim or demand in excess of \$300,000 is made against the PLF as an entity and, in the good faith judgment of the CEO of the PLF, such claim or lawsuit has a viable potential to result in judgment at or above that amount; or (c) when the Bar president and the chair of the PLF Board believe that an issue affecting both organizations warrants study analysis and a recommended course of action that can best be accomplished with the appointment of a Special Issues Committee. The Special Issues Committee will report the outcome of its work, including any recommendations, to the full Board of Governors and PLF Board of Directors. Where appropriate and consistent with law, the Special Issues Committee may hold all or parts of its meetings in Executive Session.

(B) The Chairperson may designate additional committees as appropriate, and will appoint the membership of each committee. Non-directors are eligible to serve on committees.

### **2.350 EXECUTIVE SESSION**

Executive sessions may be called when permitted by Oregon law. All discussions regarding the handling of specific claims or other appropriate issues will be conducted in executive sessions for reasons of confidentiality pursuant to ORS 192.660 (2) (f) and (h).

### **2.400 INSURANCE COVERAGE**

(A) The Professional Liability Fund will obtain blanket liability, fire and other similar types of insurance coverages. The PLF may obtain directors and officers liability coverage and errors and omissions coverage when, in the opinion of the board, it is prudent and economic to do so. Such coverage may be purchased in conjunction with the Oregon State Bar.

(B) In addition to normal and ordinary insurance coverages, the PLF may obtain certain forms of insurance coverage limiting the liability of the PLF under any one claim or any group of claims through reinsurance.

### **2.500 GIFTS**

(A) The Chief Executive Officer or individual PLF staff member may not accept any gifts from a Defense Panel member.

(B) The Chief Executive Officer and PLF staff may not accept any gifts in violation of Oregon law. In the event there is any question, the Chief Executive Officer will determine if the gift is in violation of this policy and approve the receipt of any gifts not in violation of this policy.

(BOD 2/21/92; BOG 3/13/92; BOD 12/4/92; BOG 1/22/93; BOD 5/19/95; BOG 6/9/95; BOD 6/30/97; BOG 7/26/97; BOD 4/22/99; BOG 6/5/99; BOD 8/6/99; BOD 11/19/99; BOG 1/28/00; BOD 2/7/03; BOD 6/20/03; BOG 9/18/03; BOD 5/14/04; BOG 6/11/04; BOD 10/22/04; BOG 11/20/04; BOD 6/17/05; BOG 6/24/05; BOD 6/87/12; BOD 8/10/12; BOG 11/10/12; BOD 12/6/13; BOD 10/19/18; BOG 11/17/18; BOG 12/7/18; BOG 2/22/19; BOD 4/16/21; BOG 4/16/21; BOD 04/14/23; BOG 04/14/23)

## **CHAPTER 3 PRIMARY PLAN COVERAGE AND ASSESSMENT**

### **3.100 CLAIMS MADE PLAN AND RETROACTIVE DATE**

(A) Primary coverage will be provided to active OSB members engaged in the private practice of law whose principal offices are in Oregon in accordance with the applicable Primary Coverage Plan adopted by the Board of Directors in each year.

(B) Attorneys who have maintained continuous PLF coverage since July 1, 1978 will have no retroactive Date for their current primary coverage. Attorneys who have maintained continuous PLF primary coverage since a date after July 1, 1978 will have a Retroactive Date which is the date on which the attorney's PLF primary coverage first commenced.

(C) If a Covered Party terminates his or her PLF primary coverage, the Covered Party will receive a new Retroactive Date upon returning to PLF primary coverage which is the date on which the Covered Party's new period of PLF primary coverage commenced.

### **3.130 SPECIAL COVERAGE SITUATIONS**

Assistance for Impaired or Disabled Covered Parties: An attorney who provides assistance to impaired or disabled Covered Parties at the request of the PLF or according to procedures recommended by the PLF will not be considered to be functioning as a "BUSINESS TRUSTEE" under Section III.C of the PLF Primary Coverage Plan.

(BOD 4/10/98; BOG 5/30/98)

### **3.150 EXEMPTIONS FROM PLF PARTICIPATION**

(A) Principal Office Not In Oregon. Active OSB members whose principal office is not in Oregon are not eligible to obtain primary coverage from



the Professional Liability Fund, and are required to sign a request for exemption from PLF participation at least annually. OSB members in this category may be required to inform the PLF whether or not they engage in the private practice of law in Oregon, and if so, may be required to provide some or all of the following additional information to the PLF at least annually upon request: whether or not they maintain professional liability insurance which covers them for their private practice of law in Oregon, the name and address of the insurance carrier, the name of the insured, the coverage limits and deductible, the retroactive date of the insurance policy, the policy period, a copy of the declarations sheet, and a copy of the policy and any endorsements. OSB members are required to respond to information requests within 30 days.

(B) Principal Office In Oregon. Active OSB members not in private practice in the state of Oregon, either on a full-time or part-time basis with or without remuneration, are not subject to the annual assessment and must file a request for exemption based upon one of the following categories:

(1) employed exclusively as a government attorney or licensed paralegal or as a judge;

(2) employed exclusively by a corporation or business entity (including non-profit organizations but not including law entities);

(3) an employee or independent contractor with a legal aid or public defender office which provides professional liability coverage for the OSB member through an Acceptable Alternative Insurer as defined at Subsection (D);

(4) employed in a non-law related field;

(5) retired;

(6) employed as a law clerk/supervised attorney/supervised practitioner not engaged in the private practice of law as defined in Subsection (G)(7) below;

(7) unemployed;

(8) any other category which does not constitute the private practice of law in Oregon, or any activity which would be excluded or otherwise not covered by the PLF Primary Coverage Plan.

(C) OSB members temporarily admitted to perform legal services in Oregon pursuant to Oregon State Bar Rule for Admission 13.70 may claim an exemption from PLF coverage for any of the reasons set forth above in 3.150(B), or if they do not qualify for any such exemption, but maintaining coverage with an Acceptable Alternative Insurer. This exemption, regarding coverage through an Acceptable Alternative Insurer, however, is no longer available after the attorney is admitted as an active member of the Oregon State Bar. Upon being admitted as an active member, the attorney must then purchase the mandatory coverage provided by the PLF.

(D) (1) An “Acceptable Alternative Insurer” is defined as an insurer which meets both of the following qualifications:

(a) The insurer is (1) an admitted insurer in Oregon, (2) a surplus lines insurer which has complied with all applicable Oregon statutes and regulations of the Insurance Division of the State of Oregon, or (3) a risk retention group or purchasing group formed under federal statute and registered with the Insurance Division of the State of Oregon.

(b) With respect to the coverage required pursuant to Policy 3.150A(3), the insurer provides claims made professional malpractice insurance covering the activities of the exempt attorney with coverage limits of at least \$300,000 per claim/\$300,000 aggregate,

regardless of the amount of any applicable deductible.

(c) With respect to the alternative coverage required for exemption under Policy 3.150(C) regarding temporary admission to perform legal services in Oregon, any such coverage must be substantially equivalent to the mandatory coverage provided by the PLF, both in terms of applicable limits and scope of coverage, with the exception of any reasonable applicable deductible.

(2) Active OSB members claiming exemption under any exemption category which requires the OSB member to maintain professional liability coverage for the attorney through an Acceptable Alternative Insurer must maintain the coverage at all times during the year while the exemption is in effect, and may be required to provide proof of such coverage upon request. Any OSB member who fails to maintain such coverage will be referred to the Oregon State Bar for disciplinary action.

(E) Requests for exemption will be handled in accordance with procedures adopted by the Chief Executive Officer. OSB members requesting exemption will be required to sign the following statement:

I hereby certify that I am exempt from the [year] assessment to the Professional Liability Fund for the following reason:

[List exemption categories]

I agree to notify the Professional Liability Fund immediately if I cease to be exempt at any time during [year].

(F) Exemptions from assessment must be applied for on an annual basis or when the member's status changes from private practice in accordance with the administrative procedures of the PLF. An exempt OSB member must notify the PLF of any change to private practice status and pay the prorated assessment due at that time.

(G) Special policy consideration has been given by the PLF Board of Directors to exempt OSB members in the following situations:

(1) [Reserved.] Oregon State Bar.

(2) [Reserved.]

(3) Amicus Curiae: An attorney who has claimed exemption from the PLF may appear and file an amicus curiae brief on behalf of another without remuneration.

(4) Pro Bono Service: OSB members who represent or perform services for clients on a pro bono basis are required to obtain PLF coverage. However, exempt OSB members may provide pro bono services through OSB-certified or other volunteer legal services programs that provide professional liability coverage for the volunteer through an Acceptable Alternative Insurer or the PLF's Pro Bono Plan as defined at Subsection (D).

(5) Family Practice: An exempt OSB member may represent that person's spouse, parent, adoptive parent, parent-in-law, step-parent, grandparent, child, adopted child, step-child, grandchild, son-in-law, daughter-in-law, sibling, adopted sibling, half sibling, brother-in-law, sister-in-law, or any member of the OSB member's household. An exempt OSB member also may represent a business entity owned or controlled by one or more of these listed family members if the representation is excluded under the terms of the PLF Primary Coverage Plan.

(6) Student Legal Advisers and Attorneys With Law School Legal Clinics: OSB members who serve as student legal advisers at any college or graduate school, and OSB members who supervise law students serving clients through any law school legal clinic, are permitted and required to claim exemption from PLF participation under Subsection (B)(1) or (B)(2) on account of such activities so long as (a) they are employees of the college, graduate school, law school, or legal clinic, (b) the services they provide

to students or clients are within the scope of their employment, and (c) any claim for alleged malpractice against them would be insured or indemnified by their employer.

(7) Law Clerks/ Supervised Attorneys/ Supervised Practitioners (Including Retired and Active Pro Bono OSB members): An OSB member may perform legal research and writing without obtaining PLF coverage provided:

(a) the OSB member's work is reviewed and supervised by an OSB member with PLF coverage (or an OSB member who is permitted to engage in private practice while claiming exemption from the PLF);

(b) the OSB member makes no strategy or case decisions;

(c) the OSB member does not hold himself or herself out to any client as an attorney or represent any party;

(d) the OSB member signs no pleadings or briefs;

(e) the OSB member attends no depositions as the attorney of record;

(f) the OSB member makes no court appearances as the attorney of record;

(g) the OSB member does not use the title "attorney," "attorney at law," "lawyer," "licensed paralegal," or any other indication that the individual is able to act as an independent legal professional on any correspondence or documents; and

(h) the OSB member is not listed in the firm name or on the firm letterhead as an attorney, licensed paralegal, or firm member (unless specified as law clerk or retired). If the OSB member is retired, the OSB member's name may be listed on the firm letterhead as "retired" or "of counsel (retired)," or similar designation that

makes clear the OSB member is not engaged in the private practice of law.

(8) Arbitration and Mediation: An OSB member may serve as an arbitrator without obtaining PLF coverage provided that the OSB member's services are limited to serving as an arbitrator and do not include representing any of the parties in the arbitration. This exemption is available only if the OSB member's practice is limited to serving as an arbitrator (or other exempt activity). An OSB member claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/arbitrator," "lawyer," "legal services," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "\*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

An OSB member may perform mediation services without obtaining PLF coverage provided that the OSB member's practice is exclusively limited to mediation (or other exempt activity) and the OSB member complies with RPC 2.4 relating to mediation. An OSB member claiming exemption under this provision may not use the title "attorney," "attorney at law," "attorney/mediator," "lawyer," "legal services," "licensed paralegal," or similar phrase on any stationary, cards, billing forms, or professional listings unless the title is followed by an asterisk or other mark and the phrase "\*Not engaged in the private practice of law" appears on the same page. However, attorneys claiming exemption under this category may use the title "J.D." after their name.

(9) Non-Covered Activities: An OSB member who is otherwise exempt from participation in the PLF may engage in law-related activities and represent a client without obtaining PLF coverage if all of the OSB member's activities would be excluded or otherwise not covered by the PLF Primary Coverage Plan.

(10) Government Activity Exemption:

An OSB member who is otherwise exempt from participation in the PLF may act on behalf of a government entity as a public official, employee or in any other capacity that comes within the defense and indemnity requirements of ORS 30.285 and 30.287, or similar state or federal statute rules or case law.

(11) Active Pro Bono and Retired

Status: OSB members who maintain Active Pro Bono or Retired status with the Oregon State Bar are limited by the OSB as to their permitted activities. OSB Members in these membership statuses are exempt from PLF participation by definition and will not receive an annual billing statement and request for exemption form.

(12) Employed OSB members:

Employed OSB members claiming exemption under subsections (B)(1) through (3) above may represent a third party in an attorney-client relationship so long as such representation is within the OSB member's scope of employment. Examples include employment by an insurance company, labor organization, member association, or governmental entity which involves representation of the rights of insureds, union or association members, clients of the employer, or the employer itself. Employment by a placement, temporary or similar agency does not qualify for exemption under subsections B(1)-(3).

(H) "Private practice of law" shall be consistent with the coverage terms and definitions in the Primary Coverage Plan.

(I) All requests for exemption or failures to request an exemption are subject to verification by the OSB member upon request by the Professional Liability Fund. Any misstatement may constitute a violation of RPC 8.4(a)(3) and may be the basis for disciplinary proceedings.

### **3.180 OUT-OF-STATE OSB MEMBERS; PRINCIPAL OFFICE**

(A) The provisions of ORS Ch. 9 concerning the location of the principal office of an active member of the Oregon State Bar are interpreted by the Professional Liability Fund as stated in this policy. This policy will apply to all active OSB members.

(B) Definition of Office: As used in this policy, the term "office" will mean a location which is held out to the public by an OSB member as an office where the OSB member engages in the private practice of law. Indicia that a location is held out to the public in this manner will include, but not be limited to, the following:

(1) Listing of the location on an OSB member's letterhead, business cards, and billing forms as the OSB member's office.

(2) Listing the location in local telephone directories, bar directories, the Martindale-Hubbell directory, and other directories as the OSB member's office address.

(3) Exterior and interior signage indicating to the public that the location provides legal services.

(4) The existence of an office at the location which is dedicated solely to the OSB member's use.

(5) Configuration of the location as an OSB member's office, separation of the location from other offices of the OSB member not used for private practice, and separation of the location from the residence or personal living space of the OSB member or another person.

(6) Maintenance of a telephone number for the location which is separate from the telephone number of any other office of the OSB member and from the residence or personal living space of the OSB member or another person.

(7) Holding of meetings with clients, potential clients, or other counsel at the location as part of the OSB member's private practice of law.

(C) No Office: If an OSB member has no office as defined in subsection (B) above, the OSB member's principal office as defined by ORS Ch. 9 will be defined as the OSB member's principal residence if the OSB member is an active member of the bar association of the state of residence; otherwise, the OSB member's principal office will be deemed to be in Oregon unless the OSB member affirmatively demonstrates to the PLF that the OSB member does not engage in the private practice of law in Oregon.

(D) One Office: If an OSB member maintains only one office as defined in subsection (B) above, the OSB member's principal office as defined by ORS Ch. 9 will be defined as that office.

(E) Two or More Offices:

(1) Two Offices: If an OSB member maintains two offices as defined in subsection (B) above, the OSB member's principal office as defined by ORS Ch. 9 is the office where the OSB member is physically present more than 50 percent of the time engaged in the private practice of law.

(2) Multiple Offices: If a maintains more than two offices as defined in subsection (B) above, the location of the OSB member's principal office as defined by ORS Ch. 9 is determined by making the following calculation:

(a) All the time the OSB member is physically present in all offices of the OSB member in Oregon will be aggregated the "Oregon Office Time".

(b) All the time the OSB member is physically present in all offices of the OSB member outside of Oregon will be aggregated the "Non-Oregon Office Time".

(c) The two totals calculated under subsections (1) and (2) above will be compared. If the Oregon Office Time is greater than the Non-Oregon Office Time, the OSB member's principal office is in Oregon. If the Non-Oregon Office Time is greater than or equal to the Oregon Office Time, the OSB member's principal office is not in Oregon.

(F) In determining the location where an OSB member engages in the private practice of law more than 50 percent of the time for the purposes of ORS Ch. 9 and this policy, only the amount of time the OSB member is physically present at each office of the OSB member (as defined under subsection (B) above) while engaged in the private practice of law will be considered. Time spent at any office unrelated to the private practice of law will not be considered. Other factors will not be relevant to this determination, including, but not limited to, the following:

(1) The fact that an OSB member lives in any particular state.

(2) The fact that the OSB member sometimes engages in the private practice of law at home if the home is not an office as defined under subsection (B) above.

(3) The fact that the preponderance of an OSB member's clients are located in any particular state.

(4) The fact that an OSB member's practice is concentrated before the courts or agencies of any particular state.

(5) The fact that an OSB member uses secretarial, administrative, or research facilities located in any particular state.

(G) The determination of where the principal office of an OSB member is located will be made as of January 1 of each year based upon an OSB member's activities during the prior 12 months (or during such continuous period ending on December 31 as the OSB member has maintained

at least one office in Oregon and at least one office outside Oregon, whichever time period is shorter). Subsequent mid-year changes in the amount of time spent at various offices will not affect the OSB member's status except under the following circumstances:

(1) If the OSB member's principal office as of January 1 was in Oregon, but the OSB member ceases mid-year to have an office in Oregon, the OSB member's principal office will cease to be in Oregon as of the date the OSB member ceases to have an office in Oregon. The OSB member's Primary Coverage Plan will automatically convert to Extended Reporting Coverage as provided under Policy 3.620, and the OSB member will have no PLF coverage for any acts, errors, or omissions which occur after the date the OSB member ceases to have an office in Oregon. The OSB member may be entitled to a prorated refund of the annual PLF assessment.

(2) If the OSB member's principal office as of January 1 was not in Oregon, the OSB member has an office in Oregon, and the OSB member ceases mid-year to have an office outside of Oregon, the OSB member's principal office will be in Oregon as of the date the OSB member ceases to have an office outside of Oregon. The OSB member must notify the PLF within ten days, and will receive a prorated billing statement for PLF primary coverage for the balance of the year.

(H) A OSB member who opens an office in Oregon but continues to maintain an office outside Oregon will not be permitted or required to obtain PLF coverage until the next January 1, and then only if the OSB member was physically present at the Oregon office a greater amount of time than at the office outside Oregon during the period when the OSB member maintained the two offices. If the OSB member wishes to have malpractice coverage before the attorney is permitted and required to obtain PLF coverage, the OSB member should either continue whatever coverage was in place before the OSB member established an Oregon office or obtain appropriate coverage from the commercial market.

(I) An OSB member whose principal office as defined in this policy is not in Oregon is not entitled to obtain PLF primary coverage. If an OSB member whose principal office is not in Oregon nevertheless pays the PLF annual assessment intentionally or in error, the OSB member will not have any coverage for claims which are made against the OSB member which would otherwise be covered by the Primary Coverage Plan then in effect, and the OSB member will be entitled to a refund of any assessment paid upon notice to the PLF and be exempt from participation in the PLF.

(J) (1) It is the responsibility of each OSB member to determine if the OSB member's principal office is in Oregon each year and update the determination mid-year if appropriate. In the event the PLF has any question concerning whether or not an OSB member's principal office was in Oregon at any particular time, OSB members may be required to provide the PLF with relevant information and supporting documentation upon request, including by way of illustration: office schedules, time slips, and billing statements; office and docket calendars; travel records and invoices; photographs of office areas and signage; and copies of letterhead, business cards, billing forms, and telephone directory listings. Failure of an OSB member to provide information and documentation within 30 days of request will be treated the same as a payment default under Policy 3.350 and ORS 9.200.

(2) The principal office of an OSB member whose official mailing address (as maintained by the Oregon State Bar) is outside Oregon will be presumed to be outside Oregon for the purpose of this policy. Such a presumption may be rebutted if the OSB member completes such forms and provides such information and documentation as the PLF may request and the PLF is satisfied that the OSB member's principal office is in Oregon. Notwithstanding the rebuttable presumption stated in this subsection (2), all active OSB members whose official mailing address is outside Oregon will be required to file an annual Request for Exemption with the PLF.

(3) No payments for coverage will be accepted, and no coverage will be issued, to any attorney who does not provide the forms, information, and documentation requested by the PLF under subsections (1) and (2) above.

(K) Special Situations:

(1) If an active member of the Oregon State Bar (a) does not maintain an office in Oregon, (b) maintains an office in another state, and (c) is not a member of the bar association in the other state, the OSB member's principal office is not in Oregon and the attorney must claim exemption from PLF participation.

(2) If an active member of the Oregon State Bar (a) maintains an office and engages in private practice in Oregon, (b) is a member of the bar of another state, and (c) engages in law-related activities at an office in the other state which do not constitute the private practice of law, the OSB member's principal office is in Oregon and the OSB member must obtain PLF coverage. The OSB member will not have PLF coverage for his or her law-related activities in the other state which do not constitute the private practice of law.

(L) Examples: This policy is illustrated by the following examples. (The OSB member ["Member"] in each example is assumed to be an active member of the Oregon State Bar engaged in the private practice of law.)

Example: OSB Member A does not maintain an office anywhere and lives in Vancouver, Washington. OSB Member A is not an active member of the Washington State Bar. A's principal office is in Oregon.

Example: Same facts as prior example for OSB Member B, except that OSB Member B is also an active member of the Washington State Bar. OSB Member B's principal office is not in Oregon, even if

the majority of B's practice and clients are in Oregon.

Example: OSB Member C maintains an office in Vancouver, Washington, but is not a member of the Washington State Bar. OSB Member C does not maintain an office in Oregon, but all of C's practice is in the court of Oregon. C's principal office is not in Oregon.

Example: OSB Member D maintains an office in Ontario, Oregon, and an office in Fruitland, Idaho. On January 1, OSB Member D determines that he spent more time during the prior year physically located at his Oregon office than at his Idaho office. OSB Member D's principal office is in Oregon.

Example: Same facts as prior example, except that OSB Member D closes his Ontario, Oregon office on the following May 15. OSB Member D's principal office ceases to be in Oregon on May 15, and his current PLF Primary Coverage Plan ends as of that date and automatically converts to extended reporting coverage. OSB Member D may be entitled to a prorated refund of his annual PLF assessment.

Example: OSB Member E maintains an office in Portland, Oregon and an office in Oakland, California. On January 1, OSB Member E determines that she spent more time during the prior year physically located at her California office than at her Oregon office. OSB Member E's principal office is not in Oregon.

Example: Same facts as prior example, except that OSB Member E closes her Oakland, California office on the following August 23. Member E's principal office ceases to be outside Oregon on August 23, and she must notify the PLF within the next ten days. The PLF will send OSB Member E a prorated assessment billing

statement with coverage to commence August 23.

Example: OSB Member F maintains an office in Portland, Oregon and an office in Seattle, Washington. On January 1, OSB Member F determines that he spent more time during the prior year physically located at his Seattle office than at his Portland office. OSB Member F's principal office is therefore not in Oregon. However, during the year it becomes obvious to OSB Member F that he will spend more than 90 percent of his time in his Portland office. So long as OSB Member F maintains a Seattle office, the location of his principal office does not change during the year and OSB Member F is neither required nor permitted to obtain PLF coverage; however, the following January 1 his principal office for the coming year will be determined to be in Oregon.

Example: OSB Member G maintains three offices, one in Portland, Oregon, one in Salem, Oregon, and one in Vancouver, Washington. On January 1, he determines that he spent 25 percent of his time at his Portland office, 15 percent of his time at his Salem office, and 60 percent of his time at his Vancouver office during the prior 12 months. Because the Oregon office time (40 percent) is less than the non-Oregon office time (60 percent), OSB Member F's principal office is not in Oregon.

Example: OSB Member H maintains three offices, one in Medford, Oregon, one in Yreka, California, and one in Denio, Nevada. On January 1, she determines that she spent 45 percent of her time at her Medford office, 20 percent of her time at her Yreka office, and 35 percent of her time at her Denio office during the prior 12 months. Because the Oregon office time (45 percent) is less than the non-

Oregon office time (55 percent), OSB Member H's principal office is not in Oregon. On July 12, OSB Member H closes her Denio, Nevada office. Because she still maintains an office outside of Oregon, the location of OSB Member H's principal office for the year does not change even though she spends more time at her Medford office than at her Yreka office during the rest of the year. However, the following January 1 her principal office for the coming year may be in Oregon if her total Oregon office time the previous year exceeded the total non-Oregon office time.

Example: OSB Member I is a member of both the Oregon and California State Bars, but maintains only an office in Los Angeles. On September 1, he opens an office in Portland, but he keeps his Los Angeles office as well. During the balance of the year, Member I is physically present 80 percent of the time in his Portland office and 20 percent in his Los Angeles office. Member I is neither required nor permitted to maintain PLF coverage for the period September 1 through December 31, but he is required and permitted to obtain PLF coverage for the following year as of January 1.

### **3.200 REGULAR ASSESSMENT**

(A) Assessments of the Professional Liability Fund will be established on the basis of the PLF's experience, operating needs, and projections of future claim development. The projected assessment for the following Plan Period will be submitted to the Board of Governors for their approval no later than November 1 of each year.

(B) Payment of the basic assessment is due on or before January 1. OSB members entering private practice in Oregon after January 1 of any Plan Period will pay a proportionate assessment on the basis of one-twelfth of the total for each full or partial month that the OSB member will be in



practice during the year, including the month entering private practice. The default date for all assessments will be 10 days after the due date, or on the first regular business day thereafter.

(C) If the OSB member is not eligible for exemption as described in Policy 3.150, the staff of the Professional Liability Fund is not authorized to waive or reduce the assessment amount without prior approval of the Board of Directors. The assessment amount includes the regular assessment and any appropriate late payment charge.

### **3.250 STEP-RATED ASSESSMENT**

(A) OSB members will receive a discount on the cost of their PLF coverage during their first periods of coverage as provided in this policy. The annual assessment rate for an OSB member's PLF coverage will be determined as of January 1 of each year, and the rate will apply to all periods of coverage obtained by the attorney during the year. The PLF will calculate the total number of full or partial months of PLF coverage which the OSB member has maintained in all prior years as of January 1 of the current year (the "Prior Coverage Period Total"). Each partial month of coverage will be counted as a full month. The attorney will then be entitled to a Step Rating Credit in calculation of the attorney's annual assessment rate as stated in the following table:

<u>Prior Coverage Period Total</u>	<u>Step Rating Credit</u>
0 months to 12 months	40 percent
Over 12 months to 24 months	20 percent
Over 24 months	20 percent
Over 36 months	0 percent

The Step Rating Credit will be applied as a reduction only to the regular assessment established for the year by the Board of Governors.

(B) The Step Rating Credit will not apply to any installment service charge, late payment charge, or any other charge.

### **3.300 INSTALLMENT PRIVILEGES**

(A) An OSB member may elect to pay the annual assessment in four quarterly installments. The default date for the first installment is January 10 together with full payment of an installment service charge. Default dates for the remaining installments are April 10, July 10, and October 10 or the first regular business day thereafter. OSB members may prepay or partially prepay any installment payment. The installment service charge shall be calculated as an administrative charge of \$10 plus a finance charge of 7% on the total assessment due. The service charge may be rounded up or down to the nearest whole dollar. OSB members who fail to pay the first installment and full service charge together with any applicable late payment charges, reinstatement charges, and other amounts due to the Bar or the PLF by February 10 or the first regular business day thereafter may not thereafter elect to pay on the installment payment plan for the balance of the year.

(B) If the assessment default date is after January 10, the number of installments available will be fewer than four and will be equal to the number of full quarters left in the year after the default date. No installment payment plan is available if the default date is after June 30.

(C) OSB members who elect to pay the annual assessment in installments but who fail to make any payment by one month following the applicable installment default date shall be required to pay the entire remaining assessment balance immediately and shall not be entitled to a partial or full refund of any installment service charge previously paid. The OSB member shall be charged a late payment charge of \$100 per month for each partial or full calendar month the OSB member is in default. The PLF will also begin the notice requirements pursuant to statute. Notwithstanding the foregoing, OSB members

who pay their second quarterly installment with any applicable late payment charges by May 10 or the first regular business day thereafter, may still pay the remaining assessment in installments.

(D) OSB members who elect to pay the annual assessment in installments and who subsequently choose to pay some or all of the remaining balance before the default dates shall not be entitled to a partial or full refund of any installment service charge previously paid.

(E) OSB members employed by OSB-certified pro bono programs may elect to pay the annual assessment in quarterly installments without paying the installment service charge described in subsection (A).

### **3.350 PAYMENT DEFAULT AND LATE PAYMENT CHARGES**

(A) Late Payment Charges: The default date for assessment payment will be listed on assessment notices and will be at least 10 days after the start of coverage. In the event a payment which is due is not received by the initial default date, the OSB member shall be charged a late payment charge of \$100 per month for each partial or full calendar month the OSB member is in default. Late payment charges shall be considered a part of the assessment which is in default.

(B) The chief executive officer may waive or reduce late payment charges for newly-admitted OSB members during the first partial year of PLF coverage upon a showing of good cause for the delay in payment.

(C) Attorneys Who Fail to Respond to Billing Statements: An active OSB member whose official mailing address (as maintained by the OSB member with the Oregon State Bar) is in Oregon is provisionally presumed to be engaging in the private practice of law in Oregon and shall be obliged to pay the annual assessment unless an appropriate Request for Exemption is filed with the PLF. An active OSB member who fails to pay

either the required full or installment assessment amount (plus any applicable finance charge or late payment charges) or to file a Request for Exemption by the default date and who is suspended as a result shall be provided with coverage provisionally under the applicable Coverage Plan for claims arising from acts, errors, or omissions occurring during the period covered by the billing statement but prior to the date of suspension. Such provisional coverage shall be subject to verification that the member was, in fact, eligible and required to purchase coverage during the period from the PLF. The burden of establishing that the member was, in fact, eligible and required to purchase coverage during the period from the PLF shall be on the claimant and/or the OSB member, and the PLF may challenge the OSB member's right and obligation to obtain coverage based upon the facts. Once the claimant and/or the OSB member has met this burden, the PLF shall provide applicable coverage for the member (subject to all Coverage Plan terms and conditions) regardless of whether or not the OSB member has paid for the coverage. The OSB member shall pay the PLF immediately for the cost of the coverage, together with all applicable finance charges and late payment charges. If the OSB member does not pay, the PLF shall pursue collection efforts against the OSB member for payment of the assessment and other charges and interest and the PLF shall report the OSB member to Bar Discipline for appropriate disciplinary action.

(D) OSB members Who Incorrectly Claim Exemption: An OSB member who claims exemption from participation in the PLF during any period when the OSB member is not, in fact, eligible to claim exemption shall be subject to the following provisions:

(1) The PLF will provide coverage to the OSB member (subject to all Coverage Plan terms and conditions) for the period when the OSB member was not eligible to claim exemption.

(2) The OSB member will be required to pay the PLF for coverage for the period when the

OSB member was not eligible to claim exemption, together with all applicable late payment charges to a maximum of three months' late payment charges. Payment will be due immediately upon billing. Failure to pay shall result in suspension from membership according to the same procedures as apply to any other late payment of a PLF assessment.

(3) The coverage provided to the OSB member under this Subsection (D) will be provisional, subject to verification that the OSB member was, in fact, eligible and required to obtain PLF coverage for the period in question. The OSB member will be required to provide the PLF with such information as the PLF may request in order to determine the OSB member's eligibility for coverage, and the PLF shall have the sole authority to make that determination, subject to applicable statutes and policies governing eligibility. If the PLF provisionally provides coverage to an OSB member and later determines that the OSB member was not, in fact, eligible for coverage, the PLF shall not be estopped from withdrawing coverage and the OSB member shall be required to reimburse the PLF for all expense and indemnity incurred during the period of provisional coverage.

(E) Emergency Provisions: The PLF CEO has the authority to take reasonable and necessary actions, including extending deadlines and suspending late fees, if national or statewide events occur that severely disrupt the normal course of business.

(F) OSB Members Falsely Claiming Exemption: If the PLF determines that an OSB member claimed an exemption when the OSB member knew or should have known the OSB member was not eligible for an exemption, the PLF will refer the OSB member to the Oregon State Bar for disciplinary action.

### **3.400 PRORATION FOR OSB MEMBERS LEAVING PRIVATE PRACTICE DURING THE PLAN YEAR**

(A) An OSB member with PLF coverage who leaves the private practice of law in Oregon during the Plan Year is entitled to proration of the applicable PLF assessment if the OSB member meets the criteria stated in subsection (B). The OSB member will pay a proportionate assessment on the basis of one-twelfth of the total assessment for each partial or full calendar month that the OSB member was in private practice, including the month the OSB member leaves private practice. No reduction, proration, or refund will occur for any service charge, late payment charge, or other charges or fees paid or owed by the OSB member. OSB members seeking proration of the applicable PLF assessment under this policy will be required to complete an Application for Proration and sign a Request for Exemption.

(B) To qualify for proration of the applicable PLF assessment under this policy, an OSB member must cease to engage in any private practice of law which would require PLF coverage. This means, among other things, that the OSB member may not consult with a current, former, or prospective client, partner, fellow shareholder, associate, employee, or associated OSB member concerning the ongoing progress or handling of an existing matter or new matter unless permitted to do so within the scope of the OSB member's PLF exemption.

(C) If an OSB member obtains proration of his or her assessment under subsection (A) and returns to PLF coverage in the same Plan Year with a gap in continuous coverage of less than two full calendar months, upon returning to coverage the OSB member will be required to pay his or her full annual assessment as if there had been no gap in coverage. In all other cases, the PLF will charge the OSB member who returns to PLF coverage in the same Plan Year an assessment according to Policy 3.200(B). OSB members subject to this subsection may qualify for installment payment privileges according to Policy 3.300(B).

(D) The Retroactive Date for an OSB member who obtains proration of his or her assessment under Policy 3.400 and later returns to PLF coverage will be determined according to Policy 3.100.

(E) If an OSB member is paying his or her assessment on an installment basis and will be leaving the private practice of law in Oregon prior to the last calendar month of the next installment period, the OSB member may simultaneously (1) file an Application for Proration and Request for Exemption indicating the anticipated date of leaving the private practice of law in Oregon, and (2) pay a reduced installment payment as calculated by the PLF based on the anticipated date of leaving the private practice of law in Oregon. The OSB member will be responsible for notifying the PLF immediately if the OSB member's actual last day of private practice in Oregon is different than the date previously indicated to the PLF, and will be required to pay immediately any additional assessment amounts which may be due based upon the correct date.

### **3.450 PAYMENTS MADE IN ERROR**

In the discretion of the Chief Executive Officer, assessments which were inadvertently or erroneously paid to the Professional Liability Fund when an OSB member was eligible or required to claim an exemption from participation in the PLF may be refunded upon request. Refunds are limited to the current Plan Year and the prior Plan Year assessments paid in error. The PLF will not refund service charges or late fees. No more than two Plan Years shall be included in the refund calculation. As payments are accepted on an individual member basis, and not on a firm or partnership basis, the staff of the PLF will inquire as to the party who paid the assessment payment, and if payment was made by the OSB member's former firm on the OSB member's behalf, the refund check will be made payable to both the individual OSB member and to the firm.

### **3.620 EXTENDED REPORTING COVERAGE**

This Plan for Extended Reporting Coverage is subject to amendment or termination by the Board of Directors at any time. No rights are vested as to Extended Reporting Coverage (including rights as to the cost or scope of coverage) until such time as an OSB member has obtained Extended Reporting Coverage.

#### **(A) Definitions:**

(1) Regular Coverage means the current Primary Coverage Plan maintained by OSB members engaged in the private practice of law.

(2) Retirement means the "last act" in private practice in Oregon which would require an OSB member to maintain current PLF coverage under applicable PLF statutes and policies, whether the OSB member retires, dies, leaves private practice, or begins private practice in another state after such date.

(B) Time When Extended Reporting Coverage Takes Effect: An OSB member's Extended Reporting Coverage (ERC) takes effect as of the first day of the next calendar month following an OSB member's date of retirement. ERC will be governed by the terms and conditions of the PLF Primary Coverage Plan in effect in the year of retirement.

Example: OSB Member retires on August 31, 2020. The ERC would take effect for covered claims first made against the OSB member on or after September 1, 2020. The 2020 Primary Coverage Plan would apply to all ERC claims.

Example: OSB Member retires on January 4, 2021. Member must obtain regular 2021 coverage. ERC takes effect on February 1, 2021.

Example: OSB Member retires on December 31, 2020. ERC takes effect on January 1, 2021.

(C) Cost of ERC: There is no cost for Extended Reporting Coverage. ERC is granted automatically to OSB members who stop maintaining coverage under the PLF Primary Coverage Plan. However, ERC is not granted to OSB members who are in default in payment of any amounts due to the PLF.

(D) Limits of Coverage: An OSB member who obtains ERC does not obtain new Limits of Coverage as defined at Section I of the PLF Primary Coverage Plan. Instead, the OSB member obtains “extended reporting” coverage based upon the Primary Coverage Plan in effect during the last year of coverage. This means the Coverage Period during the last year of regular coverage is extended to a single lifetime Coverage Period for the OSB member. The defense and indemnity costs for claims made during the last year of coverage will reduce the Limits of Coverage available to the OSB member for claims made in the years after retirement, when ERC is in effect. There is no coverage for claims based on acts, errors, or omissions which occur after the ERC has commenced.

Example: OSB Member retires on August 31, 2020. All covered claims made against the OSB member after that date will be covered by the member’s extended reporting coverage. When ERC takes effect on September 1, 2020, the reporting period for the member’s regular 2020 coverage will be extended to a single lifetime reporting period commencing September 1, 2020. All claims made in 2021 or later years would fall within this single life-time reporting period, and would be subject to all terms and conditions of the 2020 Primary Coverage Plan and limited to the remaining Limits of Coverage available under the 2020 Primary Coverage Plan.

Example: Same facts as in the preceding example. The OSB member had one claim made in May, 2020 which was closed in 2021 with a combined defense and indemnity cost of \$85,000 (including the member’s entire Claims Expense Allowance). Assuming the 2020 Limits of Coverage were \$300,000 plus a Claims Expense Allowance of \$50,000, only \$265,000 in coverage remains available for all claims made during the balance of 2020 or in 2021 or later years (when the ERC is in effect).

(E) Conversion of Regular Coverage to ERC During the Plan Year: A prorated refund of an OSB member’s PLF assessment may be available under the provisions of PLF Policy 3.400 if an OSB member retires during the Plan Year.

Filing Request for Exemption After Becoming Exempt from Coverage: An OSB member who retires but remains an active member of the Oregon State Bar will receive a PLF Billing Statement each year and should complete a Request for Exemption annually. If the OSB member does not file a Request for Exemption or other request for ERC within four months after the end of the last Primary Coverage Plan year for which the OSB member has regular coverage, the PLF will automatically grant ERC. No ERC will be granted if the OSB member has other insurance coverage which applies to the claim. ERC applies only to claims arising from acts in the private practice of law which occurred during a period of regular PLF coverage as provided in the applicable Primary Coverage Plan.

Example: OSB Member retires on December 31, 2020. The OSB member is granted ERC upon filing a Request for Exemption from Primary Coverage (which should be filed by the default date of January 10, 2021).

Example: Same facts as prior example. OSB Member fails to file a Request for Exemption by the default

date (January 10, 2020). If the member does not correct this oversight, the member will eventually be suspended from membership in the Oregon State Bar. However, even if the OSB member takes no action and is suspended, the PLF will grant ERC on May 1, 2021, effective January 1, 2021. The ERC based on the member's 2020 Primary Coverage Plan will apply to claims first made on or after January 1, 2021 arising from the member's private practice of law prior to 2021.

Example: OSB Member has 2020 Primary Coverage, but does not either pay for 2021 coverage or request exemption by the January 10, 2021 deadline. A claim is made against the OSB member in February, 2021 based on an alleged error occurring in October 2020. Because the OSB member has not obtained Primary Coverage in 2021, the PLF will provisionally apply ERC to the claim. If the member obtains Primary Coverage in 2021 by the final date for obtaining the coverage, the 2021 Primary Coverage Plan will apply to the claim; otherwise, ERC will apply to the claim. If the OSB member fails to act within the time limits prescribed, the OSB member may be suspended from membership in the Bar but ERC based on the OSB member's 2020 Primary Coverage Plan will apply to the claim.

Example: OSB Member retires on December 31, 2020 and commences practice in California on January 1, 2021. OSB Member obtains malpractice insurance in California which covers new claims from the member's prior practice in Oregon. A claim is made on June 15, 2021 based on the OSB member's prior practice in Oregon. ERC does not apply to the claim.

### **3.700 DEDUCTIBLE**

Coverage under the Professional Liability Fund is not subject to a deductible under the Primary Coverage Plan. However, a deductible may be adopted at a future date, and may apply to all claims made on or after that date regardless of when the act, error, or omission giving rise to the claim occurred.

### **3.750 COVERAGE EXCLUSIONS (PRIOR CARRIER)**

If a prior carrier is defending an OSB member under its prior policy subject to a deductible, the PLF will refuse coverage of the deductible amount pursuant to provisions of the Primary Coverage Plan.

### **3.800 COVERAGE FOR PRO BONO PROGRAMS**

(A) The PLF will provide professional liability coverage without charge for claims made against PLF-exempt Oregon OSB members arising from their work for OSB certified pro bono programs under the specific provisions of this policy.

(B) As used in this policy:

(1) "Pro Bono Coverage" means the PLF coverage provided to a Pro Bono Program through a PLF Master Plan pursuant to this policy.

(2) "Pro Bono Program" means a program which has been certified by the Oregon State Bar as an OSB Pro Bono Program under OSB Bylaws and does not present an unacceptably high risk of professional liability claims.

(3) "Volunteer Member" means an active member of the Oregon State Bar who has claimed exemption from PLF participation at the time of providing legal services to clients without compensation through the Pro Bono Program.

(C) A Pro Bono Program may apply to the PLF for Pro Bono Coverage under a PLF Master Plan by providing the following information:

(1) A copy of the application submitted to the Oregon State Bar in connection with its request for certification as an OSB Pro Bono Program under OSB Bylaws Article 13 and all supplemental and renewal applications;

(2) A list of all staff officers and staff OSB members, as well as a list of all Volunteer Members who have provided services through the Pro Bono Program within the prior 12 months;

(3) A projection of the likely number of Volunteer Members who will participate in the program during the coming 12 months, the number of matters or clients which the Volunteer Members will likely handle, and the estimated percent of Volunteer Members who will not have regular PLF coverage;

(4) Details of the Pro Bono Program's existing malpractice coverage, including a copy of the declarations sheet and policy; and

(5) Such other information as the PLF may request.

(D) Upon receipt of the information listed in subsection (C), the PLF will issue a Master Plan to the Pro Bono Program at no charge providing malpractice coverage for Volunteer Members who provide legal services to clients through the Pro Bono Program. The PLF will not issue a Master Plan to the Pro Bono Program if the Pro Bono Program carries malpractice insurance of at least \$300,000 per claim for its Volunteer Members. The scope and nature of the Pro Bono Coverage will be as provided in the master policy, as such master policy may be modified by the Board of Directors from time to time in the future.

(E) Each Pro Bono Program receiving Pro Bono Coverage will submit an annual report in such form as the PLF may request listing the names of the Volunteer Members who provided

services to clients through the Pro Bono Program during the prior calendar year as well as details of the number of clients and matters handled and the nature of the services provided.

(F) Malpractice coverage provided under this Policy 3.800 may be terminated by the PLF at any time upon 30 days' notice to participating Pro Bono Programs. Pro Bono Coverage will automatically terminate at such time as any Pro Bono Program ceases to qualify as an OSB Pro Bono Program under the OSB's Bylaws.

(BOD 6/21/91; BOG 10/1/91; BOD 4/10/92; BOG 5/1/92; BOD 8/14/92; BOG 9/22/92; BOD 7/16/93; BOD 8/13/93; BOD 2/18/94; BOD 3/12/94; BOD 5/6/94; BOG 8/12/94; BOD 9/26/94; BOG 11/12/94; 8/11/95; BOG 11/12/95; BOD 12/1/95; BOG 1/20/96; BOD 8/9/96; BOG 9/25/96; BOG 11/17/96; BOD 12/6/96; BOG 2/7/97; BOD 2/28/97; BOG 4/5/97; BOD 4/25/97; BOG 5/31/97; BOG 7/26/97; BOD 10/3/97; BOG 11/26/97; BOD 11/21/97; BOG 2/6/98; BOD 2/6/98; BOG 4/4/98; BOD 4/10/98; BOG 5/30/98; BOD 8/14/98; BOG 9/25/98; BOD 6/21/02; BOG 8/3/02; BOD 10/25/02; BOG 11/16/02; BOD 2/7/03; BOG 2/27/03; BOD 7/31/03; BOG 9/18/03; BOD 11/15/03; BOG 12/12/03; BOD 2/20/04; BOG 4/2/04; BOD 10/22/04; BOG 11/20/04; BOD 9/14/05; BOG 9/30/05; BOD 10/9/09; BOG 10/30/09; BOD 8/10/12; BOG 11/10/12; BOD 10/11/13; BOG 11/23/13; BOD 8/14/14; BOG 9/5/14; BOD 6/13/16; BOG 6/24/16; BOD 4/16/21; BOG 4/16/21; 12/10/21; BOG 02/18/22; BOD 04/14/23; BOG 04/14/23)

## **CHAPTER 4 CLAIMS**

### **4.100 CLAIMS DEFENSE**

The Chief Executive Officer has the ultimate responsibility for claims handling. The Chief Executive Officer will appoint a Director of Claims to manage and support the day-to-day functions of the Claims Department, including hiring, training, assignment of claims to Claims Attorneys, claims management and strategy and settlement authority up to \$100,000. The Director of Claims may appoint counsel for review and evaluation of any claim as well as appoint counsel to defend a Covered Party in trial or on appeal. Such appointments will be made from the established Claims Defense Panel as have been reviewed from time to time by the Chief Executive Officer unless the Director of Claims determines that it is necessary to retain other counsel because of conflicts, the need for special expertise, the need for services in a special venue, or for other reasons.

#### **4.150 CLAIMS MANAGEMENT**

(A) The Director of Claims will have responsibility for the following claims management functions subject to review by the Chief Executive Officer:

(1) Evaluation, investigation, negotiation and defense of legal malpractice claims;

(2) Development of central, comprehensive and consistent policies to effectuate these claims-handling functions;

(3) Appointment and maintenance of a defense panel of qualified attorneys throughout the state who are qualified to defend, review and/or repair claims or threatened claims;

(4) Assignment of cases to defense panel attorneys;

(5) Ensuring that the provisions of this policy manual, including the PLF Mission and Goals stated at Policy 1.250 and the provisions of this chapter, are fully complied with; and

(6) Maintenance of billing procedures and reporting forms from Defense Panel members.

(B) [Reserved.]

(C) The Professional Liability Fund will utilize such outside technical experts in the investigation, evaluation and defense of claims as it deems appropriate, giving due consideration to the seriousness and exposure to loss in each case. Such outside experts will be obtained from the defense panel where possible.

(D) Retention of Support Services: The PLF may retain outside experts, expert witnesses, investigators or consultants in connection with the handling or defense of any claim, action or suit.

(E) Cost and Expense Records: All employees of the PLF will maintain expense records with

documentation, where possible, for all amounts expended by the PLF in such form as the Chief Executive Officer may require.

(F) Notice to Board of Directors: The Chief Executive Officer will immediately notify the Board of Directors whenever the PLF, a member of the PLF staff, an agent of the PLF, or a Defense Panel member is informed that the PLF, staff member, agent, or panel member has been, will, or may be made a party, witness, or deponent, or has been, will, or may be the subject of a disciplinary complaint, in connection with the investigation or defense of a PLF claim.

#### **4.200 CLAIMS HANDLING PRACTICES AND PROCEDURES**

(A) The Professional Liability Fund and its Defense Panel shall:

(1) Promptly acknowledge and act upon communications relating to claims;

(2) Not misrepresent facts or Coverage Plan provisions in handling and settling claims;

(3) Accept or deny claims or coverage within a reasonable time after review of such information as is necessary in order to properly evaluate the claim or coverage.

(4) Provide an explanation of the basis for the denial of any claim or coverage.

(5) Attempt in good faith to promptly and equitably settle claims in which liability has become reasonably clear and damages have become reasonably ascertainable.

(B) Claims Handling Practices and Procedures Manual: The Chief Executive Officer will adopt and revise from time to time a Claims Handling Practices and Procedures Manual which will apply to all Claims Department activities.



(C) Oversight by Claims Committee:

(1) PLF staff will bring any new or difficult claims handling issues to the Claims Committee, together with such recommendations as staff may present. The Claims Committee will instruct staff how to proceed, and the Committee's decisions will be recorded by minutes. As appropriate, the Chief Executive Officer or Director of Claims will memorialize decisions of the Committee which have general and ongoing applicability through amendments to the Claims Handling Practices and Procedures Manual. All amendments will be distributed to the PLF Board of Directors, the Board of Governors liaison, and Defense Panel members as appropriate.

(2) The Claims Committee will meet with the Chief Executive Officer and all claims attorneys at least annually to conduct a general review of PLF claims handling practices and procedures and to confirm that the PLF is following the claims handling practices and procedures established in this policy as well as the PLF's Mission Statement and Claims Goals established under Policy 1.250. The Board of Governors liaison to the PLF Board of Directors will be encouraged to attend this meeting. The Claims Committee will thereafter report to the PLF Board of Directors and the Board of Governors liaison.

(D) Outside Claims Department Audit:

From time to time, but at least every five years, the PLF Board of Directors will commission a claims department audit by an outside auditor familiar with insurance program claims handling. The auditor will be asked (1) to conduct an ordinary claims department performance audit based on insurance industry standards, (2) confirm compliance with the claims handling practices and procedures established in this Chapter as well as the PLF's Mission Statement and Claims Goals, and (3) to audit such other matters as the PLF Board of Directors may request. A copy of each final audit report will be

sent to the PLF Board of Directors and the Board of Governors liaisons.

#### **4.250 CONFIDENTIALITY AND PRIVILEGE**

(A) All claims records of the Professional Liability Fund are confidential and privileged in accordance with the laws of the State of Oregon and other applicable law. No confidential or privileged claim records will be disclosed. Where applicable, the confidentiality and privileges provided under ORS 9.080(2), ORS 9.460(3), ORS Ch. 192 and the attorney-client and work product privileges, and other available protections will be asserted to the utmost against any attempts to obtain such information. This includes, where applicable, a request for confidential claim files and records by the Oregon State Bar or the Oregon State Bar Board of Governors, except as provided in subsection (D) of this policy. It is in the public interest and essential for purposes of the coverage afforded by the PLF and the complete cooperation of the members of the Bar that every effort be made to maintain confidentiality and privilege of all information acquired through the operation of the PLF.

(B) The term "claims records" includes but is not limited to all reports of claims, actual or potential, questionnaires, reserve information, forms and templates used by Claims Attorneys, and all files and oral or written communications in any way relating to the investigation, repair, or defense of claims against any Covered Party.

(C) (1) The PLF will not provide claims records to third parties, even with a waiver or authorization from the Covered Party. This policy applies to requests received in connection with hiring decisions, judicial appointments, disciplinary proceedings, news stories, and similar matters.

(2) The PLF will respond to subpoenas and other litigation discovery requests seeking claim information, but will assert all available privileges and objections as appropriate.

(3) The PLF will respond to requests for claim information from a Covered Party, but will provide in writing only a basic listing of claim information from the PLF's computer records (claim number, claimant, date of claim, and defense costs and indemnity paid). Written claim information will be provided only to the Covered Party directly. The PLF reserves the right not to provide any written claim information to a Covered Party if the PLF is not satisfied that the Covered Party's request for written information is completely voluntary.

(D) If the Oregon State Bar, Oregon State Bar Board of Governors, Professional Liability Fund, or Professional Liability Fund Board of Directors are named parties in an action, confidential claim file information will be provided to all named defendants to the extent permitted by the Oregon Code of Professional Responsibility, ORS Ch. 9, ORS Ch. 192.311, the attorney-client privilege, work product privilege, and other fiduciary obligations owed by the PLF.

(E) Any request by the Oregon State Bar Board of Governors for confidential claim file information from the Professional Liability Fund will be directed by the President of the Oregon State Bar Board of Governors to the Chair of the Professional Liability Fund Board of Directors. No material or information will be released by the Oregon State Bar Board of Governors without first receiving the approval for such release from the Chair of the Professional Liability Fund Board of Directors.

(F) The Chair of the Professional Liability Fund Board of Directors will review all public statements pertaining to confidential claim files and records made by the Oregon State Bar or Oregon State Bar Board of Governors for compliance with the claim file protections set forth in this section.

#### **4.275 DISCLOSURE OF PLF INVOLVEMENT**

Except where legal, ethical, and professional constraints dictate otherwise, the PLF's policy is

to fully and voluntarily disclose to the claimant or the claimant's attorney that the PLF is defending the claim, and to the court where the litigation is pending when the PLF is providing a defense to the Covered Party in that litigation.

#### **4.300 FILE REPAIR**

(A) Any OSB member covered by the Professional Liability Fund may contact the PLF for assistance concerning any act, error or omission which the Covered Party believes may give rise to a claim potentially covered under the Professional Liability Fund Plan to undertake a repair of the alleged act, error or omission. The decision whether to undertake file repair is discretionary with the PLF based upon all relevant factors.

(B) If the PLF incurs any expense in the handling of the repair matter, then a claim file will be opened.

(C) A repair is designed to prevent or mitigate claims against Covered Parties, and all disclosures made to the PLF are confidential, privileged, and not subject to discovery in any subsequent suit, action, claim or proceeding in accordance with the laws of the State of Oregon and other applicable law.

(D) The PLF's strong preference is in favor of full and voluntary disclosure of the PLF's involvement in a repair, but the final decision concerning disclosure will be left to repair counsel based on all legal, ethical, and professionalism requirements.

#### **4.350 RESERVING POLICY AND PROCEDURES**

(A) The Professional Liability Fund will establish both loss and expense reserves as quickly and accurately as possible as part of the claim file set-up procedure. Consideration is to be given to the following factors in light of what is known at any given time:

(1) The degree of potential liability of the Covered Party for negligent acts or omissions.

(2) The nature and extent of the claimant's damages.

(3) Coverage questions.

(4) Defenses available to the Covered Party on the malpractice issue.

(5) The nature of the underlying case.

(6) Defenses available in the underlying case.

(7) Jurisdiction in which the claim is or would be filed.

(8) Mitigation efforts by claimant in the underlying case.

(9) Opinion of defense counsel.

(10) Character and reputation of the Covered Party and the claimant.

(11) General assessment of the overall situation, both as to the underlying and malpractice cases.

(12) Reports and assessments of liability received from outside experts.

(13) Such other factors as may be deemed relevant to the claim.

(B) The Assigned Claims Attorney will review all loss reserves at least every 90 days, and more often if new information is received which bears on file evaluation.

#### **4.400 CLAIM SETTLEMENT PROCEDURES**

(A) The Director of Claims will appoint a member of the Board of Directors to review any claim for which a settlement of \$100,001 or more is anticipated. Any claim settlement in the amount of \$100,001 or more must be approved by the assigned Director. Any settlement in excess of \$150,000 must be discussed by the

Board of Directors in executive session pursuant to ORS Ch. 192 either at a Board meeting or by telephone conference call, but all final actions or decisions concerning negotiation and settlement of any claim for \$150,001 or more will be made solely by the Chief Executive Officer or their staff designee with the approval of the designated director.

(B) In the event a judgment has already been rendered against a Covered Party on a claim and there is an opportunity to satisfy the judgment or to settle the claim for an amount less than the judgment, any payment in the amount of \$100,001 in satisfaction of the judgment or more must be approved by the Assigned Director but need not be discussed by the Board of Directors even if the payment is in excess of \$150,000 unless the assigned Director so elects. Any payment in satisfaction of a judgment or in settlement in excess of \$150,000 will be reported to the Board of Directors at its next regular meeting.

(C) When the settlement or repair of any claim includes the purchase of real property the matter must be presented to the Board in the same manner as if it were the settlement of a claim in excess of \$150,000. If the purchase of real property is made, any subsequent change to the status of the property including the eviction of tenants, foreclosure of the property, or sale of the property must also be discussed by the Board of Directors, but all final actions or decisions concerning the real property will be made solely by the Chief Executive Officer or his or her staff designee with the approval of the Assigned Director.

(D) In order to maintain the integrity of the claim-handling process, neither the Board of Directors nor any individual Director will communicate with any claimant or any attorney for a claimant regarding any pending claim.

#### **4.450 MONTHLY CLAIM REPORTS**

The Director of Claims will provide the Board with monthly reports providing statistical information about all claims closed in the preceding calendar month.

#### **4.500 DEFENSE PANEL**

(A) A Defense Panel has been established to assist the Professional Liability Fund in the handling of claims against the Professional Liability Fund. Members of the Panel are called upon to evaluate claims, make recommendations as to claims handling, advice regarding coverage, work on claims repair matters, and represent Covered Parties against whom claims have been made.

(B) Attorneys may be added to or deleted from the Defense Panel from time to time by the Chief Executive Officer.

(C) The Defense Panel will be chosen from attorneys who have expertise in handling the defense of legal malpractice cases. Experience in handling insurance defense cases and general tort litigation is desirable. The PLF will endeavor to appoint Panel members in all geographical areas of the state where attorneys with the requisite expertise are available. The Director of Claims will provide all Defense Panel members with the PLF's Mission Statement and Claims Goals, and the requirements and standards of this chapter when added to the panel and at least every two years thereafter, and these same requirements and standards will be discussed with the Defense Panel at any general meeting or seminar scheduled for the Panel.

(D) The PLF will pay Defense Panel members the hourly rate which they normally charge for defense work. The Professional Liability Fund may set a maximum hourly rate for claims review work by panel members.

(E) The PLF will maintain uniform billing procedures for use by Defense and Review Panel members. The PLF expects adherence to these

procedures and the Panel members will be required to agree to such procedures as a condition of appointment. As an additional condition of appointment, Panel members must agree to arbitrate any disputes which may arise over fee bills. All fee bills submitted by Defense Panel members will be subject to review and approval by the Chief Executive Officer or designee. The Chief Executive Officer will attempt to work out any dispute over fees which may occur, and if unable to do so, will submit the disputed fee to arbitration.

(F) The Chief Executive Officer has authority to select an attorney not presently on the defense panel, if necessary, to provide legal services when required due to conflicts preventing use of a Defense Panel member, the need for special expertise, the need for services in an unusual forum, or for other special reasons.

(G) No member of the Defense Panel, nor any other attorney employed by the Professional Liability Fund in the defense of claims against Covered Parties, nor any member of their respective firms, will represent a claimant in prosecuting a claim against the Professional Liability Fund or against any Covered Party if the claim is or may be covered by the PLF in whole or part. This limitation will not apply:

(1) where a third party or cross-claim should, in the judgment of the attorney defending a claim for the Professional Liability Fund, be prosecuted in order to fully represent the interests of the Covered Party-attorney, or

(2) where a third party or cross-claim should, in the judgment of the defense attorney, be made against an OSB member in order to represent the interests of the client and the defense attorney could not reasonably anticipate the necessity of making such a claim against an OSB member at the time the defense attorney began working on the matter.

(H) No member of the Defense Panel, nor any other attorney employed by the Professional

Liability Fund in the defense of claims against Covered Parties, nor any member of their respective firms, will act as personal counsel for any Covered Party concerning a claim which is or may be within the coverage provisions of the Professional Liability Fund, or represent any party in litigation against or involving the Professional Liability Fund.

(I) No member of the Defense Panel, nor any other attorney employed by the Professional Liability Fund in the defense of claims against Covered Parties, nor any member of their respective firms, will serve as an expert witness for any claimant in prosecuting a claim against the Professional Liability Fund or against any Covered Party if the claim is or may be covered by the PLF in whole or part.

(J) Attorneys hired by the PLF will comply with all requirements of the Defense Panel File Reporting Guidelines.

(K) All members of the Defense Panel are required to maintain malpractice coverage of not less than \$700,000.00 in excess of current Primary Coverage Plan limits.

#### **4.550 DEFENSE PANEL FILE REPORTING GUIDELINES**

The Chief Executive Officer will adopt and revise from time to time Defense Panel File Reporting Guidelines which will apply to all Claims Department activities.

#### **4.650 PUBLICATIONS AND TRAINING**

The Fund shall subscribe to such publications dealing with legal malpractice as are available, and the Chief Executive Officer, Claims Attorneys, other PLF and Defense Panel members shall be required to attend conferences or seminars, and to study to improve their knowledge concerning Professional Liability Fund and personal and practice management assistance, on an ongoing basis.

(BOD 6/23/00; BOG 6/30/00; BOG 7/22/00; BOD 1/19/01; BOG 1/26/01; BOD 8/27/04; BOG 10/13/04; BOD 10/22/04; BOG 11/20/04; BOD 9/15/06; BOG 11/18/06; BOD 12/8/06; BOG 2/22/07; BOD 4/3/10; BOG 6/18/10; BOD 10/14/16; BOG 11/19/16; BOD 04/14/23; BOG 04/14/23)

## **CHAPTER 5 FINANCIAL**

### **5.100 BANKING**

(A) The Board of Directors will designate bank depositories under the standard bank resolution forms. Authorized signatories to such bank accounts will be the Chief Executive Officer or Chief Financial Officer or one or more employees designated by the Chief Executive Officer and reported to the Board of Directors. One signature will be required on any check under \$10,000, with two signatures required on any check of \$10,000 or more. At least one signature on any check of \$25,000 or more will be the signature of the Chief Executive Officer or the Chief Financial Officer. In the absence of the CEO and CFO, either one may designate either the Director of Administration, Director of Claims, or Director of Personal and Practice Management.

(B) Any check payable to a Director, the Chief Executive Officer, or the Chief Financial Officer will bear two signatures, not to include the signature of the payee.

(C) The Chief Executive Officer or Chief Financial Officer will review a copy or record of any check not signed by either of them, together with supporting documentation, within ten business days of disbursement.

### **5.200 INVESTMENT GUIDELINES**

The funds of the Oregon State Bar Professional Liability Fund are to be invested in the following manner:

(A) Prudence: All participants in the investment process shall act responsibly. The standard of prudence to be applied by the Board of Directors, the Investment Committee, PLF staff and external service providers shall be the

“prudent investor” rule, as provided in ORS Ch. 128.

(B) Ethics and Conflicts of Interest: The Board of Directors, Investment Committee, PLF staff, and outside managers and advisors involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair their ability to make impartial decisions. These parties are required to reveal all relationships that could create or appear to create a conflict of interest in their unbiased involvement in the investment process. The Board of Directors and PLF staff shall be subject to applicable State statutes and opinions of the Oregon Government Standards and Practices Commissions. All external service providers shall be governed by the Standards of Professional Conduct established by the Association of Investment Management and Research (AIMR) and applicable State statutes.

(C) Diversification: The investments of the Oregon State Bar Professional Liability Fund shall be diversified as to type of investment, issuer, and industry sector. Investments will not be made in individual securities. Commingled funds or mutual funds will be used as investment instruments. For commingled funds or mutual funds there is a pooling of securities owned by multiple clients for diversification, lower expense, and improved liquidity. Investments in real estate will be implemented through a diversified commingled fund structure. For absolute return investments, only “funds of funds” will be used to promote diversification and limit volatility. A fund of funds is defined as a pool of investments managed by multiple organizations that have different investment strategies or approaches. Investments in the real return strategy shall be made in an investment vehicle targeting a “real” return in excess of inflation, utilizing a core investment in inflation protected securities.

(D) Finance and Investment Committee: The Finance and Investment Committee will advise the Board of Directors. The Board of Directors will approve the hiring of the investment advisor/consultant, the selection of all investment managers, and all changes to the investment guidelines including the asset allocation.

(E) Investment Advisor/Consultant: The Board of Directors will hire an independent consulting organization to provide expert advice and assistance regarding investments. This organization shall not be involved in any investment management of PLF funds. This organization will monitor investment results and report to the Board of Directors as soon as practicable after each calendar quarter. A representative of the investment consultant will periodically meet with the Finance and Investment Committee to review each manager’s performance. Any noncompliance with the PLF Investment Guidelines will be reported to the Board of Directors as quickly as possible. The quarterly investment performance report will also be distributed to the Board of Governors of the Oregon State Bar.

The investment consultant may offer the Investment Committee and Board of Directors other expert assistance including formulating investment policies, preparation of asset allocation reports, and selection of investment managers.

(F) Investment Managers: The Board of Directors will select investment managers, including commingled funds, mutual funds and funds of funds, after reviewing recommendations from the Investment Committee. For each investment manager, an applicable index or indices will be selected as a gauge to evaluate future performance. For some asset classes, a fixed or absolute return percentage may be used instead of an index. In addition, performance will be evaluated with a universe of other managers within the same asset class. Generally, performance

measurement shall be based on total rate of return and shall be monitored over a sufficient time period to reflect the investment expertise of the investment manager over one full market cycle, or three years, whichever is less. Investment managers are requested to meet with the Investment Committee at least annually to review past performance and the investment forecast for the following year.

(G) Short Term Investments: The Chief Executive Officer and Chief Financial Officer will project the annual cash needs for PLF administration and claim payments. Based upon these projections, amounts shall be allocated to short term investments including fixed income funds, money market funds or bank accounts. The Chief Executive Officer or Chief Financial Officer may withdraw funds or liquidate any short term investments as needed to pay claims or cover the cost of PLF operations.

(H) Long Term Investments: Investment funds intended to be held more than one year shall be called long term investments. The Chief Executive Officer or Chief Financial Officer may withdraw funds or liquidate long term investments as needed to pay claims or cover the cost of PLF operations.

(I) Asset Allocation: An important component of an investment strategy for long term investments is the asset mix, or the resource allocation, among the various classes of securities available for PLF investments. The Board of Directors will be responsible for minimum, target and maximum asset allocation for investments intended to maximize investment return with limited volatility. The Board of Directors shall make use of formal asset allocation studies to help set allocations. These studies, reviewing the appropriate asset mix for the PLF, will be completed every two years at a minimum. The investment portfolio shall be diversified among the asset classes listed in the asset allocation table below, and such holdings themselves shall be prudently diversified.

The Board of Directors will adopt a long-term “target” strategic asset allocation. The Board of Directors will periodically review the asset allocation to deem that it is appropriate for the PLF investment objectives. Within each asset class, the Board of Directors shall adopt portfolio implementation strategies and investment styles to meet the overall investment objective of each asset class.

The following is intended to represent the current target mix of asset classes for long term investments:

ASSET CLASS	MINIMUM PERCENT	TARGET PERCENT	MAXIMUM PERCENT
U.S. Equities	17%	32%	34%
International Equities	12%	23%	30%
Fixed Income	20%	35%	36%
Real Estate	5%	10%	15%

(J) Rebalancing: The Chief Executive Officer and Chief Financial Officer, on an ongoing basis and in accordance with market fluctuations, shall rebalance the investment portfolio so it remains within the range of minimum and maximum allocations.

## 5.250 AUDITING AND ACCOUNTING ASSISTANCE

The Board of Directors hires the independent financial auditor subject to the requirements of the Oregon Secretary of State. Any audit report will be made directly to the Board of Directors.

The Board of Directors may retain additional outside accounting advice whenever it deems necessary.

### **5.300 CLAIMS RESERVES**

The estimated liability for claims is the major item in the Liabilities and Equity portion of the Professional Liability Fund's Balance Sheet. The accuracy of this item is crucial when presenting the financial condition of the PLF. The Chief Executive Officer will periodically review the case-by-case indemnity and expense reserves required under section 4.350 and will adjust these figures to present at all times as accurate a picture as possible of the total claims liabilities incurred by the PLF. The Chief Executive Officer will use consulting actuaries when appropriate. The method of calculating estimated liabilities will be reported in detail to the Board on at least an annual basis.

### **5.350 BUDGET**

The Chief Financial Officer and Chief Executive Officer will prepare an annual budget for the Primary and Excess Programs that must be approved by the Board of Directors and the Board of Governors. The budget will reflect the PLF's mission and goals as stated at Policy 1.250. The Excess Program will be allocated a portion of all common costs based upon the benefits received from PLF departments and programs. The Chief Executive Officer will present the budget to the Board of Governors in conjunction with the recommended Primary Program assessment for the coming year.

### **5.400 REPORTS TO BOARD OF DIRECTORS**

At each meeting, the Board of Directors will receive a copy of the PLF's financial statement, a copy of any investment reports prepared by the PLF's investment advisors, and such other financial reports as the Chief Executive Officer may present. In addition, the Board of Directors will receive copies of all reports from consulting actuaries and any consultants who evaluate the performance of

the PLF's investment advisors. All members of the Board of Directors and Board of Governors will receive a copy of the final annual audit of the PLF.

### **5.450 SUBROGATION AND RECEIVABLES; WRITE-OFFS**

The Chief Executive Officer will establish procedures and forms for handling subrogation matters and receivables, including judgments for costs and disbursements, assignments of contracts, notes, and other assets, and subrogation actions against third parties. Uncollectible obligations valued at \$50,000 or less may be written off with proper documentation including an appropriate justification based upon standard financial and accounting practices. Uncollectible obligations valued at more than \$50,000 may be written off only with approval of the Board of Directors with proper documentation including an appropriate justification based upon standard financial and accounting practices. The Chief Executive Officer will present a report of all write-offs in excess of \$10,000 to the Finance Committee at least annually.

### **5.550 SALARY ADJUSTMENT**

(A) The Oregon State Bar and the Professional Liability Fund will coordinate their annual budgeting for salary increases in order that the two organizations will select the same percentage increase for their respective salary pools.

(B) The Bar's Chief Executive Officer and the PLF's Chief Executive Officer will confer from time to time concerning the appropriate salary pool percentage in their respective budgets for the following year.

(C) Beginning midsummer each year, the OSB and PLF CEOs will assemble the following data: (a) projected cost of living increase figures for Portland and U. S. cities; (b) projected salary pool percentage increases for comparable businesses and organizations, and (c) such other information as they may choose. They will also give due consideration to the correctness of the underlying



assumptions and percentage increase figure chosen in the prior year, and whether any adjustment in the next year's figure is warranted.

(D) Based upon available data, the OSB and PLF CEO's will attempt to select an appropriate percentage increase figure for the following year. In making this selection, their goal will be to create an available salary pool which is adjusted from the prior year's pool (adjusted for any increase or decrease in number of personnel) by an appropriate amount, taking into consideration such factors as merit and inflation. Individual salary adjustments for personnel will be decided separately by the CEO for the Bar and the CEO for the PLF as an administrative matter at a later date. Salary adjustments for the OSB CEO and PLF CEO, if any, will be determined through a separate procedure within each organization.

(E) The OSB CEO and PLF CEO will forward their recommendation to their respective budget committees. In the event that different recommendations are being made, both the Board of Governors and the PLF Board of Directors will be told of the difference and the reason the CEOs are making different recommendations. Each budget committee will make an independent recommendation to their full boards.

(F) The joint goal of the two organizations is to agree on the same salary pool percentage. However, in certain circumstances it may be appropriate for each organization to select a different percentage increase figure. The final choice of a figure shall be made by the board of each organization after the full communication and cooperation as described by this statement of procedures.

(BOD 5/17/91; BOG 10/1/91; BOD 10/2/91; BOD 12/6/91; BOG 12/13/91; BOG 3/13/92; BOD 8/14/92; BOG 9/22/92; BOD 7/16/93; BOG 8/13/93; BOD 12/3/93; BOD 12/17/93; BOD 2/18/94; BOG 3/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/15/97; BOG 9/25/97; BOD 2/12/99; BOG 4/3/99; BOD 1/28/00; BOG 6/3/00; BOG 8/9/01; BOG 11/17/01; BOD 4/19/02; BOG 8/3/02; BOD 10/25/02; BOG 11/16/02; BOD 12/12/03; BOG 1/31/04; BOD 5/14/04; BOG 6/11/04; BOD 10/22/04; BOG 11/20/04; BOD 6/23/06; BOG 7/7/06; BOD 10/8/10; BOG 11/12/10; BOD 11/02/15; BOG 11/20/15; BOD 08/24/18; BOG 09/21/18)

## **CHAPTER 6 PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE**

### **6.100 GENERAL STATEMENT**

Personal and practice management assistance programs are of primary importance to the Professional Liability Fund to reduce the frequency and severity of future claims. Personal and practice management programs will include 1) educating OSB members on avoiding malpractice 2) practice management assistance and 3) personal assistance. The education activities will include collection and analysis of claims data, periodic publications, handbooks, workshops, seminars (including participation in programs and seminars of the Oregon State Bar and other organizations) and audiotapes and videotapes of programs. Practice management assistance will include assistance with docket control, tickler systems, conflict of interest systems, mail handling, billing, trust accounting, general accounting, time management, file management, client communications, computer systems, and other practice management issues. Personal assistance will include assistance with alcoholism, drug addiction, burnout, career change and satisfaction, depression, anxiety, gambling addiction, procrastination, relationship issues, stress management, time management or other distress that impairs a member of the Oregon legal community's ability to function.

### **6.150 PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE (PLF-PPMAC)**

(A) The PLF Personal and Practice Management Assistance Committee (PLF-PPMAC) has been created by the Board of Governors under OSB Bylaw 24 pursuant to ORS 9.568. The members of the PLF Board of Directors will serve as the members of the PLF-PPMAC (the "Committee").

(B) (1) The Committee will provide personal and practice management assistance through the Oregon Attorney Assistance Program (OAAP) and the Practice Management Adviser Program (PMAP) described in these policies. The Committee delegates to PLF CEO and OAAP Executive Director such authority as is necessary to administer those programs, to receive complaints and referrals under ORS 9.568(6), and to provide assistance to members of the Oregon legal community pursuant to PLF Policy 6.100. All assistance will be provided in accordance with the Bylaws and Policies of the Oregon State Bar and of the Professional Liability Fund. Neither the Committee nor the PLF CEO will request or require disclosure of the names of participants in the OAAP or PMAP.

(2) The PLF CEO or OAAP Executive Director will report general program results to the Committee at each regularly scheduled meeting of the Committee, and will provide periodic written reports to the Committee at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions for program changes, proposed amendments to applicable bylaws and policies, and such other general information as the Committee may request. However, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(C) The Committee will meet with the Board of Governors and provide periodic written reports of its activities at least annually. The reports will contain program statistics, a description of program changes and developments, a narrative summary of results, suggestions for program changes, proposed amendments to applicable bylaws and policies, and such other general information as the Board of Governors may request. However, the identity of any person who has received assistance from the OAAP or the

PMAP will not be requested or required to be disclosed, the periodic reports will not disclose the identity of any person who has received assistance from the OAAP or the PMAP, and in all cases the confidentiality of program participants will be maintained consistent with the provisions of ORS 9.568 and applicable Bar and PLF policies.

(D) For the purposes of ORS 9.568, all PLF employees as well as all other persons providing help through, at the request of, or with the approval of the OAAP and PMAP, will be deemed to be agents of the PLF-PPMAC (in addition to all others who fall within the definition of ORS 9.568(8)).

## **6.200 OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP)**

The Professional Liability Fund has established an assistance program called the Oregon Attorney Assistance Program (OAAP). The purpose of the OAAP is to provide personal assistance to members of the Oregon legal community pursuant to ORS 9.568.

(A) The purpose of the OAAP is:

(1) To provide assistance to members of the Oregon legal community who experience problem alcohol, drug, and/or other substance use, burnout, career transition, depression, anxiety, compulsive disorders (including gambling addiction), time management issues, relationship issues, stress, or other distress that impairs a member's ability to function:

(2) To aid in the curtailment of malpractice claims and disciplinary complaints;

(3) To educate the Oregon legal community about sources of distress and/or impairment, such as the diseases of alcoholism, problem substance use, anxiety, depression, relationship issues, compulsive disorders, chronic illness, and career transition; and

(4) To educate the Oregon legal community and families of members of the Oregon legal community about the scope of services offered by the OAAP and resources that are available for assistance.

(B) The OAAP will be based on the concept of lawyers helping lawyers.

(C) In order to assist members of the Oregon legal community, the OAAP will be available to all members of the Oregon legal community including OSB members and judges. In addition, to the extent permitted by available resources, the OAAP will also be available to law office staff, court staff, families of OSB members and judges, and law students in Oregon law schools.

(D) The OAAP will be conducted in the strictest basis of confidentiality. The OAAP program will use federal and state regulations on confidentiality of alcohol and chemical dependency programs as a basis for all OAAP guidelines and procedures. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by any person will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the member of the Oregon legal community accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

(E) OAAP services will be provided at a physical location that is separate from the Oregon State Bar and the Oregon State Bar Professional Liability Fund offices in order to maintain the program's confidentiality and anonymity and to enhance participation in the programs by

members of the Oregon legal community seeking assistance.

(F) The OAAP will maintain statistical data, including the number of people accessing the OAAP and the type of services provided. Statistical reports will be produced periodically as requested by the OAAP executive director. The reports will not disclose the identity of any person who has received assistance from the OAAP.

(G) The OAAP services will be provided by attorney counselors who are trained to provide problem identification, assessment, motivation, and referral to appropriate services. All OAAP Attorney Counselors will (1) be licensed attorneys (2) have experience or training in alcohol and chemical dependency, intervention, mental health issues, group dynamics, and public speaking, (3) have an understanding of or experience with 12-Step programs, and (4) if in recovery, have at least five years of consecutive recovery. OAAP Attorney Counselors will attain CEAP (Certified Employee Assistance Professional), CADC (Certified Alcohol and Drug Counselor), or other comparable counseling credentials within four years of employment and will maintain the certification or credential in addition to other appropriate continuing education.

(H) The OAAP Attorney Counselors will provide knowledgeable referrals to the community, public and private resources for diagnostic and/or treatment services including therapists, treatment centers or other appropriate community resources. The OAAP Attorney Counselors may also refer individuals to the member support networks of the OAAP or other available organizations, agencies or resources.

(H) Involvement in the OAAP will be at no or nominal cost to the program participant.

#### **6.250 PRACTICE MANAGEMENT ADVISOR PROGRAM (PMAP)**

The Professional Liability Fund has established an assistance program called the Practice

Management Advisor Program (PMAP). The purpose of the PMAP is to provide practice management assistance to OSB members pursuant to ORS 9.568.

(A) The PMAP shall:

(1) provide assistance to OSB members in the areas of mail handling, conflict of interest systems, computer software and hardware, general and trust accounting, tickler systems, client relations, time management, and billing systems.

(2) aid in the curtailment of malpractice claims and disciplinary complaints arising from practice management errors.

(3) educate the legal community about practice management issues.

(B) The PMAP will be available to OSB members, including Oregon judges and Oregon law students.

(C) The Practice Management Advisor Program will be conducted on the strictest basis of confidentiality. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by any person will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the OSB member accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

(D) The PMAP practice management advisers will have (1) a minimum of five years experience in law office systems and management, (2) experience and expertise in

teaching, (3) familiarity with a wide range of computer software and hardware, and (4) excellent interpersonal skills.

(E) Involvement in the PMAP will be at no or nominal cost to the program participant.

### **6.300 CONFIDENTIALITY**

All personal and practice management assistance programs provided by the Oregon Attorney Assistance Program (OAAP) and Practice Management Advisor Program (PMAP) will be conducted on the strictest basis of confidentiality. The confidentiality and privilege provided under ORS 9.080(2), ORS 9.568, ORS Chapter 192.410 et seq., and the attorney-client and work product privileges, and other available protection will be asserted to the utmost against any attempts to obtain such information. No information learned about or provided by an OSB member will be disclosed to any person, agency, or organization outside the OAAP or the PMAP without the consent of the OSB member accessing the program. The only exceptions are: 1) to avert a serious, imminent threat to the person's health or safety or that of another person and 2) to comply with legal obligations such as ORS 419B.010 and ORS 124.060 (child abuse and elder abuse).

### **6.400 COOPERATION WITH BAR DISCIPLINE COUNSEL AND STATE LAWYERS' ASSISTANCE COMMITTEE**

The PLF's personal and practice management assistance programs will cooperate with the Oregon State Bar's Disciplinary Counsel and the State Lawyers Assistance Committee in the following areas:

(1) provision of general claims and other statistics as appropriate which do not disclose the identity of any OSB member being assisted by the personal and practice management assistance programs and which does not otherwise breach Policy 6.150 concerning confidentiality, and

(2) supervision and progress reports about an OSB member who is already within the jurisdiction of the State Bar's disciplinary process or the State Lawyers Assistance Committee and who is undergoing a prescribed program of treatment or remedial efforts under the supervision of PLF staff members. Such reports will be provided only with the prior approval of the OSB member who is subject of the reports.

#### **6.450 SHORT-TERM LOANS FOR TREATMENT**

The Chief Executive Officer may authorize loans to members in an amount not to exceed \$2,500 for the purpose of obtaining immediate treatment for alcohol, chemical dependency, or other problems which impair an OSB member's ability to practice law. The loan will be used only for the purpose of such treatment, and will be evidenced by a promissory note of the OSB member.

#### **6.500 MULTIPLE CLAIMS**

It will be the responsibility of the Chief Executive Officer and staff of the PLF to contact any OSB member with multiple claims to attempt to mitigate future damages.

(BOD 6/21/91; BOG 10/1/91; BOD 2/21/92; BOG 3/13/92; BOD 4/23/93; BOG 8/13/93; BOD 6/18/99; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 08/09/01; BOG 11/17/01; BOD 02/08/02; BOG 04/05/02; BOD 6/20/03; BOG 9/18/03; BOD 8/27/04; BOG 10/13/04; BOD 6/17/05; BOG 6/24/05; BOD 2/8/08; BOG 2/22/08; BOD 12/11/09; BOG 2/19/10; ; BOD 4/27/12; BOG 11/10/12; BOD 2/6/15; BOG 4/24/15; BOD 04/14/23; BOG 04/14/23)

### **CHAPTER 7 EXCESS COVERAGE PROGRAM**

#### **7.100 EXCESS COVERAGE PROGRAM**

(A) The PLF will offer excess coverage through an excess program as authorized under ORS Ch. 9. The Board of Directors of the PLF will be responsible for the excess program (subject to the ultimate control of the Board of Governors as in other matters), but delegates underwriting to the Chief Executive Officer.

(B) The excess program may maintain a positive net position established from capital contribution, profit commissions, ceding commissions, investment income, and other sources. The purpose of the excess program net position is to provide excess program stability, capital to permit the PLF to retain some risk in its reinsurance agreements, and reserves against the possibility of failure by a reinsurer.

#### **7.150 MANAGEMENT**

The Professional Liability Fund will manage the excess program in accordance with the policies of the PLF Board of Directors. The excess program will reimburse the Professional Liability Fund for services so that the cost of the excess program is borne by the participants in the excess program through their excess coverage assessments and is not subsidized by the primary fund. All assets, liabilities, revenues and expenses of the excess program will be accounted for as a separate fund.

#### **7.200 EXCESS CLAIMS SETTLEMENT**

(A) The Board of Directors will have settlement authority for all claims in the primary and excess layers. In each case, settlement decisions are to be made by the board considering only the interest of each respective fund, with due consideration to the duties owed under law by a primary carrier to an excess carrier, and vice versa. In the event of uncertainty or potential conflict as to appropriate trial strategy or settlement of a particular claim between the interests of the primary and excess programs, the Board of Directors may establish one or more advisory committees, seek legal or expert advice, or take such other action as the Board deems appropriate.

(B) All discussions regarding the handling of specific claims covered by the excess program will be conducted in executive sessions pursuant to ORS Ch. 192.

(C) Excess claims will be settled according to the procedures stated at Policy 4.400. The member of the Board of Directors designated to

review a claim for settlement purposes under Policy 4.400(A) will have authority over the claim at both the primary and excess layers.

## **7.250 APPLICATION AND UNDERWRITING**

(A) The PLF may require firms seeking excess coverage to complete an application form designated by the PLF. The PLF may request additional relevant information at any stage of the underwriting process. Firms will be underwritten based upon this application, such other information as the PLF deems relevant, and the underwriting guidelines established in section 7.300. Because the information requested from firms is personal, sensitive, confidential, and relates to litigation matters, applications and other underwriting materials will be exempt from disclosure under the Public Records Law, ORS Ch. 192.

(B) No final decisions or action on an application will be made by the Excess Committee. The committee may review and discuss firm applications, but all final decisions or action on applications will be made by the Chief Executive Officer or the Chief Executive Officer's designee with a right of appeal to the PLF Board of Directors.

(C) For underwriting purposes the PLF may limit the excess coverage offered to a firm in such areas as, but not limited to, imposition of a retroactive date as to a firm or individual firm members; imposition of an exclusion as to claims from particular claimants, transactions, events, or subject matters; imposition of an exclusion as to claims from business entities in which the firm, firm members, or their families have an ownership or management interest or for which they serve as an officer or director; and other coverage limitations. For underwriting purposes, the PLF may impose additional requirements as a condition to obtaining coverage including, but not limited to, higher assessment rates, additional surcharges, or a requirement that the firm or firm members undertake specified education or personal and practice management assistance.

(D) In order to ensure the integrity and quality of the underwriting process and to maintain the viability of the excess program, the individual underwriting decisions of the PLF will be final and will not be reviewed by the Board of Governors.

(E) Excess plans are underwritten and issued on an annual basis and are not renewable.

(F) No information from the Oregon Attorney Assistance Program or the PLF's other assistance programs will be obtained or used in the underwriting process unless both the applicant firm and affected firm member(s) request that it be considered. See PLF Policy 6.300.

## **7.300 EXCESS COVERAGE ASSESSMENT**

(A) Applications submitted for underwriting will be evaluated against a variety of factors, including, but not limited to: prior claims experience, area of practice, CLE history, firm size, amount of excess insurance sought, and the use and quality of standard practice management systems.

(B) If the PLF determines that an application is unlikely to be accepted for underwriting, the PLF will notify the applicant of its likely decision and the reasons. The applicant will be offered an opportunity (1) to present additional information to the PLF to demonstrate why its application meets the criteria for acceptance, (2) to withdraw its application, or (3) to have its application rejected by the PLF. If the applicant does not withdraw its application, the PLF will notify the applicant of its final underwriting decision and the reasons.

(C) If a firm has not been accepted for underwriting in a given year, the firm will not be considered for underwriting in the following two years unless there is a showing of an acceptable change in circumstances. It is the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(D) If in a given year the PLF has offered excess coverage to a firm on the basis of any special coverage or practice limitations, restrictions, or conditions, those same limitations, restrictions, or conditions will apply to any offers of excess coverage in the following two years unless there is a showing of an acceptable change in circumstances. It is the responsibility of the firm seeking excess coverage to show an acceptable change in circumstances.

(E) Assessments for excess coverage will be determined through an underwriting formula and rate sheet. Base rates will be set by the PLF in agreement with reinsurers and will be reported to the Board of Directors and the Board of Governors.

(F) The Board may establish requirements and procedures concerning the payment of excess coverage assessments including, but not limited to, payment due dates, cancellation for non-payment, and financing of assessments.

(G) The excess program may be assessable against the program participants, including firm members. Supplemental assessments will be made if required according to the terms of the excess coverage plan.

(H) The Chief Executive Officer or designee will report to the Board of Directors and the Board of Governors about the Excess Plan renewal on an annual basis.

#### **7.400 REINSURANCE**

The Professional Liability Fund may obtain such reinsurance for the excess program as it deems appropriate and economically advantageous. The PLF will obtain a formal reinsurance security report at least annually concerning the reinsurers participating in the excess program.

#### **7.500 REPORTS**

The Chief Executive Officer will report to the Board of Directors the status of claims with excess

liability potential and will furnish such additional information as the Board of Directors may request.

#### **7.600 ADDITIONAL EXCESS PROGRAM RULES**

(A) Former firm members may inquire in writing regarding their former law firm's excess coverage status. Information provided may include whether the former member's firm had or has excess coverage, the coverage period (and applicable coverage limits, if any), and whether the former member is listed on the firm's coverage documents.

(B) Coverage Limits and Primary Coverage: A firm which obtains excess coverage from the PLF must obtain the same amount of excess coverage for each member of the firm. Excess coverage will not be extended to any firm which includes any firm member who does not maintain current primary PLF coverage unless the firm obtains coverage for the firm member under the provisions of Section (D) below. Firms will not be offered excess coverage limits over \$1.7 million unless they have maintained excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage. Firms may be offered excess coverage over \$1.7 million without having had excess coverage of at least \$1.7 million with some carrier for one year prior to applying for PLF excess coverage if the firm does not present an unacceptable level of risk and the firm can demonstrate that the reason for the limits increase is due solely to client coverage requirements (See Section (M) below regarding coverage limits restrictions at the \$9.7 million level).

(C) Prior Acts Coverage/Retroactive Date:

(1) The retroactive date applicable to claims made under the excess coverage plan will be the same retroactive date that applies under the applicable PLF Primary Coverage Plan or Plans or the firm's retroactive date, whichever date is more recent.

(2) The PLF may give a credit to firms with recent excess coverage retroactive dates according to the following schedule:

<u>Period between Firm Retroactive Date and Start of Coverage Period</u>	<u>Excess Assessment Credit</u>
0 -12 months	50 percent
12-24 months	40 percent
24-36 months	30 percent
36-48 months	20 percent
48-60 months	10 percent
60+ months	No credit

The PLF may not offer the credit to a firm for the underwriting considerations stated at Policies 7.250 and 7.300.

(D) Non-Oregon Attorneys and Out of State Attorneys:

(1) Firms with non-Oregon attorneys or Oregon attorneys whose principal office is not in Oregon may be offered coverage subject to the Excess Program underwriting criteria, the restrictions of this section and any other additional underwriting and coverage limitations imposed by the PLF or its reinsurers. Registered patent agents will be treated the same as non-Oregon attorneys. Non-Oregon attorneys whose principal office is in Oregon must be practicing in areas of law that do not require Oregon bar membership.

(2) The PLF may establish conditions, terms, and rates for coverage for firms with non-Oregon attorneys and/or non-resident Oregon attorneys, including additional endorsements and exclusions. The PLF may offer “drop-down” coverage for the firm for any firm members not covered by the PLF Primary Coverage Plan, subject to such deductibles or self-insured retentions as the PLF may establish.

(3) As a general rule, the PLF will not offer excess coverage to any firm if the total number of out-of-state lawyers in the firm exceeds more than 33% of total firm lawyers at the time of

application or at any time during the past five years.

(4) Unless otherwise determined by the PLF, firms will be charged for excess coverage for non-Oregon and out-of-state attorneys at a per-attorney rate equal to the current primary assessment plus the rate for excess coverage applicable to other firm attorneys.

(5) Coverage for non-Oregon and out-of-state attorneys will be subject to a deductible of \$5,000 per claim.

(E) Installment Payment Plan:

(1) Firms will have the option of paying the excess coverage assessment on an installment basis as follows:

<u>Payment Due Date</u>	<u>Percent of Total</u>
January 1	40%
May 1	35%
September 1	25%

(2) Firms that choose the installment payment plan will be charged a service charge equal to \$25 plus interest of 7% per annum on the outstanding balance. The service charge must be paid with the first installment and is non-refundable. Installment payments are only available in a given year if the coverage period for a firm begins prior to March 1; if the coverage period for a firm begins on March 1 or later, the firm will be required to pay its annual excess assessment in a single payment.

(3) Firms will have a ten-day grace period for payment of installments. If payments are not received during the grace period, the firm’s excess coverage plan will be canceled as provided under the excess coverage plan. The PLF may, but will not be required to, reinstate coverage if payment of an installment is made within ten days after the expiration of a grace period, and may require that the balance of the firm’s assessment for the year be paid in full as a condition of reinstatement.



(F) Cancellation: If an excess coverage plan is canceled by the PLF, the assessment will be determined on a pro rata basis. If excess coverage is canceled, the firm will still remain liable for supplemental assessment but on a pro rata basis according to the period of coverage during the year.

(G) Predecessor Firm Endorsement:

(1) A former firm which does not meet the Excess Plan definition of a “predecessor firm” may be added for underwriting reasons as a “predecessor firm” by special endorsement. The following conditions, among others, must ordinarily be met:

(a) The former firm is no longer engaged in the practice of law;

(b) The former firm is not covered by any excess policy, including extended reporting coverage;

(c) The former firm and the firm members who worked for the firm do not present an unacceptable level of risk in the view of the PLF; and

(d) At least 50 percent of the firm attorneys who were with the former firm during its last year of operation and who are presently engaged in the private practice of law in Oregon will carry current PLF excess coverage during the year.

The PLF may impose special limitations or conditions, and may impose an additional assessment for underwriting reasons as a condition to granting the endorsement, or may decline to grant the endorsement for underwriting reasons.

(2) No firm may be listed as a predecessor firm (by endorsement or otherwise) for the same or an overlapping period of time on more than one Excess Plan.

(H) Firm Changes After the Start of the Coverage Period:

(1) Except as provided in subsection (2), firms are not required to notify the PLF if an firm member joins or leaves the firm after the start of the Coverage Period, and will neither be charged a prorated excess assessment nor receive a prorated refund for such changes. New firm members who join after the start of the Coverage Period will be covered for their actions on behalf of the firm during the remainder of the year, but will not be covered for their actions prior to joining the firm. All changes after the start of the Coverage Period must be reported to the PLF on a firm’s renewal application for the next year.

(2) Firms are required to notify the PLF after the start of the Coverage Period if:

(a) The total number of current attorneys in the firm either increases by more than 100 percent or decreases by more than 50 percent from the number of current attorneys at the start of the Coverage Period.

(b) There is a firm merger. A firm merger is defined as the addition of one attorney who practiced as a sole practitioner or the addition of multiple attorneys who practiced together at a different firm (the “merging firm”) immediately before joining the firm with PLF excess coverage (the “current firm”). It is only necessary to report a firm merger to the PLF if the current firm is seeking to add the merging firm as a predecessor firm or specially endorsed predecessor firm to the current firm’s Excess Plan.

(c) There is a firm split. A firm split is defined as the departure of one or more attorneys from a firm with PLF Excess Coverage if one or more of the departing attorneys form a new firm which first seeks PLF Excess Coverage during the same Coverage Period.

(d) An attorney joins or leaves an existing branch office of the firm outside of Oregon.

(e) The firm establishes a new branch office outside of Oregon.

(f) The firm enters into an “of counsel” relationship with another firm.

(g) An attorney continuing to practice law with, or maintaining an affiliation with, a Law Entity other than the Law Entity listed on the Excess Declarations joins or leaves the firm.

(h) A non-Oregon attorney joins, or leaves the firm.

(i) An attorney practicing in areas that present risk of claims (including aiding and abetting) under Oregon Securities Law joins or leaves the firm.

In each case under this subsection (2), the firm’s coverage will again be subject to underwriting, and a prorated adjustment may be made to the firm’s excess assessment.

(I) Discretionary Continuity Credit:

Firms that are offered excess coverage may receive a continuity credit for each year of continuous PLF Excess Coverage (2% for one year, up to a maximum credit of 20% for ten years – see table below) at the underwriter’s discretion if the firm has no negative claims experience, does not practice in a Higher Risk Practice Area, and meets acceptable practice management criteria. See PLF Policy 7.300(A).

No firm will be entitled to receive a continuity credit if the firm is receiving a credit for a recent retroactive date under Policy 7.600(C)(2).

(J) Extended Reporting Coverage:

(1) Firms that purchase excess coverage for two full years may be offered the

following extended reporting coverage (ERC) options at the following prices (stated as a percentage of the firms’ annual excess assessment for the last full or partial year of coverage):

Extended Reporting Coverage Period	ERC Premium
12 months	100%
24 months	160%
36 months	200%
60 months	250%

(2) A firm must exercise its right to purchase ERC and must pay for the ERC coverage within 30 days of termination or cancellation of its PLF excess coverage. The Chief Executive Officer may include wording in the Excess Coverage Plan to indicate that ERC options vary from year to year, and that any particular option may be unavailable in a future year.

(K) Continuous Coverage: The PLF will not offer a renewing firm continuous coverage from January 1 unless the firm’s renewal application is received by the PLF in substantially completed form by January 10 (or the next business day if January 10 is a weekend or holiday). If a renewal application is received after that date and the firm is approved for underwriting, the coverage period offered to the firm will begin on the day the renewal application was approved for underwriting and the assessment will be prorated accordingly. Renewing firms may qualify for the discretionary continuity credits pursuant to subsection (I) so long as the firm renews its coverage no later than January 31. Renewal after January 31 will result in the automatic loss of any accumulated discretionary continuity credit.

(L) Current and Former Members:

(1) No member of the firm may be listed as a current member of the firm for the same or an overlapping period of time on more than one Excess Plan.

(2) No member of the firm may be listed as a former member of a firm for the same or an overlapping period of time on more than one Excess Plan.

(M) Higher limits coverage: Firms who meet the additional underwriting criteria and procedures established by the PLF and its reinsurers may be eligible to purchase limits in excess of the \$4.7 million excess limits offered by the PLF's standard excess program. In accordance with reinsurance agreements, firms applying for higher limits coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(1) The higher limits coverage will be an additional \$5 million in excess of the \$4.7 million standard excess coverage. Firms seeking coverage above the \$4.7 million standard excess coverage will be subject to the standard underwriting formula and rate sheet and also subject to reinsurer approval and rating adjustment.

(2) Firms will not be offered higher limits coverage above \$4.7 million unless they have maintained excess coverage with limits of at least \$4.7 million with the PLF or some other carrier for the prior two years.

(N) Non-Standard Excess Coverage: Firms who do not meet the underwriting criteria established by the PLF and its reinsurers under PLF Policy 7.300 may be eligible to purchase non-standard excess coverage offered by the PLF and its reinsurers. In accordance with reinsurance agreements, firms applying for non-standard excess coverage may be subject to additional underwriting considerations and may not be eligible for credits available with the standard excess program coverage.

(BOD 10/2/91; BOG 11/8/91; BOD 12/6/91; BOG 3/13/92; BOD 9/23/92; BOG 11/13/92; BOD 9/24/93; BOG 11/19/93; BOD 2/18/94; BOG 3/12/94; BOD 8/12/94; BOG 9/26/94; BOD 9/26/94; BOG 11/12/94; BOD 8/11/95; BOG 11/12/95; BOD 8/9/96; BOG 9/25/96; BOD 6/30/97; BOG 7/26/97; BOD 8/15/97; BOG 9/26/97; BOD 10/3/97; BOG 11/15/97; BOD as revised 11/21/07; BOD 8/14/98; BOG 9/25/98; BOD 8/6/99; BOG 9/16/99; BOD 11/19/99; BOG 1/28/00; BOD 10/20/00; BOG 11/20/00; BOD 12/7/01; BOG 12/6/01; BOD 8/16/02; BOG 10/3/02; BOD 12/3/02; BOG 12/16/02; BOD 6/20/03; BOG 9/18/03; BOD 10/28/03; BOG 11/15/03; BOD 5/14/04; BOG 6/11/04; BOD 8/27/04; BOG 10/13/04; BOD 10/22/04; BOG 11/20/04; BOD 10/21/05; BOG 11/19/05; BOD 6/27/08; BOG 7/18/08; BOD 10/9/09; BOG 10/30/09; BOD 8/14/14; BOG 9/5/14; BOD 10/16/15; BOG 11/20/15; BOD 10/14/16; BOG 11/19/16; BOD 8/24/18; BOG 9/21/18; BOD 4/12/19; BOG 4/12/19; BOD 04/14/23; BOG 04/14/23)

## **APPENDIX A**

### **APPLICABLE OREGON STATE BAR BYLAWS**

OSB Bylaws Section 11.2 and Section 18 directly affect the operations of the PLF. The full text of the OSB Bylaws, including Section 11.2, Section 18, and other sections that reference the PLF, can be found on the [OSB website](#).