

**WASHINGTON STATE  
BAR ASSOCIATION**

**Examining the Historical Organization  
and Structure of the WSBA**
**(ETHOS of the WSBA)**

**Saturday, May 21, 2022, 9:00 a.m. – 4:00 p.m.  
Spokane, WA**

<https://wsba.zoom.us/j/85876396993?pwd=NHZueDFCb0NmeFdwRDNOVmxiTTZaUT09>

**Reading Materials:**

Bar Association Research (p. 3)

WSBA Overview (p. 45)

Oregon State Bar Overview (p. 47)

Idaho State Bar Overview (p. 59)

Letter from the Nebraska State Bar Association to the State Bar of Wisconsin Re

Nebraska's Deunification Experience, Aug. 30, 2017 (p. 62)

Nebraska Supreme Court Opinion Deunifying the Nebraska State Bar Association (p. 66)

[The End of Mandatory State Bars? Leslie C. Levin, The Georgetown Law Journal Online](#)

## AGENDA

9:00 AM	Welcome, Approval of Apr. 23, 2022 ETHOS Meeting Minutes	Pres. Brian Tollefson
9:05 AM	Exploring the Integrated Bar Model: Oregon, Idaho	Helen Hirschbiel, CEO Oregon State Bar  Diane Minnich, Executive Director, Idaho State Bar
10:00 AM	Exploring the Voluntary Bar Model: Colorado, Nebraska	Amy Larson, Executive Director and CEO, Colorado and Denver Bar Associations  Liz Neely, Executive Director, Nebraska State Bar Association

## Examining the Historical Organization and Structure of the WSBA (ETHOS of the WSBA) – Agenda for May 21, 2022

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11:00 AM	Exploring the Hybrid Model: California	Leah Wilson, Executive Director, State Bar of California  Oyango Snell, Executive Director, California Lawyers Association
12:00 PM	Lunch	
1:00 PM	Financial Considerations for Potential Changes to WSBA’s Scope and Structure	Director of Advancement Kevin Plachy  Budget & Finance Manager Liz Wick
2:30 PM	Break	
2:45 PM	Comments from the Membership and Public	
3:00 PM	Board of Governors Questions, Comments and Discussion	
3:50 PM	Future Agenda Items and Action Item Review	Pres. Brian Tollefson
4:00 PM	Adjourn	Pres. Brian Tollefson

*Next scheduled meeting: June 18, 2022, 9:00 a.m. – 4:00 p.m.*

## MEMO

To: The Board of Governors  
Date: May 13, 2022  
Re: Various Bar Structures

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### VARIOUS BAR STRUCTURES

Various bar structures exist governing the practice of law across the United States. Generally, they fall into one of three broad categories: (1) voluntary bars, (2) mandatory bars, and (3) integrated bars. In voluntary bar systems lawyers are not obligated to be members.<sup>1</sup> Mandatory bars require that all lawyers be members and pay license fees to practice law within the jurisdiction,<sup>2</sup> with most or all regulatory functions administered as part of the bar. An integrated bar is a form of mandatory bar that performs both professional association functions and regulatory functions.<sup>3</sup>

What follows is an examination of two examples of each structural approach to regulating the practice of law through administration of bar entities or court supervision, including governance information, funding information, and other information helpful to the analysis of the given bar structure.<sup>4</sup> The Memo is organized as follows:<sup>5</sup>

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<sup>1</sup> Leslie Levin, *The End of Mandatory State Bars?*, 109 GEO. L.J. ONLINE 1, 9 (2020). In jurisdictions like Colorado and Nebraska, which have voluntary bars, the regulation of the practice of law is under the direct control and supervision of the highest court. See *infra* §§ C and D.

<sup>2</sup> Levin, *supra* note 1, at 1.

<sup>3</sup> See *infra* Various Bar Structures §§ A and B (Washington and Michigan).

<sup>4</sup> Much of the information in this Memo was drawn from publicly available online resources, including bar websites, legal regulatory entity websites, other government online sources, and new articles. These websites often change so where indicated any links have been updated to reflect that they were last visited in September 2021. The accuracy of the information has not been confirmed with the individual jurisdictions listed.

<sup>5</sup> The structure and format of this Memo is modeled in part after a legal memorandum prepared for and considered by the 2019 Bar Structure Work Group. Felicia Craick and David Moon, Memorandum re Bar Structures, May 20, 2019, <https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Workgroup%20on%20WSBA%20Structure/Bar%20Association%20Research%20-%20Final%20Version.pdf> (last visited September 2021).

- Entirely integrated models;<sup>6</sup>
- Voluntary bar models with regulatory functions performed under the direct supervision of the court;<sup>7</sup> and
- Two-bar models that include both a voluntary bar and a mandatory bar.<sup>8</sup>

All of these bar structures regardless of their classifications operate a little differently and handle certain regulatory functions in ways that other jurisdictions do not.

**A. Washington: An Integrated Bar**

<b>Name of Organization</b>	Washington State Bar Association
<b>Nature of Entity</b>	Integrated
<b>Present Size</b>	41,593
<b>Funding Source</b>	License fees, self-generated revenues
<b>Governance</b>	Board of Governors
<b>Regulatory Functions</b>	Bar admission, licensing, discipline, MCLE compliance,
<b>Sections &amp; Committees</b>	29 section, 31 committees and boards, including regulatory boards and entities
<b>Diversity and Inclusion</b>	Diversity Committee and Equity and Justice Team
<b>Access to Justice</b>	Access to Justice Board of the Supreme Court administered by WSBA
<b>Lobbying</b>	Lobbies legislature and offers <i>Keller</i> deduction

The Washington State Bar Association (WSBA) was formed as a voluntary association in January 1888.<sup>9</sup> In 1933, the Legislature enacted the State Bar Act (RCW 2.48), establishing the Washington

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<sup>6</sup> See *infra* Various Bar Structures §§ A and B (Washington and Michigan).

<sup>7</sup> See *infra* Various Bar Structures §§ C and D (Colorado and Nebraska).

<sup>8</sup> See *infra* Various Bar Structures §§ E and F (Virginia and California).

<sup>9</sup> *The History of the Bar*, WASH. ST. B. ASS'N, <https://www.wsba.org/about-wsba/who-we-are/history-of-the-wsba> (Jan. 14, 2021).

State Bar Association as an agency of the state.<sup>10</sup> The State Bar Act made membership mandatory to practice law in Washington.<sup>11</sup> With the State Bar Act, the WSBA became an integrated bar responsible for both regulation of the practice of law and professional association functions.<sup>12</sup>

Irrespective of RCW 2.48, the Washington Supreme Court has made clear its plenary and inherent authority to govern the practice of law in Washington.<sup>13</sup> Under General Rule (GR) 12.1, the Supreme Court has delegated some functions to the WSBA.<sup>14</sup> GR 12.2 sets forth the general purposes of the WSBA and specifies its authorized activities. As a regulatory agency, the WSBA administers the admission process, including the character and fitness process and bar and licensing exams; annual licensing; and the discipline system.<sup>15</sup> As a professional association, the WSBA provides continuing legal education (CLE) and numerous other educational and member-service activities, including sections support.<sup>16</sup> These functions are supported by a mandatory annual licensing fee and other revenues.<sup>17</sup>

Acting under the plenary authority of the Court and as expressly constituted in RCW 2.48.030, the Board of Governors is the governing body of the Bar.<sup>18</sup> The Board includes a president, eleven members elected by Congressional District (two members from a divided 7th Congressional District), and three at-large governors.<sup>19</sup> The internal affairs of the WSBA, including its

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<sup>10</sup> *Id.* The Washington Supreme Court has since made clear that because the WSBA existed prior to the enactment of the statute, it was not created as an agency of the state. *Beauregard v. Washington State Bar Ass'n*, 197 Wn.2d 67, 75-77, 480 P.3d 410 (2021).

<sup>11</sup> *The History of the Bar*, *supra* note 9.

<sup>12</sup> RCW 2.48.050.

<sup>13</sup> General Rule (GR) 12.

<sup>14</sup> GR 12.1.

<sup>15</sup> GR 12.2.

<sup>16</sup> *The History of the Bar*, *supra* note 9; *About Sections*, WASH. ST. B. ASS'N, <https://www.wsba.org/legal-community/sections/sections> (last visited September 2021).

<sup>17</sup> *Fiscal Year 2021 Budget*, Wash. St. B. Ass'n, 2 (Sept. 18, 2021), [https://www.wsba.org/docs/default-source/legal-community/committees/budget-and-audit-committee/final-budget-fy-21-book---for-wsba-org.pdf?sfvrsn=21740bf1\\_0](https://www.wsba.org/docs/default-source/legal-community/committees/budget-and-audit-committee/final-budget-fy-21-book---for-wsba-org.pdf?sfvrsn=21740bf1_0).

<sup>18</sup> WSBA Bylaw IV.A, Wash. St. B. Ass'n, <https://www.wsba.org/about-wsba/who-we-are/WSBA-bylaws> (follow this link for all future references to the Bylaws); RCW 2.48.030.

<sup>19</sup> WSBA Bylaw IV.B, VI.A.2.

membership, governance, and operations, are established by the Bylaws.<sup>20</sup> Article I of the WSBA Bylaws incorporates GR 12.2, regarding the WSBA's purposes and authorized activities.<sup>21</sup>

The WSBA currently has 41,593 members, including lawyers, limited practice officers, and limited license legal technicians.<sup>22</sup> The lawyer license fee for 2022 is set at \$478, which includes a \$20 Client Protection Fund fee.<sup>23</sup> For fiscal year 2022, the WSBA projected \$24.8 million in expenses and almost \$25 million in revenues.<sup>24</sup> The WSBA supports 29 sections<sup>25</sup> and 31 committees and boards, including several regulatory and non-regulatory boards. Examples of these entities include the Budget & Audit Committee, the Committee on Professional Ethics, the Continuing Legal Education Committee, the Council on Public Defense, the Court Rules and Procedures Committee, the Diversity Committee, Adjunct Disciplinary Counsel Panel, the Board of Bar Examiners, the Character and Fitness Board, the Client Protection Board, the Disciplinary Advisory Round Table, Disciplinary Board, the roster of Hearing Officers, the Law Clerk Board the Editorial Advisory Committee, the Judicial Recommendation Committee, the Legislative Committees, the Long-Range Strategic Planning Council, the Member Engagement Work Group, the Nominations Committee, the Pro Bono and Public Service Committee, the Small Town & Rural Committee, and the Washington Young Lawyers Committee.<sup>26</sup> Several entities administered by the WSBA are Supreme Court boards including the Access to Justice (ATJ) Board, the Disciplinary Board, the roster of Hearing Officers, the Law Clerk Board, the Limited License Legal Technician Board, the Limited Practice Board, the Mandatory Continuing Legal Education (MCLE) Board, and the Practice of Law Board.<sup>27</sup>

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<sup>20</sup> See generally WSBA Bylaws.

<sup>21</sup> WSBA Bylaw IV.A.

<sup>22</sup> *WSBA Member Licensing Counts as of May 3, 2022*, Wash. St. B. Ass'n, [https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo\\_20190801.pdf?sfvrsn=ae6c3ef1\\_182](https://www.wsba.org/docs/default-source/licensing/membership-info-data/countdemo_20190801.pdf?sfvrsn=ae6c3ef1_182).

<sup>23</sup> *2022 License Fee Details*, WASH. ST. B. ASS'N, <https://www.wsba.org/for-legal-professionals/license-renewal/license-fees> (last visited September 2021).

<sup>24</sup> *Fiscal Year 2022 Budget*, Wash. St. B. Ass'n, 3 (Sept. 24, 2021), [https://www.wsba.org/docs/default-source/about-wsba/finance/wsba-fy2022-budget-book.pdf?sfvrsn=518716f1\\_4](https://www.wsba.org/docs/default-source/about-wsba/finance/wsba-fy2022-budget-book.pdf?sfvrsn=518716f1_4).

<sup>25</sup> *Join a Section*, WASH. ST. B. ASS'N, <https://www.mywsba.org/PersonifyEbusiness/Default.aspx?TabID=1500#filter=&searchTerm=&searchItemNameTerm=&searchDescriptionTerm=&productClass> (last visited September 2021).

<sup>26</sup> *Committees, Boards & Other Groups*, WASH. ST. B. ASS'N, <https://www.wsba.org/connect-serve/committees-boards-other-groups> (last visited September 2021).

<sup>27</sup> See generally *Committees, Boards & Other Groups*, *supra* note 26 (follow the links to the various boards to learn more).

The WSBA further actively seeks to promote diversity and equality in the courts and the legal system and to promote an effective and accessible legal system in a variety of ways.<sup>28</sup> The WSBA has an Equity and Justice Team that manages the WSBA’s diversity, equity, and inclusion and access to justice efforts, including staffing certain entities focused on such work.<sup>29</sup>

The bar has a legislative program and engages in legislative advocacy consistent with its policies, GR 12, and *Keller*.<sup>30</sup> Only authorized entities engage in such activities and proposed legislation must be vetted by the BOG Legislative Committee.<sup>31</sup> Authorized entities may take positions and propose legislation.<sup>32</sup> The WSBA offers members a *Keller* deduction with a process for challenging the deduction.<sup>33</sup>

**B. Michigan: An Integrated Bar**

<b>Name of Organization</b>	State Bar of Michigan
<b>Nature of Entity</b>	Integrated
<b>Present Size</b>	46,320
<b>Funding Source</b>	License fees, self-generated revenues
<b>Governance</b>	Board of Commissioners and Representative Assembly
<b>Regulatory Functions</b>	<i>With SBM:</i> character and fitness evaluations, annual licensing, client protection fund, unauthorized practice, IOLTA registrations  <i>With Michigan Supreme Court:</i> bar admissions & discipline
<b>Sections &amp; Committees</b>	44 sections 21 standing committees, and two taskforces, including regulatory committees

<sup>28</sup> *Diversity & Inclusion*, WASH. ST. B. ASS’N, <https://www.wsba.org/about-wsba/equity-and-inclusion> (last visited September 2021).

<sup>29</sup> *Diversity & Inclusion*, *supra* note 28.

<sup>30</sup> *Legislative Affairs*, WASH. ST. B. ASS’N, <https://www.wsba.org/about-wsba/legislative-affairs> (last visited September 2021).

<sup>31</sup> *Legislative Engagement Process*, WASH. ST. B. ASS’N, <https://www.wsba.org/about-wsba/legislative-affairs/legislative-engagement-process> (last visited September 2021).

<sup>32</sup> *Legislative Engagement Process*, *supra* note 30.

<sup>33</sup> *Keller Compliance 2021*, WASH. ST. B. ASS’N, <https://www.wsba.org/for-legal-professionals/license-renewal/keller-deduction> (last visited September 2021).

<b>Diversity and Inclusion</b>	Diversity & Inclusion Advisory Committee
<b>Access to Justice</b>	Access to Justice Campaign
<b>Lobbying</b>	Mandatory bar dues may only fund ideological activity reasonably related to regulation of the profession; voluntary section dues may fund other ideological activity

In 1935, the Michigan Supreme Court created the State Bar of Michigan (SBM) by court rule.<sup>34</sup> The SBM is characterized as a “public body corporate” and has the following court-mandated purposes: “aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this state.”<sup>35</sup> All licensed lawyers are members of the SBM.<sup>36</sup> SBM is regulated and supervised by the Michigan Supreme Court and funded by licensing fees and SBM revenues.<sup>37</sup> In fiscal year 2020, SBM had 46,320 attorney members.<sup>38</sup>

A Board of Commissioners governs the SBM<sup>39</sup> and implements the policy of SBM’s Representative Assembly.<sup>40</sup> Serving for three-year terms, the Board consists of 20 elected members; five members appointed by the Michigan Supreme Court; and a chairperson-elect, chairperson, and immediate past chairperson of the young lawyers section.<sup>41</sup> Officers of the Board include a president, president-elect, vice-president, secretary, and treasurer, each serving a one-year term.<sup>42</sup> The SBM’s official policy making body is its Representative Assembly of 142 elected

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<sup>34</sup> *Representative Assembly*, ST. B. OF MICH., <https://www.michbar.org/generalinfo/origin> (last visited September 2021).

<sup>35</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 1, <https://courts.michigan.gov/courts/michigansupremecourt/rules/documents/rules%20concerning%20the%20state%20bar%20of%20michigan.pdf> (last visited September 2021).

<sup>36</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 2.

<sup>37</sup> *Annual Financial Report FY 2020*, at 2 (Dec. 9, 2020), ST. B. OF MICH., <http://viewer.zmags.com/publication/9449e52a#/9449e52a/10> (last visited September 2021).

<sup>38</sup> *Annual Financial Report FY 2020*, *supra* note 37, at 5.

<sup>39</sup> *Annual Financial Report FY 2020*, *supra* note 37, at 3.

<sup>40</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 5 §1(a) <https://www.courts.michigan.gov/4988be/siteassets/rules-instructions-administrative-orders/rules-concerning-the-state-bar/rules-concerning-the-state-bar-of-michigan.pdf> (follow this link for all future references to the rules) (last visited September 2021).

<sup>41</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 5 §2.

<sup>42</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 7 §1.

representatives and eight commissioner representatives from the Board of Commissioners.<sup>43</sup> Each serves a three-year term.<sup>44</sup> Officers include a chairperson, vice-chairperson, and secretary.<sup>45</sup>

At the end of fiscal year 2020, the SBM administered 21 committees, two taskforces, and 44 sections.<sup>46</sup> Some of the committees perform regulatory functions, including the Character and Fitness Committee, the Client Assistance Fund Committee, and the Unauthorized Practice of Law Committee.<sup>47</sup> The SBM further supports the Access to Justice Campaign, a collaborative, campaign to ensure access and fairness for all in the justice system.<sup>48</sup> The ATJ campaign is administered by the Michigan State Bar Foundation in partnership with the SBM.<sup>49</sup> The Michigan State Bar Foundation is a separate nonprofit entity that provides leadership and funding to improve the justice system.<sup>50</sup> The SBM further administers a Diversity & Inclusion Advisory Committee which supports the SBM's diversity goals.<sup>51</sup>

The SBM offers the following services to its members: a bar journal, a lawyer referral service, counseling services, an ethics helpline, meeting rooms, practice management resources, other networking opportunities, and other publications.<sup>52</sup>

Pursuant to administrative order, the SBM may not use licensing fees to fund activities of an ideological nature but may engage in advocacy on public policy issues

that are reasonably related to: (A) the regulation and discipline of attorneys; (B) the improvement of the functioning of the courts; (C) the availability of legal services to society; (D) the regulation of attorney trust accounts; and (E) the

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<sup>43</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 6 §1-2.

<sup>44</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 6 §5.

<sup>45</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 7 §2.

<sup>46</sup> *Annual Financial Report FY 2020*, *supra* note 37, at 5.

<sup>47</sup> *Committees*, ST. B. OF MICH., <https://www.michbar.org/generalinfo/committees> (last visited September 2021).

<sup>48</sup> *Access to Justice Campaign*, ST. B. OF MICH., <https://www.michbar.org/programs/ATJCampaign/home> (last visited September 2021).

<sup>49</sup> *Access to Justice Campaign*, *supra* note 48.

<sup>50</sup> *About Us*, MICH. ST. BAR FOUNDATION, <https://www.msbf.org/about-us/> (last visited September 2021).

<sup>51</sup> *Diversity & Inclusion Advisory Committee*, ST. B. OF MICH., <https://www.michbar.org/generalinfo/diversityinclusion> (last visited September 2021).

<sup>52</sup> *Member Services*, ST. B. OF MICH., <https://www.michbar.org/programs/home> (last visited September 2021).

regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.<sup>53</sup>

The SBM may, however, “review and analyze pending legislation” and “provide content-neutral technical assistance to legislators.”<sup>54</sup> Since the sections collect voluntary dues, the sections are not subject to these same restrictions and may engage in ideological activities.<sup>55</sup>

As an integrated bar, the SBM performs several regulatory functions. The SBM collects the \$315 annual license fee, which is divided three ways with \$120 allocated to the discipline system (which is separately administered by the Michigan Supreme Court), \$15 allocated to the Client Protection Fund, and \$180 allocated to SBM operations.<sup>56</sup> The total recovered in license fees, section dues, and affiliate dues (legal administrators and assistants) totaled \$9,588,815 in fiscal year 2020.<sup>57</sup> SBM maintains the official attorney database and administers annual licensing requirements.<sup>58</sup> While SBM does not make final determinations, SBM receives bar applications for character and fitness review.<sup>59</sup> The SBM administers a Character and Fitness Committee, which receives applications and makes recommendations to the Supreme Court’s Board of Law Examiners,<sup>60</sup> which administers the admissions process, is the final determinative body, and is separately overseen by Michigan Supreme Court.<sup>61</sup> The Client Protection Fund Committee makes recommendations to the SBM Board of Commissioners regarding claims made by clients regarding the dishonest conduct of lawyers.<sup>62</sup> The Unauthorized Practice of Law Committee is empowered to investigate and prosecute claims of UPL.<sup>63</sup> SBM also administers prepaid services

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<sup>53</sup> *AO No. 2004-1 – State Bar of Michigan Activities*, Mich. Sup. Ct. (Feb. 3, 2004), <https://www.michbar.org/file/publicpolicy/pdfs/ao2004-01.pdf> (last visited September 2021).

<sup>54</sup> *AO No. 2004-1 – State Bar of Michigan Activities*, *supra* note 53.

<sup>55</sup> *AO No. 2004-1 – State Bar of Michigan Activities*, *supra* note 53.

<sup>56</sup> *Law License Information*, ST. B. OF MICH., <https://www.michbar.org/generalinfo/fees> (last visited September 2021).

<sup>57</sup> *Annual Financial Report FY 2020*, *supra* note 37, at 12, 24.

<sup>58</sup> *Annual Financial Report FY 2020*, *supra* note 37, at 6.

<sup>59</sup> *Step 1: Eligibility Information*, ST. B. OF MICH., <https://www.michbar.org/professional/step1#2> (last visited September 2021).

<sup>60</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 15 §1(1)-(2).

<sup>61</sup> *Admissions to the Bar in Michigan*, Mich. Sup. Ct., <https://www.courts.michigan.gov/administration/committees-boards/board-of-law-examiners/admission-to-the-bar-in-michigan/> (last visited September 2021).

<sup>62</sup> *Client Protection Fund Rulebook Rule 1 and 7*, ST. B. OF MICH., <https://www.michbar.org/file/client/pdfs/rules.pdf> (last visited September 2021).

<sup>63</sup> Mich. Sup. Ct. Rules Concerning the St. B. of Mich. Rule 16.

regulation, nonprofit lawyer referral services regulation, regulation of advocacy promoting improvements in the administration of justice, and administration of IOLTA registrations.<sup>64</sup>

Certain regulatory functions remain with the Michigan Supreme Court. As previously mentioned, the Board of Law Examiners administers and oversees admissions.<sup>65</sup> The Board was created by the Michigan Legislature and is appointed by the Governor on nomination from the Michigan Supreme Court.<sup>66</sup> The Board of Law Examiners is generally funded by application fees.<sup>67</sup> Board members are entitled to compensation as authorized by the Michigan Supreme Court and appropriated by the legislature.<sup>68</sup> Additionally, disciplinary functions are housed separately with the Michigan Supreme Court through its Attorney Grievance Commission, which is its investigative and prosecutorial arm, and its Attorney Discipline Board, which is its adjudicative arm.<sup>69</sup> Members of each of these entities are appointed by the Michigan Supreme Court.<sup>70</sup> A Grievance Administrator oversees and provides staff support to the Attorney Grievance Commission.<sup>71</sup> All of these disciplinary functions are funded by the legal profession, through SBM, which must provide for the reasonable and necessary expenses of these entities as determined

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<sup>64</sup> *Annual Financial Report FY 2020*, *supra* note 37, at 6.

<sup>65</sup> MCL 600.922, [https://www.courts.michigan.gov/4a21e3/siteassets/committees,-boards-special-initiatves/ble/ada\\_ble\\_rules\\_statutes\\_policy\\_statements\\_september2020\\_a11y.pdf](https://www.courts.michigan.gov/4a21e3/siteassets/committees,-boards-special-initiatves/ble/ada_ble_rules_statutes_policy_statements_september2020_a11y.pdf) (last visited September 2021); *Board of Law Examiners*, Mich. Sup. Ct., <https://www.courts.michigan.gov/administration/committees-boards/board-of-law-examiners/> (last visited September 2021).

<sup>66</sup> *Board of Law Examiners*, *supra* note 65.

<sup>67</sup> MCL 600.931(A).

<sup>68</sup> MCL 600.931(D). It is unclear whether legislative appropriations are ever requested for this function. The approved fiscal year 2022-2023 judiciary budget does not indicate appear to indicate whether funding was requested. S.B. 830 (S-1), (Mich. 2022), [https://www.senate.michigan.gov/sfa/Departments/HighlightSheet/Hljud\\_web.pdf](https://www.senate.michigan.gov/sfa/Departments/HighlightSheet/Hljud_web.pdf).

<sup>69</sup> MICH. CT. R. 9-108, 9-110, [https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/CRs/Ch%209/Court%20Rules%20Book%20Ch%209-Responsive%20HTML5/index.html#t=Court\\_Rules\\_Book\\_Ch\\_9%2FCourt\\_Rules\\_Chapter\\_9%2FCourt\\_Rules\\_Chapter\\_9.htm](https://courts.michigan.gov/Courts/MichiganSupremeCourt/rules/Documents/HTML/CRs/Ch%209/Court%20Rules%20Book%20Ch%209-Responsive%20HTML5/index.html#t=Court_Rules_Book_Ch_9%2FCourt_Rules_Chapter_9%2FCourt_Rules_Chapter_9.htm); *Michigan Attorney Grievance Commission*, ST. OF MICH. ATT'Y GRIEVANCE COMM'N, <https://www.agcmi.org/>; *Welcome to the Attorney Discipline Board*, ST. OF MICH. ATT'Y DISCIPLINE BD., <https://www.adbmich.org/>.

<sup>70</sup> MICH. CT. R. 9-108, 9-110.

<sup>71</sup> MICH. CT. R. 9-109.

by the Michigan Supreme Court.<sup>72</sup> For 2020, the operating expenses of the discipline system was \$5,477,780.<sup>73</sup> Michigan does not require attorneys to comply with MCLE requirements.<sup>74</sup>

**C. Colorado: Voluntary Bar & Direct Court Supervision Model**

Name of Organization	Colorado Bar Association	Office of Attorney Regulation
Nature of Entity	Voluntary	Court-entity
Present Size	18,000	43,446
Funding Source	Membership fees	Licensing fees, bar application fees, CLE revenues, and interest
Governance	Board of Governors and Executive Council	Colorado Supreme Court
Regulatory Functions	None	Admissions, licensing, mandatory continuing legal and judicial education, discipline, UPL, CPF, and inventory counsel
Sections & Committees	30 sections, 22 committees and councils, and a Young Lawyers Division	Six permanent Supreme Court regulatory committees
Diversity and Inclusion	President’s Diversity Council; Offers an Equity, Diversity, and Inclusivity Toolkit to its sections	Supports diversity through CLEs and demographic data
Access to Justice	Supports Access to Justice Commission	Supports Access to Justice Commission
Lobbying	Legislative Policy Committee determines CBA positions	None

<sup>72</sup> MICH. CT. R. 9-105; *Law License Information*, *supra* note 56 (\$120 assessment for attorney discipline system from annual license fee).

<sup>73</sup> AGC Annual Report January 1, 2020 – December 31, 2020, at 16, ST. OF MICH. ATT’Y GRIEVANCE COMM’N, <https://www.agcmi.org/getattachment/Reference/AGC-Statistics/AGC-2020-Annual-Report.pdf.aspx?lang=en-US>.

<sup>74</sup> *Law License Information*, *supra* note 56.

The Colorado system includes both a voluntary bar association and regulatory functions performed by government offices under the supervision and direct control of its Supreme Court.<sup>75</sup>

### 1. Colorado Bar Association

The voluntary Colorado Bar Association (CBA) was founded in 1897.<sup>76</sup> It has approximately 18,000 members, which constitutes 63% of active licensed Colorado attorneys.<sup>77</sup> Its priorities include assisting members in improving the quality, economics, and efficiency of their practices; supporting and improving the legal system, and enhancing public confidence in the profession.<sup>78</sup> Its services include continuing education, volunteering, and networking.<sup>79</sup> CBA further “works to secure the efficient administration of justice, encourage the adoption of proper legislation and perpetuate the history of the profession.”<sup>80</sup> It operates the Colorado Bar Foundation, which promotes educational and charitable purposes, providing grants to educate the public and assisting legal institutions.<sup>81</sup> CBA also has a nonprofit educational arm, Colorado Bar Association CLE (CBA-CLE), which is self-supporting and receives no membership dues.<sup>82</sup>

Membership fees are graduated, ranging from \$55 to \$250 depending on years of practice.<sup>83</sup> Members also pay practice section fees, ranging from \$15 to \$35.<sup>84</sup> To participate in the CBA, CBA members who are active lawyers are further required to be members of one of 26 local bar associations with their own fee structures.<sup>85</sup> No publicly available information details the budget or costs of running the CBA.

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<sup>75</sup> *Colorado Bar Association Facts & Tip Sheet*, COLO. B. ASS'N, <https://www.cobar.org/About-the-CBA/Quick-Facts-About-the-CBA> (last visited September 2021); Laurel S. Terry, *The Power of Lawyer Regulators to Increase Client & Public Protection Through Adoption of a Proactive Regulation System*, 20 LEWIS & CLARK L. REV. 717, 721-22 (2016).

<sup>76</sup> *Colorado Bar Association Facts & Tip Sheet*, *supra* note 75.

<sup>77</sup> *Colorado Bar Association Facts & Tip Sheet*, *supra* note 75.

<sup>78</sup> *Colorado Bar Association Facts & Tip Sheet*, *supra* note 75.

<sup>79</sup> *Colorado Bar Association Facts & Tip Sheet*, *supra* note 75.

<sup>80</sup> *Colorado Bar Association Facts & Tip Sheet*, *supra* note 75.

<sup>81</sup> *Colorado Bar Association Facts & Tip Sheet*, *supra* note 75.

<sup>82</sup> *About Colorado Bar Association CLE*, CBA-CLE, <https://cle.cobar.org/About-CLE> (last visited September 2021).

<sup>83</sup> *Colorado Bar Pricing Sheet*, Colo. B. Ass'n, at 1 <https://www.cobar.org/Portals/COBAR/Repository/CBA/42321PL/pricing%20sheet.pdf?ver=c-Mm2Gg-Oqbo-I18qlx9UQ%3d%3d> (last visited September 2021)

<sup>84</sup> *Colorado Bar Pricing Sheet*, *supra* note 83, at 2.

<sup>85</sup> *Colorado Bar Pricing Sheet*, *supra* note 83, at 1-2.

The CBA is governed by a Board of Governors.<sup>86</sup> Governors are elected from each affiliated local bar association, with one governor for each 200 of a local bar association's members who are CBA members entitled to vote.<sup>87</sup> Additional governors represent designated organizations, which include the CBA sections.<sup>88</sup> Each governor serves a two-year term.<sup>89</sup>

The Board's leadership body is the Executive Council, which holds the organization's corporate authority and powers.<sup>90</sup> Members of the Executive Council include certain officers of the organization (the president, the president-elect, the immediate past president, the senior vice president, the regional vice presidents, the treasurer, and the executive director), a Young Lawyers Division (YLD) chair, the president of the Denver Bar Association, three representatives from diversity bars, three section representatives from the Board of Governors, four additional governors, and a representative from the CBA-CLE Board of Directors.<sup>91</sup>

The CBA has 30 sections,<sup>92</sup> 22 committees and councils,<sup>93</sup> and a YLD.<sup>94</sup> Among the committees include an Ethics Committee that issues formal opinions that are unbinding on the Colorado Supreme Court<sup>95</sup> and a Legislative Policy Committee that determines CBA positions on state legislation.<sup>96</sup>

The CBA supports the Colorado Access to Justice Commission, an independent entity, that is a joint effort with the Colorado Supreme Court and Statewide Legal Services Group.<sup>97</sup> The CBA also

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<sup>86</sup> *CBA Bylaws §5.1*, Colo. B. Ass'n, [https://www.cobar.org/Portals/COBAR/Repository/CBA/bylaws0701/CBA%20Bylaws%2007\\_01\\_2021.pdf?ver=nzFtn6\\_Lrl1Elf-bB6PK9A%3d%3d](https://www.cobar.org/Portals/COBAR/Repository/CBA/bylaws0701/CBA%20Bylaws%2007_01_2021.pdf?ver=nzFtn6_Lrl1Elf-bB6PK9A%3d%3d) (follow this link for future references to the bylaws) (last visited September 2021).

<sup>87</sup> *CBA Bylaws §5.2(a)(1)*, Colo. B. Ass'n.

<sup>88</sup> *CBA Bylaws §5.2(d)(1)*, Colo. B. Ass'n.

<sup>89</sup> *CBA Bylaws §5.2(a)(3)* and *5.2(d)(6)*, Colo. B. Ass'n.

<sup>90</sup> *CBA Bylaws §6.1*, Colo. B. Ass'n.

<sup>91</sup> *CBA Bylaws §6.2* and *7*, Colo. B. Ass'n.

<sup>92</sup> *CBA Sections*, COLO. B. Ass'n, <https://www.cobar.org/sections> (last visited September 2021).

<sup>93</sup> *Committees*, COLO. B. Ass'n, <https://www.cobar.org/For-Members/Committees> (last visited September 2021).

<sup>94</sup> *About YLD*, COLO. B. Ass'n, <https://www.cobar.org/yld> (last visited September 2021).

<sup>95</sup> *Ethics Committee*, COLO. B. Ass'n, <https://www.cobar.org/ethics> (last visited September 2021).

<sup>96</sup> *Legislative Policy Committee: Overview*, COLO. B. Ass'n, <https://www.cobar.org/lpc#9034265-overview> (last visited September 2021).

<sup>97</sup> *CBA Programs*, COLO. B. Ass'n, <https://www.cobar.org/About-the-CBA/CBA-Programs> (last visited September 2021).

has a President's Diversity Council and offers an Equity, Diversity, and Inclusivity Toolkit for its section leaders.<sup>98</sup>

## 2. Office of Attorney Regulation

Regulatory functions in Colorado are housed separately, and supervised directly by the Colorado Supreme Court, under the Office of Attorney Regulation Counsel (OARC) as an arm of the judicial branch.<sup>99</sup> OARC is charged with helping the Court regulate the practice of law through "attorney admissions, attorney registration, mandatory continuing legal and judicial education, attorney diversion and discipline, regulation of the unauthorized practice of law (UPL), and inventory counsel"<sup>100</sup> (i.e., custodianship counsel). The Colorado Lawyer Trust Account Foundation separately handles IOLTA financial institution registrations.<sup>101</sup> The CBA is unique among many bar associations in that it "is not integrated with any bar association in its regulatory functions."<sup>102</sup> Instead the Supreme Court appoints Regulation Counsel<sup>103</sup> who serves at the pleasure of the Supreme Court. OARC's mission is to protect the public and promote the public interest, and OARC is guided by the Colorado Supreme Court's regulatory objectives.<sup>104</sup> Registration is mandatory for all licensed lawyers.<sup>105</sup> At the end of 2020, ORAC had 43,446 registered attorneys, 28,014 of whom were active.<sup>106</sup>

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<sup>98</sup> *Committees, supra* note 93; *Equity, Diversity, & Inclusivity Toolkit for Section Leaders*, COLO. B. ASS'N, <https://www.cobar.org/For-Members/Committees/Section-Diversity-Inclusivity-Toolkit> (last visited September 2021).

<sup>99</sup> *Welcome to the Office of Attorney Regulation Counsel*, COLO. SUP. CT. OFF. ATT'Y REGUL. COUNS., <https://www.coloradosupremecourt.com/index.asp> (last visited September 2021); Terry, *supra* note 75, at 721-22.

<sup>100</sup> *Learn More*, COLO. SUP. CT. OFF. ATT'Y REGUL. COUNS., <https://www.coloradosupremecourt.com/LearnMore.htm> (last visited September 2021).

<sup>101</sup> *Welcome*, COLTAF, <https://www.coltaf.org/> (last visited September 2021).

<sup>102</sup> *Learn More, supra* note 100.

<sup>103</sup> Colorado Rules of Civil Procedure, Ch. 20 Rule 251.3; see also Colorado Rules of Civil Procedure, Ch. 20 Rules 202.4, 227, 231, 251.32(h).

<sup>104</sup> *Learn More, supra* note 100.

<sup>105</sup> *2020 Annual Report*, COLO. SUP. CT. OFF. ATT'Y REGUL. COUNS., at 1, <https://www.coloradosupremecourt.com/PDF/AboutUs/Annual%20Reports/2020%20Annual%20Report.pdf> (last visited September 2021).

<sup>106</sup> *2020 Annual Report, supra* note 105, at 30.

As of November 1, 2020, the OARC employed 70 full time employees.<sup>107</sup> The OARC supports and staffs six permanent Supreme Court Committees, including the Supreme Court Advisory Committee, the Board of Law Examiners-Law Committee, the Board of Law Examiners-Character and Fitness Committee, the Continuing Legal and Judicial Education Committee, the Legal Regulation Committee, and the Board of Trustees of the Attorneys' Fund for Client Protection.<sup>108</sup>

Colorado attorney regulation is funded from a variety of sources, including annual registration fees, application fees for the bar exam, and other sources such as CLEs and interest earned.<sup>109</sup> No tax dollars fund attorney regulation.<sup>110</sup> Annual fees are set by the Court.<sup>111</sup> The annual fee is currently set at \$325 for active lawyers, \$25 dollars of which is allocated to the Client Protection Fund and the rest to funding all practice of law functions, including OARC, the Office of the Presiding Disciplinary Judge (the attorney regulation adjudicative office<sup>112</sup>), the Commission on Judicial Discipline, the Lawyers Assistance Program, the Lawyer Mentoring Program, and regulatory committees.<sup>113</sup> For fiscal year 2022, revenues for attorney regulation are anticipated to be at \$11,849,829, with expenditures and indirect costs totaling \$11,768,632.<sup>114</sup>

The Colorado Supreme Court has as two of its regulatory objectives to promote “access to justice and consumer choice in the availability and affordability of competent legal services,” and “diversity, inclusion, equality and freedom from discrimination in the delivery of legal services and the administration of justice.”<sup>115</sup> While the court does not have committees specifically for these purposes, the Colorado Supreme Court does support such efforts. For example, Colorado has a separate Access to Justice Commission not associated with ORAC and not administered by

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<sup>107</sup> Nathan B. Coats, *Colorado Judicial Branch FY 2021-22 Budget Request*, Colo. Jud. Dep't, (Nov. 1, 2020), at 251 (in PDF), [https://www.courts.state.co.us/userfiles/file/Administration/Financial\\_Services/Budget/FY22JudicialBranchBudgetSubmission.pdf](https://www.courts.state.co.us/userfiles/file/Administration/Financial_Services/Budget/FY22JudicialBranchBudgetSubmission.pdf).

<sup>108</sup> *Colorado Supreme Court Committees*, COLO. SUP. CT. OFF. ATT'Y REGUL. COUNS., <https://www.coloradosupremecourt.com/AboutUs/Committees.asp>

<sup>109</sup> Nathan B. Coats, *supra* note 107, at 436.

<sup>110</sup> *Learn More*, *supra* note 100.

<sup>111</sup> Colorado Rules of Civil Procedure, Ch. 18, Rule 227(A)(1)(a).

<sup>112</sup> *The Office of the Presiding Disciplinary Judge*, Colo. Sup. Ct Off. Presiding Disciplinary Judge, <http://coloradopdj.com/> (last visited September 2021).

<sup>113</sup> Colorado Rules of Civil Procedure, Ch. 18, Rule 227(A)(1)(a), (c).

<sup>114</sup> Coates, *supra* note 107, at 436.

<sup>115</sup> Rules Governing the Practice of Law, Preamble to Chapters 18 to 20, [https://www.coloradosupremecourt.com/PDF/AboutUs/2016\(06\)%20clean%20-%20PREAMBLE%20\(regulatory%20objectives\)%20ADOPTED%2004-07-16.pdf](https://www.coloradosupremecourt.com/PDF/AboutUs/2016(06)%20clean%20-%20PREAMBLE%20(regulatory%20objectives)%20ADOPTED%2004-07-16.pdf).

the Colorado Supreme Court.<sup>116</sup> The Colorado Supreme Court has further mandated new CLE requirements on the topic of equity, diversity, and inclusion that will be implemented by OARC.<sup>117</sup>

There is no evidence the OARC engages in legislative activities;<sup>118</sup> however, staff of the OARC may answer questions from legislators regarding pending legislation.

**D. Nebraska: Voluntary Bar & Direct Court Supervision (Formerly Integrated)**

Name of Organization	Nebraska State Bar Association	Attorney Services Division
Nature of Entity	Voluntary	Court-entity
Present Size	70-80% of licensed lawyers	6,952 active lawyers; 12,801 total registered of varying statuses
Funding Source	Membership fees	License fees
Governance	House of Delegates and Executive Council	Nebraska Supreme Court
Regulatory Functions	Client Assistance Fund (funded by mandatory assessments)	Bar exam, annual licensing, MCLE, discipline, UPL
Sections & Committees	32 sections; 23 committees, including the Client Assistance Fund and the Nebraska Lawyers Assistance Program	10 regulatory commissions and committees and a Lawyer's Advisory Committee
Diversity and Inclusion	Committee on Equity and Fairness	Not with division, but Supreme Court has Committee on Equity and Fairness
Access to Justice	Yes; but no specific entity charged with such work	Not with division, but Supreme Court has Access to Justice Commission

<sup>116</sup> *About the ATJC*, COLO. ACCESS TO JUSTICE COMM'N, <https://www.coloradoaccesstojustice.org/about> (last visited September 2021).

<sup>117</sup> *Welcome to the Office of Attorney Regulation Counsel*, *supra* note 99.

<sup>118</sup> *See generally Welcome to the Office of Attorney Regulation Counsel*, *supra* note 99.

Name of Organization	Nebraska State Bar Association	Attorney Services Division
Lobbying	May take positions that are political or ideological that are germane to its purposes and the quality of legal services	None

### 1. History

In 1937, the Supreme Court of Nebraska integrated its bar by written opinion.<sup>119</sup> With its opinion, the Nebraska Supreme Court set forth the rules governing and regulating the Bar Association.<sup>120</sup> All licensed lawyers were thus required to become members in the Nebraska State Bar Association (NSBA) and pay bar dues.<sup>121</sup> However, not all regulatory functions remained with the NSBA: In the 1990s, discipline functions moved from the NSBA to a division of the Nebraska Supreme Court due to the Court’s concern regarding the entity policing itself.<sup>122</sup> Further, in 2006, the Supreme Court mandated and assumed mandatory continuing legal education functions.<sup>123</sup>

Sometime in or around 2013, a Nebraska attorney filed a petition with the Nebraska Supreme Court requesting the abolishment of mandatory membership in the NSBA given U.S. Supreme Court case law regarding compelled speech and integrated bars.<sup>124</sup> On consideration of the petition, the court determined it should modify its court rules creating and governing the NSBA to limit the use of mandatory fees to regulatory functions related to the practice of law.<sup>125</sup>

In addition to the already segregated discipline and MCLE functions,<sup>126</sup> the Supreme Court’s order segregated the following regulatory functions from the NSBA: admissions, maintenance of

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<sup>119</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. 1018, 1021, 841 N.W.2d 167 (2013).

<sup>120</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1021.

<sup>121</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1022.

<sup>122</sup> Carole McMahon-Boies, *Nebraska Model and Lessons Learned*, Presentation to the Wash. Sup. Ct. Work Group on Bar Structure (May 6, 2019).

<sup>123</sup> McMahon-Boies, *supra* note 122.

<sup>124</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1018-19.

<sup>125</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1035.

<sup>126</sup> McMahon-Boies, *supra* note 122.

membership records, maintenance of records of trust fund requirements, and handling of allegations of the unauthorized practice of law.<sup>127</sup> Such functions are now overseen by the Nebraska Supreme Court's Attorney Services Division.<sup>128</sup> The Court regarded its decision as "ensur[ing] that the Bar Association remains well within the limits of the compelled-speech jurisprudence of the U.S. Supreme Court and avoid[ing] embroiling this court and the legal profession in unending quarrels and litigation over the germaneness of an activity in whole or in part, the constitutional adequacy of a particular opt-in or opt-out system, or the appropriateness of a given grievance procedure."<sup>129</sup> With the severance of the regulatory functions, the NSBA retained certain functions including its Volunteer Lawyers Project, the Nebraska Lawyers Assistance Program, and the Client Assistance Fund.<sup>130</sup>

The Supreme Court segregated the regulatory and associational functions by splitting its fees, with a new mandatory attorney assessment for regulatory functions now paid directly to the Nebraska Supreme Court.<sup>131</sup> All licensed lawyers are still members of the NSBA by virtue of their licensure; however, now the NSBA is funded solely by voluntary dues.<sup>132</sup>

Some controversy surrounded implementation of the order because of the compressed timeline which gave the NSBA 25 days to transition to a voluntary bar.<sup>133</sup> At the time, the NSBA had already collected 20% of its 2014 dues payments, requiring it to offer refunds to those who overpaid for regulatory functions.<sup>134</sup> Further confusion arose with attorneys who thought they had complied with licensure requirements but who owed late fees to the Attorney Services Division because of

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<sup>127</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1035.

<sup>128</sup> *Attorney Services Division*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/attorneys/attorney-services-division> (last visited September 2021).

<sup>129</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1035-36.

<sup>130</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1036.

<sup>131</sup> *Annual Licensure*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/attorneys/annual-licensure> (last visited September 2021).

<sup>132</sup> *About NSBA*, NEB. ST. B. ASS'N, <https://www.nebar.com/page/AboutNSBA> (last visited September 2021).

<sup>133</sup> Dan Kittay, *Deunification Challenge in Michigan, Big Changes in Nebraska: Part of a Trend?*, BAR LEADER, ABA DIVISION FOR BAR SERVICES (May-Jun 2014), [https://www.americanbar.org/groups/bar\\_services/publications/bar\\_leader/2013-14/may\\_june/deunification\\_challenge\\_michigan\\_big\\_changes\\_nebraska\\_part\\_trend/](https://www.americanbar.org/groups/bar_services/publications/bar_leader/2013-14/may_june/deunification_challenge_michigan_big_changes_nebraska_part_trend/) (last visited September 2021).

<sup>134</sup> Kittay, *supra* note 133.

their tardiness in paying the mandatory assessment.<sup>135</sup> The Division refunded \$36,000 in late fees to those who paid the NSBA.<sup>136</sup> Finally, the NSBA had to cut programming due to a 25% budget reduction<sup>137</sup> and laid off 19 staff.<sup>138</sup> The cuts forced it to reduce its budget that served the court and public.<sup>139</sup> As NSBA Executive Director Elizabeth Neeley put it:

The beauty of a mandatory bar is that it can look outside of itself; and it can support the profession, it can support the court system and it can support the public.... One of the primary changes when you convert to a voluntary bar is you become member-centric. Your service to the court and service to the public becomes secondary, because if you don't have members, you can't do anything.<sup>140</sup>

## 2. Nebraska State Bar Association

The NSBA states that its mission is to “work[] for Nebraska lawyers to help them achieve the highest standards of competence, ethics and professionalism and to protect and promote the administration of and access to justice.” All persons admitted to practice law are members,<sup>141</sup> regardless of whether they pay voluntary dues to the NSBA.<sup>142</sup> However, only those who choose to pay the voluntary dues are entitled to access the benefits offered by the NSBA.<sup>143</sup> Annual voluntary membership dues for actively licensed lawyers are \$240.<sup>144</sup> Since severance, those who

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<sup>135</sup> McMahan-Boies, *supra* note 122.

<sup>136</sup> McMahan-Boies, *supra* note 122.

<sup>137</sup> Kittay, *supra* note 133.

<sup>138</sup> Carole McMahan-Boies, *supra* note 122.

<sup>139</sup> Kittay, *supra* note 133.

<sup>140</sup> Lyle Moran, *California Split: 1 Year After Nation's Largest Bar Became 2 Entities, Observers See Positive Change*, ABA J. (Feb. 4, 2019), <https://www.abajournal.com/web/article/california-split-1-year-after-californias-state-bar-became-2-entities-observers-see-positive-changes> (last visited September 2021).

<sup>141</sup> Neb. Sup. Ct. R. 3-803, <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-practice-law/article-8-state-bar-association-creation-control-regulation/%C2%A7-3-803-membership> (last visited September 2021). *See also* <https://supremecourt.nebraska.gov/supreme-court-rules/chapter-3-attorneys-and-practice-law/article-3-discipline-procedures-lawyers> (follow this link for future references to the rules) (last visited September 2021).

<sup>142</sup> *About NSBA*, *supra* note 132.

<sup>143</sup> *About NSBA*, *supra* note 132.

<sup>144</sup> *Join the NSBA*, NEB. ST. B. Ass'N, <https://www.nebar.com/page/JoinNSBA> (last visited September 2021).

have elected to pay the membership fee and retain the benefits of membership in NSBA has hovered at around 70-80%.<sup>145</sup> During 2020, the NSBA collected \$1,076,727 in dues.<sup>146</sup>

Benefits of membership include Casemaker, CLE programs, networking through sections and other events, a free profile on Nebraska's Find-a-Lawyer website, pro bono opportunities through its Volunteer Lawyers Project, confidential assistance to members through the Nebraska Lawyers Assistance Program, a Leadership Academy, and access to a legal library.<sup>147</sup>

The organization is governed by a House of Delegates<sup>148</sup> and an Executive Council.<sup>149</sup> The House elects members based on representation by district and serves as a policy-making body.<sup>150</sup> Each delegate serves a four year term.<sup>151</sup> The Executive Council functions as the administrative and executive body of the NSBA.<sup>152</sup> It is composed of the immediate past president, president, president-elect, president-elect designate, immediate past chair, chair, chair-elect, chair elect-designate, and six elected district members.<sup>153</sup>

Elected officers of the House of Delegates include the chair, chair-elect, and secretary.<sup>154</sup> Other officers of the NSBA include the president, president-elect, treasurer, and executive director.<sup>155</sup> The president, president-elect, chair of the House, chair-elect are elected.<sup>156</sup> The Executive Council appoints the secretary, treasurer, and executive director.<sup>157</sup> The president serves as the chief executive officer of the association and presides over all meetings of the NSBA and

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<sup>145</sup> Carole McMahon-Boies, *supra* note 122.

<sup>146</sup> *Consolidated Financial Statements December 31, 2020 and 2019*, Neb. St. B. Ass'n & Neb. Lawyers Foundation, at 4, [https://cdn.ymaws.com/www.nebar.com/resource/resmgr/about\\_nsba/2020\\_NSBAFinal\\_Audit.pdf](https://cdn.ymaws.com/www.nebar.com/resource/resmgr/about_nsba/2020_NSBAFinal_Audit.pdf) (last visited September 2021)

<sup>147</sup> *Join the NSBA*, *supra* note 144.

<sup>148</sup> Neb. Sup. Ct. R. 3-805(A).

<sup>149</sup> Neb. Sup. Ct. R. 3-806(A).

<sup>150</sup> Neb. Sup. Ct. R. 3-805(A).

<sup>151</sup> Neb. Sup. Ct. R. 3-805(D).

<sup>152</sup> Neb. Sup. Ct. R. 3-806(A).

<sup>153</sup> Neb. Sup. Ct. R. 3-806(B).

<sup>154</sup> Neb. Sup. Ct. R. 3-805(G).

<sup>155</sup> Neb. Sup. Ct. R. 3-804(A).

<sup>156</sup> Neb. Sup. Ct. R. 3-804(C).

<sup>157</sup> Neb. Sup. Ct. R. 3-804(D).

Executive Council.<sup>158</sup> The chair presides over meetings of the House.<sup>159</sup> The Court has mandated the House operate under bylaws and that current bylaws be filed at all times with the Court.<sup>160</sup>

The NSBA administers 23 committees, including the Client Assistance Fund and the Nebraska Lawyers Assistance Fund, and 32 sections.<sup>161</sup> The Client Assistance Fund is not funded by mandatory assessment fees paid to the Attorney Services Division.<sup>162</sup> Instead it is funded by assessments collected from lawyers by the administrator of the fund with the assistance of the NSBA.<sup>163</sup> The administrator is required to “report to the Court the names and addresses of all attorneys who fail to pay said assessments.”<sup>164</sup> The NSBA also has a nonprofit, the Nebraska Lawyers Foundation, that obtains grants and funding for its Volunteer Lawyers Project, Lawyers Assistance Program, Leadership Academy, and other bar programs.<sup>165</sup> The NSBA has no organization-wide access to justice or diversity committee but claims to support access to justice and diversity as among its purposes.<sup>166</sup> It also has a Diversity Section that promotes and addresses diversity and inclusion issues in the legal profession and justice system.<sup>167</sup>

The Supreme Court has authorized the NSBA to collect and use voluntary membership dues to analyze and disseminate information to members on pending or proposed legislation that relates to the purposes of the organization.<sup>168</sup> The NSBA’s Legislative Program and Policy Statement

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<sup>158</sup> Neb. Sup. Ct. R. 3-804(G)(1).

<sup>159</sup> Neb. Sup. Ct. R. 3-804(G)(2)

<sup>160</sup> Neb. Sup. Ct. R. 3-811, 3-814.

<sup>161</sup> *NSBA Online Member Communities*, NEB. ST. B. ASS’N, <https://www.nebar.com/page/Communities> (last visited September 2021).

<sup>162</sup> See Neb. Sup. Ct. R. 3-803(D).

<sup>163</sup> *Client Assistance Fund of the Nebraska State Bar Association Rule G*, [https://cdn.ymaws.com/www.nebar.com/resource/resmgr/CAF/CAF\\_Rules.pdf](https://cdn.ymaws.com/www.nebar.com/resource/resmgr/CAF/CAF_Rules.pdf) (last visited September 2021).

<sup>164</sup> *Id.*

<sup>165</sup> *Nebraska Lawyers Foundation FAQ*, NEB. ST. B. ASS’N, <https://www.nebar.com/page/NLFFAQ> (last visited September 2021).

<sup>166</sup> *Join the NSBA*, *supra* note 147; *Diversity and Inclusion*, NEB. ST. B. ASS’N, <https://www.nebar.com/page/DiversityInclusion> (last visited September 2021).

<sup>167</sup> *Diversity Section*, NEB. ST. B. ASS’N, <https://community.nebar.com/home/community-home?CommunityKey=08a6a320-06e6-4309-976f-c79768ef1d2a> (last visited September 2021).

<sup>168</sup> Neb. Sup. Ct. R. 3-803(J).

expressly empowers the association to take positions on proposed legislation.<sup>169</sup> The Policy lists examples of issues on which the NSBA may take positions.<sup>170</sup> The NSBA continues to be limited from taking positions on legislation that is political or ideological “unless it is germane to the purposes of the Association or will affect the quality of legal services to the public.”<sup>171</sup>

### 3. Attorney Services Division

The Attorney Services Division oversees lawyer admissions, maintenance of membership records, enforcement of ethical rules, regulation of mandatory continuing legal education, maintenance of records of trust fund requirements, and the handling of allegations of the unauthorized practice of law.<sup>172</sup> Admissions and the bar exam are governed by the Nebraska Supreme Court's Nebraska State Bar Commission.<sup>173</sup> Annual licensure processes include license renewals, filing of trust account affidavits, and reporting on malpractice insurance coverage.<sup>174</sup> The Office of Counsel for Discipline handles attorney discipline.<sup>175</sup> Related Supreme Court committees include the District Committees on Inquiry, which reviews and investigates complaints, and a Disciplinary Review Board, as well as the Lawyers' Advisory Committee, which issues ethics opinions,<sup>176</sup> all of which are administered through the Nebraska Supreme Court.<sup>177</sup> MCLE functions are overseen

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<sup>169</sup> *Legislative Program and Policy Statement*, at 2 (Apr. 5, 2014), NE ST. B. ASS'N, [https://cdn.ymaws.com/www.nebar.com/resource/resmgr/Governance/Legislative\\_Policy.pdf](https://cdn.ymaws.com/www.nebar.com/resource/resmgr/Governance/Legislative_Policy.pdf) (last visited September 2021).

<sup>170</sup> *Legislative Program and Policy Statement*, *supra* note 169, at 1-2.

<sup>171</sup> *Legislative Program and Policy Statement*, *supra* note 169, at 2.

<sup>172</sup> *In re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*, 286 Neb. at 1035.

<sup>173</sup> Neb. Sup. Ct. R. 3-102.

<sup>174</sup> *Annual Licensure*, *supra* note 131.

<sup>175</sup> *Counsel for Discipline*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/administration/professional-ethics/attorney-discipline-ethics/counsel-discipline> (last visited September 2021).

<sup>176</sup> Neb. Sup. Ct. R. 3-305, 3-306, 3-307.

<sup>177</sup> *Professional Discipline*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/administration/professional-ethics> (last visited September 2021); *Counsel for Discipline*, *supra* note 175.

by the Nebraska MCLE Commission.<sup>178</sup> Finally, the Supreme Court's Commission on the Unauthorized Practice of Law oversees claims of UPL within the jurisdiction.<sup>179</sup>

The Attorney Services Division collects an annual fee of \$98 for active lawyers.<sup>180</sup> By court rule, the fee is apportioned three ways: \$25 to admissions, \$60 for discipline, and \$13 for UPL.<sup>181</sup> A search of licensed lawyers through the Attorney Services Division website shows that over 12,800 lawyers are registered with the state, all with varying statuses.<sup>182</sup> As of 2018, the ABA reported that there were 6,952 active lawyers in Nebraska.<sup>183</sup> For fiscal year 2022, license fees, bar exam fees, and other related sources of revenue will fund three budget centers, totaling \$1,357,000 in anticipated revenues and \$1,689,163 in anticipated administrative expenditures.<sup>184</sup>

Prior to the court's order, the NSBA staffed a Minority Justice Commission, which is now defunct.<sup>185</sup> The Access to Justice Commission of the Nebraska Supreme Court has assigned this work to its Committee on Equity and Fairness, which is funded by grants.<sup>186</sup> However, the Commission is not run by the Attorney Services Division.<sup>187</sup> There has been some discussion of

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<sup>178</sup> *Mandatory Continuing Legal Education (MCLE)*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/attorneys/mandatory-continuing-legal-education-mcle> (last visited September 2021).

<sup>179</sup> *Unauthorized Practice of Law*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/attorneys/unauthorized-practice-law> (last visited September 2021).

<sup>180</sup> *Annual Licensure*, *supra* note 131.

<sup>181</sup> Neb. Sup. Ct. R. 3-803(D).

<sup>182</sup> *Search Lawyers Licensed in Nebraska*, Neb. Sup. Ct. Att'y Serv. Div., <https://mcle.wcc.ne.gov/ext/SearchLawyer.do> (last visited September 2021).

<sup>183</sup> *2018 Survey on Lawyer Discipline Systems*, ABA Standing Comm. on Professional Discipline (July 2020), [https://www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2018sold-results.pdf](https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2018sold-results.pdf) (last visited September 2021).

<sup>184</sup> Michael G. Heavican, *Agency: 005 – Supreme Court 2021-2023 Biennial Budget Request*, Neb. Sup. Ct., at 185, 190-92, available at <https://das-nebs.ne.gov/public/faces/brdIndex.jsp> (last visited September 2021).

<sup>185</sup> McMahon-Boies, *supra* note 122.

<sup>186</sup> McMahon-Boies, *supra* note 122; *Committee on Equity and Fairness*, ST. OF NEB. JUD. BRANCH, <https://supremecourt.nebraska.gov/programs-services/access-justice-commission/committee-equity-fairness> (last visited September 2021).

<sup>187</sup> McMahon-Boies, *supra* note 122.

using continuing legal education fees and licensure late fees to fund the program.<sup>188</sup>

There is no evidence the Attorney Services Division engages in legislative activities of any kind.<sup>189</sup>

**E. Virginia: Two-bar Model with Voluntary & Mandatory Bar**

Name of Organization	Virginia Bar Association	Virginia State Bar
Nature of Entity	Voluntary	Mandatory
Present Size	4,800	51,618
Funding Source	Membership fees, self-generated revenue	License fees, self-generated revenue
Governance	Board of Governors	Council and Executive Committee
Regulatory Functions	None	<i>With VSB:</i> Licensing, discipline, MCLE, UPL, CPF  <i>With another Supreme Court agency:</i> bar admissions
Sections & Committees	19 sections, Young Lawyers Division, one committee	20 sections, Young Lawyers Conference, five standing committees, seven special committees, three regulatory boards, 17 disciplinary committees
Diversity and Inclusion	No organization-wide program: holds events and YLD has its own Diversity Program	The Diversity Conference
Access to Justice	No organization-wide program: Pro Bono Council	Committee on Access to Legal Services

<sup>188</sup> McMahon-Boies, *supra* note 122.

<sup>189</sup> See generally *Attorney Services Division*, *supra* note 128.

Name of Organization	Virginia Bar Association	Virginia State Bar
Lobbying	Engages in legislative advocacy by proposing legislation, informing lawmakers, and appearing at legislative hearings	No

Virginia has a two-bar model: the Virginia Bar Association (VBA), which is voluntary,<sup>190</sup> and the Virginia State Bar (VSB), which is mandatory and an agency of the Supreme Court of Virginia.<sup>191</sup>

### 1. Virginia Bar Association

The VBA, a voluntary bar, was formed in 1888 and has approximately 4,800 members.<sup>192</sup> It describes itself as “the independent voice of the Virginia lawyer, advancing the highest ideals of the profession through advocacy and volunteer service.”<sup>193</sup> It does so by improving the law through promoting legislative changes, expanding lawyer proficiency through CLEs, serving the community and increasing accessing to justice, and providing community among lawyers.<sup>194</sup> As a voluntary bar, it performs no regulatory functions.<sup>195</sup> Annual dues for members are \$300.<sup>196</sup>

A Board of Governors governs the VBA.<sup>197</sup> Its leadership includes a president, president-elect, immediate past president, chair and chair-elect of its Young Lawyer’s Division (YLD), and chair of the Board.<sup>198</sup> Six members are elected as regional representatives, and two regional

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<sup>190</sup> *About the Virginia Bar Association*, VA. B. ASS’N, [https://www.vba.org/page/about\\_us](https://www.vba.org/page/about_us) (last visited September 2021).

<sup>191</sup> *About the Bar*, VA. ST. BAR, <https://www.vsb.org/site/about> (last visited September 2021).

<sup>192</sup> *About the Virginia Bar Association*, *supra* note 190.

<sup>193</sup> *About the Virginia Bar Association*, *supra* note 190.

<sup>194</sup> *About the Virginia Bar Association*, *supra* note 190.

<sup>195</sup> *See generally About the Bar*, *supra* note 191.

<sup>196</sup> *Join or Reactivate Membership*, VA. B. ASS’N, [https://www.vba.org/page/join\\_reactivate](https://www.vba.org/page/join_reactivate) (last visited September 2021).

<sup>197</sup> *Board of Governors*, VA. B. ASS’N, [https://www.vba.org/page/board\\_of\\_governors](https://www.vba.org/page/board_of_governors) (last visited September 2021).

<sup>198</sup> VBA Bylaw 3.2, VA. B. ASS’N, <https://www.vba.org/page/83> (follow this link for all other Bylaws references) (last visited September 2021).

representatives and two at-large members are elected by the Board.<sup>199</sup> Members serve three-years.<sup>200</sup> The Board may appoint a judicial, legislative, and law school faculty representative.<sup>201</sup>

The VBA oversees 19 sections.<sup>202</sup> One Committee, the Joint Alternative Dispute Resolution (ADR) Committee, is described as substantive law section of both the VBA and VSB.<sup>203</sup> The sections provide opportunities to connect with lawyers, make recommendations for legislative changes, and hold and host educational programs.<sup>204</sup> The VBA has seven committees and two divisions, including the YLD and the Law Practice Management Division.<sup>205</sup> The VBA further runs the VBA Foundation, which supports charitable and educational pursuits.<sup>206</sup>

The VBA lists as member benefits and services: CLEs, career development resources, affordable insurance through its subsidiary the Virginia Bar Association Insurance, health insurance through a partner, networking opportunities, legislative advocacy, and discounts, and a bar journal.<sup>207</sup>

The VBA engages in legislative advocacy by proposing legislation, informing lawmakers, and appearing at legislative hearings.<sup>208</sup> Sections and committees consider proposals and then may recommend them to the VBA Board of Governors.<sup>209</sup>

As an organization, the VBA does not appear to be actively engaged in access to justice efforts or diversity initiatives.<sup>210</sup> However, the VBA administers a Pro Bono Council to promote pro bono

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<sup>199</sup> VBA Bylaw 3.2, VA. B. Ass'N.

<sup>200</sup> VBA Bylaw 3.2, VA. B. Ass'N.

<sup>201</sup> VBA Bylaw 3.2, VA. B. Ass'N.

<sup>202</sup> *Sections & Committees*, VA. B. Ass'N, [https://www.vba.org/page/sections\\_committees](https://www.vba.org/page/sections_committees) (last visited September 2021).

<sup>203</sup> *Joint ADR Committee*, VA. B. Ass'N, [https://www.vba.org/page/joint\\_adr](https://www.vba.org/page/joint_adr) (last visited September 2021).

<sup>204</sup> *Sections & Committees*, *supra* note 202.

<sup>205</sup> *Sections & Committees*, *supra* note 202.

<sup>206</sup> *The VBA Foundation*, VA. B. Ass'N, <https://www.vba.org/page/foundation> (last visited September 2021).

<sup>207</sup> *Member Benefits and Services*, VA. B. Ass'N, [https://www.vba.org/page/membership\\_benefits](https://www.vba.org/page/membership_benefits) (last visited September 2021).

<sup>208</sup> *Advocacy*, VA. B. Ass'N, [https://www.vba.org/page/legislative\\_advocacy](https://www.vba.org/page/legislative_advocacy) (last visited September 2021).

<sup>209</sup> *Advocacy*, *supra* note 208.

<sup>210</sup> *See generally the Virginia Bar Association*, VA. B. Ass'N, <https://www.vba.org/> (last visited September 2021).

participation.<sup>211</sup> Further, the VBA holds diversity events,<sup>212</sup> and the YLD has a Diversity Program.<sup>213</sup>

## 2. Virginia State Bar

The VSB is a mandatory bar operated as an administrative agency of the Supreme Court of Virginia.<sup>214</sup> It was created in 1938 by legislative action.<sup>215</sup> All lawyers must register and maintain their licenses to practice law with the VSB.<sup>216</sup> The VSB's mission is "(1) to protect the public, (2) to regulate the legal profession of Virginia, (3) to advance access to legal services, and (4) to assist in improving the legal profession and the judicial system."<sup>217</sup> It currently has over 51,618 members and 32,114 active members.<sup>218</sup> The VSB is funded by annual license fees and self-generated income.<sup>219</sup> Its fiscal year 2022 budget is \$14.8 million, and as of June 30, 2021, it had a staff of 93.<sup>220</sup> It is unclear to what extent the VSB is actively supervised by the Court.

The VSB is governed by a Council and Executive Committee.<sup>221</sup> Its Council exercises the powers of the VSB<sup>222</sup> and is an 81-member body, consisting of 65 elected lawyer members based on judicial circuit districting, nine at-large members appointed by the Supreme Court, four

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<sup>211</sup> *Pro Bono Council*, VA. B. Ass'N, [https://www.vba.org/page/pro\\_bono\\_council](https://www.vba.org/page/pro_bono_council) (last visited September 2021).

<sup>212</sup> Search "diversity" on <https://www.vba.org/> (last visited September 2021).

<sup>213</sup> *Young Lawyers Division*, VA. B. Ass'N, <https://www.vba.org/page/yld> (last visited September 2021).

<sup>214</sup> *About the Bar*, *supra* note 191.

<sup>215</sup> *About the Bar*, *supra* note 191.

<sup>216</sup> *Lawyer Compliance*, VA. ST. BAR, <https://www.vsb.org/site/members> (last visited September 2021).

<sup>217</sup> *About the Bar*, *supra* note 191.

<sup>218</sup> *IBIS Member Status Report (External) Membership Report as of August 6, 2021*, VA. ST. BAR, <https://www.vsb.org/images/uploads/memstats.pdf> (last visited September 2021).

<sup>219</sup> *About the Bar*, *supra* note 191.

<sup>220</sup> *Virginia State Bar 83<sup>rd</sup> Annual Report* at 5, 9, VA. ST. BAR, [https://www.vsb.org/docs/83rd\\_Annual\\_Report.pdf](https://www.vsb.org/docs/83rd_Annual_Report.pdf) (last visited September 2021).

<sup>221</sup> *Executive Committee*, VA. ST. BAR, <https://www.vsb.org/site/about/officers> (last visited September 2021).

<sup>222</sup> *Rules of the Sup. Ct. of Va. Part 6 §IV(5)*, <https://www.vsb.org/pro-guidelines/index.php/bar-govt/> (last visited September 2021).

conference chairs, and three officers.<sup>223</sup> Members may serve two three-year terms.<sup>224</sup> The Executive Committee is a body of 13 members, six of whom are elected annually by the Council.<sup>225</sup> The remaining members are the president, president-elect, immediate past president, President of the Young Lawyers Conference (YLC), Chair of the Conference of Local Bar Associations, and Chair of the Diversity Conference, who serve ex officio.<sup>226</sup> The Executive Committee allocates bar funds; employs staff; oversees financial recording keeping and audits; reviews the performance of the executive director (ED), deputy ED, and bar counsel; and performs other duties.<sup>227</sup>

With respect to regulatory functions, the VSB enforces the rules and regulations governing lawyer ethics and the unauthorized practice of law, disciplines lawyers, and oversees MCLE compliance.<sup>228</sup> It collects the annual licensing fees, which is \$250 for active members, with an additional assessment of \$5 for the Clients' Protection Fund (CPF) and \$30 for the Attorney Wellness Fund.<sup>229</sup> It oversees registration of banks serving as depositories of IOLTA funds<sup>230</sup> and professional entities formed solely for the practice of law in Virginia.<sup>231</sup> Unauthorized practice of law complaints are investigated and resolved through disciplinary functions.<sup>232</sup> A separate agency under the Supreme Court, the Virginia Board of Bar Examiners, initially licenses attorneys to practice law, which includes accepting and reviewing applications, conducting character and fitness reviews, and administering the bar exam.<sup>233</sup> The Board is funded by bar examination and

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<sup>223</sup> *Bar Council*, VA. ST. BAR, <https://www.vsb.org/site/about/council> (last visited September 2021).

<sup>224</sup> *Bar Council*, *supra* note 223.

<sup>225</sup> *Bylaws of the Virginia State Bar and Counsel Art. VI §1*, VA. ST. BAR, <https://www.vsb.org/pro-guidelines/index.php/bylaws/> (follow this link for future references to the Bylaws) (last visited September 2021).

<sup>226</sup> *Bylaws of the Virginia State Bar and Counsel Art. VI §1*, VA. ST. BAR.

<sup>227</sup> *Bylaws of the Virginia State Bar and Counsel Art. VI §3*, VA. ST. BAR.

<sup>228</sup> *About the Bar*, *supra* note 191.

<sup>229</sup> *Annual Dues & Fees*, VA. ST. BAR, <https://www.vsb.org/site/members/requirements> (last visited September 2021).

<sup>230</sup> *Trust Accounts & IOLTA*, VA. ST. BAR, <https://www.vsb.org/site/members/trust-account-depositories> (last visited September 2021).

<sup>231</sup> *Professional Entities*, VA. ST. BAR, <https://www.vsb.org/site/members/professional-entities-registration-forms> (last visited September 2021).

<sup>232</sup> *Unauthorized Practice of Law*, VA. ST. BAR, <https://www.vsb.org/site/regulation/unauthorized-practice/#opinions> (last visited September 2021).

<sup>233</sup> *About the Bar*, *supra* note 191; *Virginia Board of Bar Examiners*, Va. Bd. of Bar Examiners, <https://barexam.virginia.gov/> (last visited September 2021).

registration fees and interest accrued, and in 2021, reported \$1,749,591 in revenue<sup>234</sup> and \$1,472,122 in expenditures.<sup>235</sup> Members are appointed by the Supreme Court.<sup>236</sup>

The VSB has 20 sections that are intended to improve the practice of law in specific substantive areas.<sup>237</sup> The sections are supported by section dues and sections have their own officers and purposes.<sup>238</sup> It further has a YLC.<sup>239</sup> VSB member services include an ethics hotline,<sup>240</sup> a fee dispute resolution program,<sup>241</sup> a lawyer referral service,<sup>242</sup> a bar journal,<sup>243</sup> and a legal research tool.<sup>244</sup>

The VSB has the five standing committees, including Access to Legal Services, Budget and Finance, Lawyer Discipline (COLD), Legal Ethics, and Professionalism. It has seven special committees and three regulatory boards. The VSB's regulatory entities include COLD (which monitors the progress of disciplinary investigations and prosecutions, among other duties<sup>245</sup>), the CPF Board, the

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<sup>234</sup> *\$1.7 Million: Board of Bar Examiners*, COMMONWEALTH DATA POINT, <https://www.datapoint.apa.virginia.gov/dashboard.php?Page=Revenue&FiscalYear=2021&Branch=JUB&Name=Judicial> (last visited September 2021).

<sup>235</sup> *\$1.5 Million: Board of Bar Examiners*, COMMONWEALTH DATA POINT, <https://www.datapoint.apa.virginia.gov/dashboard.php?Page=Expenditures&FiscalYear=2021&Branch=JUB&Name=Board%20Of%20Bar%20Examiners&Agency=23300> (last visited September 2021).

<sup>236</sup> VA. CODE § 54.1-3920, <https://law.lis.virginia.gov/vacode/title54.1/chapter39/section54.1-3920/> (last visited September 2021).

<sup>237</sup> *Sections*, VA. ST. BAR, <https://www.vsb.org/site/members/sections> (last visited September 2021).

<sup>238</sup> *Sections*, *supra* note 237.

<sup>239</sup> *Young Lawyers Conference*, VA. ST. BAR, <https://www.vsb.org/site/conferences/ylc> (last visited September 2021).

<sup>240</sup> *Ethics Questions and Opinions*, VA. ST. BAR, <https://www.vsb.org/site/regulation/ethics> (last visited September 2021).

<sup>241</sup> *Fee Dispute Resolution*, VA. ST. BAR, <https://www.vsb.org/site/public/fee-dispute-resolution-program> (last visited September 2021).

<sup>242</sup> *Lawyer Referral Panel Members*, VA. ST. BAR, <https://vlrs.community.lawyer/pages/for-lawyers> (last visited September 2021).

<sup>243</sup> *Virginia Lawyer*, VA. ST. BAR, <https://www.vsb.org/site/publications/valawyer> (last visited September 2021).

<sup>244</sup> *Virginia State Bar 83<sup>rd</sup> Annual Report*, *supra* note 220, at 7.

<sup>245</sup> *Lawyer Discipline*, VA. ST. BAR, <https://www.vsb.org/site/about/lawyer-discipline> (last visited September 2021).

Disciplinary Board, the MCLE Board, and 17 disciplinary district committees (which review bar complaints in their own districts for appropriate disposition).<sup>246</sup>

The VSB promotes access to legal services and advances diversity and inclusion in the profession.<sup>247</sup> Its Committee on Access to Legal Services fosters support for pro bono and reduced fee services.<sup>248</sup> The Committee is distinct from the Virginia Access to Justice Commission, which operates under the purview of the Supreme Court of Virginia.<sup>249</sup> The VSB further administers the Diversity Conference, which is charged with “bring[ing] together Virginia State Bar members interested in promoting diversity and inclusion in the legal profession and in ensuring that Virginia meets the legal needs of an increasingly diverse population.”<sup>250</sup> The Conference has 893 members and holds town halls, forums, and CLEs.<sup>251</sup>

The VSB has a contact for Legislative Policy questions;<sup>252</sup> however, it is unclear the extent of an legislative activity they may engage in.

**F. California: Two-bar Model with Voluntary & Mandatory Bar (Formerly Integrated)**

Name of Organization	California Lawyers Association	State Bar of California
Nature of Entity	Voluntary	Mandatory
Present Size	Approx. 50,000 section members; 40,000 YLA members	276,300
Funding Source	Membership fees, per section fees	Membership dues, self-generating revenues

<sup>246</sup> *Committees and Boards*, VA. ST. BAR, <https://www.vsb.org/site/about/committees-and-boards> (last visited September 2021)

<sup>247</sup> *About the Bar*, *supra* note 191.

<sup>248</sup> *Access to Legal Services*, VA. ST. BAR, <https://www.vsb.org/site/about/access-to-legal-services> (last visited September 2021).

<sup>249</sup> *Virginia Access to Justice Commission*, Sup. Ct. of Va., <http://www.courts.state.va.us/programs/vajc/home.html> (last visited September 2021).

<sup>250</sup> *Diversity Conference*, VA. ST. BAR, <https://www.vsb.org/site/conferences/diversity> (last visited September 2021).

<sup>251</sup> *Virginia State Bar 83<sup>rd</sup> Annual Report*, *supra* note 220, at 42.

<sup>252</sup> *Bar Staff: Whom to Contact*, VA. ST. BAR, <https://www.vsb.org/site/about/bar-staff> (last visited September 2021).

<b>Governance</b>	Board of Representatives	Board of Trustees
<b>Regulatory Functions</b>	None	Bar admissions, licensing, discipline, Client Security Fund, UPL
<b>Sections &amp; Committees</b>	17 sections, YLA, 20 committees	15 committees and commissions
<b>Diversity and Inclusion</b>	Diversity Advisory Council; Diversity, Equity, & Inclusion Committee	Various ATJ focused programs
<b>Access to Justice</b>	Access to Justice Committee	Council on Access and Fairness
<b>Lobbying</b>	May take positions and propose legislation germane to its purposes	Monitors legislative activity and represents SBC on legislative, policy, and budget matters. Has a Keller deduction and process

## 1. History

The State Bar of California (SBC) was established by the legislature in 1927 under California's State Bar Act.<sup>253</sup> The California Constitution establishes the bar as a public corporation and requires every person admitted to practice law to be a member.<sup>254</sup> The SBC's work is governed by statute.<sup>255</sup> However, the SBC operates as part of the judicial branch and as an arm of the California Supreme Court.<sup>256</sup> Prior to January 1, 2018, the SBC incorporated both regulatory and associational functions into its purposes.<sup>257</sup> The impetus for change arose from debates regarding whether an integrated bar created inherent conflicts of interest between the Bar's "allegiance to attorneys as a trade association and its duty to protect the public as a regulatory agency."<sup>258</sup>

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<sup>253</sup> Edith Jimenez, Andrew J. Van Arsdale, & Bridget Fogarty Gramme, *State Bar of California*, 23-FALL CAL. L. REG. REP. 154, 154 (2017).

<sup>254</sup> CAL. CONST. art. VI §9.

<sup>255</sup> CAL. BUS. & PROF. CODE § 6000 *et seq.*

<sup>256</sup> *2020 Financial Statement and Independent Auditor's Report*, ST. B. OF CAL., at 3 (Apr. 29, 2021), <http://www.calbar.ca.gov/Portals/0/documents/reports/2020-Financial-Statements-and-Independent-Auditor's-Report.pdf> (last visited September 2021).

<sup>257</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 156.

<sup>258</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 157.

By legislative enactment, after January 1, 2018, the SBC de-unified its regulatory and associational functions, with sections splintering off into a new voluntary bar titled the California Lawyers Association (CLA).<sup>259</sup> The CLA is set up as a private nonprofit corporation.<sup>260</sup> It is prohibited from being funded by SBC membership fees and is not a public body.<sup>261</sup> The SBC is now prohibited from having sections.<sup>262</sup> In 2018, the separation of functions created a reduction in projected revenues and expenses for the SBC of \$9 million and \$9 million, respectively, compared to the prior year's budget.<sup>263</sup>

## 2. California Lawyers Association

The CLA houses 17 sections, 16 of which were formerly part of the SBC, as well as a Young Lawyers Association (YLA).<sup>264</sup> It describes as itself as “a member-driven, mission-focused organization dedicated to the professional advancement of attorneys practicing in the state of California.” Because it is an independent entity, it is permitted to engage in direct legislative advocacy.<sup>265</sup> The CLA may take positions on and propose legislation germane to the individual section or the legal profession as a whole pursuant to CLA's germaneness policy.<sup>266</sup> It further provides CLE programs to members.<sup>267</sup> The CLA was initially funded by SBC's section reserves.<sup>268</sup> The SBC transferred \$8.3 million in reserve funds to the CLA in 2018; it provided no further funding.<sup>269</sup> The annual

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<sup>259</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 156.

<sup>260</sup> Senate Bill No. 36, Ch. 422, Legislative Counsel's Digest, available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB36](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB36) (last visited September 2021).

<sup>261</sup> *Id.*

<sup>262</sup> *Id.*

<sup>263</sup> Kevin Harper, *Open Session Agenda Item, 2018 State Bar Final Budget*, ST. B. OF CAL., 16 (Jan. 27, 2018), <https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000021362.pdf> (last visited September 2021).

<sup>264</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 156; *Our Mission: What We Do*, *supra* note 284.

<sup>265</sup> *Our Mission*, CAL. LAWYERS ASS'N, <https://calawyers.org/cla/about-cla/> (last visited September 2021).

<sup>266</sup> *Restated Bylaws of the California Lawyers Association, Article VII*, Cal. Lawyers Ass'n, <https://calawyers.org/bylaws/> (follow this link for future references to the Bylaws) (last visited September 2021); *Sections Governmental Affairs Policy, 1. Governmental Affairs Standard*, Cal. Lawyers Ass'n, <https://calawyers.org/california-lawyers-association/sections-governmental-affairs-policy/> (last visited September 2021).

<sup>267</sup> *Our Mission*, *supra* note 265.

<sup>268</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 157.

<sup>269</sup> *2020 Financial Statement and Independent Auditor's Report*, *supra* note 256, at 8.

membership fee is \$99, plus an additional \$99 for each additional section joined.<sup>270</sup> Membership totals are approximately 50,000 lawyer members and 40,000 YLA members.<sup>271</sup> The annual budget has ranged from \$7 to \$11 million since its inception, and the organization employs 29 people.<sup>272</sup>

A Board of Representatives governs the CLA.<sup>273</sup> The number of representatives equals the number of sections of the CLA (17 and one YLA member).<sup>274</sup> Corporate officers include a chair, vice chair, president, vice president, secretary, and treasurer, who are elected by the Board, and an executive director and chief financial officer, who are staff of the CLA.<sup>275</sup> The chair, vice chair, secretary, and treasurer are elected annually from among the representatives.<sup>276</sup> The president and vice president serve two-year terms.<sup>277</sup> Each section has its own leadership structure and authority to propose its own administrative bylaws to be approved by the Board.<sup>278</sup> Each section may raise its own revenues and make expenditures, subject to approval by the Board.<sup>279</sup>

As of September 2021, the CLA oversaw 20 committees.<sup>280</sup> Some of the committees include the Access to Justice Committee, the Amicus Committee, the Audit Committee, the Awards Committee, the Budget & Finance Committee, the Civic Engagement & Education Committee, the Diversity Advisory Council, the Diversity, Equity, & Inclusion Committee, the Ethics Committee (which issues proposed advisory opinions), the Governance Committee, the Governmental Affairs Committee, the Health and Wellness Committee, the Member Engagement Committee, the Policies Committee, the Programs Committee.<sup>281</sup> The California Lawyers Foundation is the charitable arm of the CLA, conducting charitable programs, projects and

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<sup>270</sup> *Frequently Asked Questions*, CAL. LAWYERS ASS'N, <https://calawyers.org/frequently-asked-questions/> (last visited September 2021).

<sup>271</sup> *Executive Director*, CAL. LAWYERS ASS'N, <https://calawyers.org/careers/executive-director/>. This information was stated in the job description for the Executive Director and that job description is no long on the website.

<sup>272</sup> *Executive Director*, *supra* note 271.

<sup>273</sup> *Restated Bylaws of the California Lawyers Association, Article IV §1*.

<sup>274</sup> *Restated Bylaws of the California Lawyers Association, Article IV §2-3*.

<sup>275</sup> *Restated Bylaws of the California Lawyers Association, Article VI §1*.

<sup>276</sup> *Restated Bylaws of the California Lawyers Association, Article VI §1*.

<sup>277</sup> *Restated Bylaws of the California Lawyers Association, Article VI §1, 3*.

<sup>278</sup> *Restated Bylaws of the California Lawyers Association, Article VII §4(a) and 5*.

<sup>279</sup> *Restated Bylaws of the California Lawyers Association, Article VII §8*.

<sup>280</sup> *Executive Director*, CAL. LAWYERS ASS'N, <https://calawyers.org/cla/committees/> (last visited September 2021).

<sup>281</sup> *CLA Committees*, CAL. LAWYERS ASS'N, <https://calawyers.org/cla/committees/> (last visited September 2021).

activities, including those that promote and support efforts to improve access to justice and increase diversity in the profession.<sup>282</sup>

### 3. State Bar of California

The SBC remains mandatory for practicing attorneys.<sup>283</sup> The SBC describes as its mission “to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.”<sup>284</sup> It thus continues its regulatory functions of administering admissions and the bar exam, licensing and discipline, and monitoring MCLE compliance; it further actively promotes access to justice and diversity and inclusion in the legal system.<sup>285</sup> It also investigates allegations of the unauthorized practice of law.<sup>286</sup> The State Bar Court of California oversees disciplinary adjudications and intermediate appeals.<sup>287</sup> At the end of 2020, the SBC had approximately 276,300 licensees.<sup>288</sup> The SBC’s 2021 projected revenue was \$206.9 million and expenses were projected at \$194.7 million, with most revenues derived from licensing fees.<sup>289</sup> The 2021 licensing fee was set at \$515, including \$25 for discipline, \$40 for the Client Security Fund, \$10 for the Lawyer Assistance Program, and \$45 for legal aid.<sup>290</sup> The SBC employs approximately 610 full-time positions.<sup>291</sup>

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<sup>282</sup> *About Us*, CAL. LAWYERS FOUNDATION, <https://calawyersfoundation.org/about/> (last visited September 2021)

<sup>283</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 154-156; Senate Bill No. 36, Ch. 422, Legislative Counsel’s Digest 9.

<sup>284</sup> *Our Mission: What We Do*, ST. B. OF CAL., <http://www.calbar.ca.gov/About-Us/Our-Mission> (last visited September 2021).

<sup>285</sup> *Our Mission: What We Do*, *supra* note 284; *Minimum Continuing Legal Education*, ST. B. OF CAL., <https://www.calbar.ca.gov/Attorneys/MCLE-CLE> (last visited September 2021).

<sup>286</sup> *Regulation Overview*, ST. B. OF CAL., <https://www.calbar.ca.gov/About-Us/Our-Mission/Protecting-the-Public/Regulation-Overview> (last visited September 2021).

<sup>287</sup> *The State Bar Court of California*, ST. BAR CT., <https://www.statebarcourt.ca.gov/> (last visited September 2021).

<sup>288</sup> *2020 Financial Statement and Independent Auditor’s Report*, *supra* note 256, at 3.

<sup>289</sup> *2021 Adopted Final Budget*, ST. B. OF CAL., at 1 (Feb. 26, 2021), <http://www.calbar.ca.gov/Portals/0/documents/reports/2021-State-Bar-Budget.pdf> (last visited September 2021).

<sup>290</sup> *Frequently Asked Questions: 2021 Annual Fees*, ST. B. OF CAL., <https://www.calbar.ca.gov/Attorneys/Attorney-Regulation/About-Your-State-Bar-Profile/Fees-Payment/Annual-Fees-FAQs> (last visited September 2021).

<sup>291</sup> *2021 Adopted Final Budget*, *supra* note 289, at 24.

The SBC is governed by a Board of Trustees composed of 13 members serving four-year terms.<sup>292</sup> The Board develops policies and principles to guide its regulatory mission.<sup>293</sup> It includes five attorney members appointed by the Supreme Court; two attorney members appointed by the California Legislature; and six public members (four appointed by the Governor, one appointed by the Senate Committee on Rules, and another appointed by the Speaker of the Assembly).<sup>294</sup> Prior to splitting SBC, the Board had 19-members, including 13 attorneys, six of whom were elected.<sup>295</sup> The change in bar structure eliminated elected positions.<sup>296</sup> Leadership now includes a chair and vice chair appointed by the California Supreme Court to a one-year term and who are limited to two terms.<sup>297</sup>

The SBC runs 15 committees and commissions that support the work of the SBC, including the California Board of Legal Specialization, the Client Security Fund Commission, the Commission on Judicial Nominees Evaluation, the Committee of Bar Examiners, the Committee on Professional Responsibility and Conduct, the Committee of State Bar Accredited and Registered Schools, the Council on Access and Fairness, the Law School Council, the Lawyer Assistance Program Oversight Committee, the Legal Services Trust Fund Commission, the Review Committee for Commission on Judicial Nominees Evaluation, the Ad Hoc Commission on the Discipline System, the Blue Ribbon Commission on the Future of the Bar Exam, the California Paraprofessional Program Working Group, and the Closing the Justice Gap Working Group.<sup>298</sup> While the SBC no longer operates a bar foundation, individuals can make contributions through SBC's website to California ChangeLawyers, an independent entity since 2018 that was formerly part of SBC and titled the California Bar Foundation.<sup>299</sup>

The SBC shows a commitment to access to justice through various programs including providing legal aid grants, offering lawyer referral services, offering a pro bono practice program,

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<sup>292</sup> *Board of Trustees*, ST. B. OF CAL., <http://www.calbar.ca.gov/About-Us/Who-We-Are/Board-of-Trustees> (last visited September 2021); CAL. BUS. & PROF. CODE § 6013.3, 6013.5.

<sup>293</sup> *Board of Trustees*, *supra* note 292.

<sup>294</sup> *Board of Trustees*, *supra* note 292; CAL. BUS. & PROF. CODE § 6013.3, 6013.5.

<sup>295</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 155.

<sup>296</sup> Jimenez, Van Arsdale, & Fogarty Gramme, *supra* note 253, at 155.

<sup>297</sup> CAL. BUS. & PROF. CODE § 6020-21.

<sup>298</sup> *Committees*, ST. B. OF CAL., <http://www.calbar.ca.gov/About-Us/Who-We-Are/Committees> (last visited September 2021)

<sup>299</sup> *Make a Contribution*, ST. B. OF CAL., <https://apps.calbar.ca.gov/contribute/contribute.aspx?d=4> (last visited September 2021); *Who We Are*, CAL. CHANGETHWYERS, <https://www.changelawyers.org/who-we-are.html> (last visited September 2021).

conducting studies, and publishing reports.<sup>300</sup> Its former Access to Justice Commission separated from SBC in 2019 and now operates as an independent nonprofit corporation.<sup>301</sup> The Council on Access and Fairness is charged with effectuating the SBC's diversity and inclusion goals and objectives.<sup>302</sup>

SBC operates a legislative program "to monitor legislative activity and represent and advocate for the State Bar on legislative, policy and budget matters."<sup>303</sup> Its work is focused on promoting laws focused on enhancing the ethical and competent practice of law, the ability to effectively regulate lawyers, and providing a fair discipline system.<sup>304</sup> It further seeks to enhance access to the profession and the justice system and promote laws that assist in the effective implementation of the SBC's mission.<sup>305</sup> It offers a Keller deduction and process for challenging the deduction.<sup>306</sup>

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<sup>300</sup> *Access to Justice*, ST. B. OF CAL., <https://www.calbar.ca.gov/Access-to-Justice> (last visited September 2021); *Access to Justice Initiatives*, ST. B. OF CAL., <https://www.calbar.ca.gov/Access-to-Justice/Initiatives> (last visited September 2021).

<sup>301</sup> *California Access to Justice Commission*, ST. B. OF CAL., <https://www.calbar.ca.gov/About-Us/Who-We-Are/Archived-Committees/California-Access-to-Justice-Commission> (last visited September 2021).

<sup>302</sup> *Council on Access and Fairness*, ST. B. OF CAL., <https://www.calbar.ca.gov/About-Us/Who-We-Are/Committees/Council-on-Access-and-Fairness> (last visited September 2021).

<sup>303</sup> *State Bar Legislative Program*, THE ST. B. OF CAL., <https://www.calbar.ca.gov/About-Us/Our-Mission/Government-Affairs/Legislative-Program> (last visited September 2021).

<sup>304</sup> *State Bar Legislative Program*, *supra* note 303.

<sup>305</sup> *State Bar Legislative Program*, *supra* note 303.

<sup>306</sup> *Keller Notice Statement of Expenditure of Mandatory Fees*, THE ST. B. OF CAL., <https://www.calbar.ca.gov/Portals/0/documents/members/Keller-Notice-Statement-of-Expenditures-of-Mandatory-Fees.pdf> (last visited September 2021).

COMPARISON OF WASHINGTON AND MICHIGAN INTEGRATED BARS

ENTITY	WSBA	STATE BAR OF MICHIGAN
<b>General Information</b>		
Nature of Entity	Integrated	Integrated
Present Size	41,346	46,320
Funding Source	License fees, self-generated revenues	License fees, self-generated revenues
License Fee	478 (incl. \$20 CPF fee)	\$315 (\$120 discipline, \$15 CPF, \$180 SBM operations)
Budget/Collected Fees	\$24 million in expenses and over \$23.5 million in revenues (FY 2021 projections)	\$7,732,165 (FY 2020 collected license fees, section dues, etc.)
Governance	Board of Governors (11 elected, 3 at-large, president, president-elect, immediate past president)	Representative Assembly (policy making body, 142 elected, 8 appointed from Board of Commissioners) AND Board of Commissioners (implements policy, 20 elected, 5 appointed by Court; chair, chair-elect, and immediate past chair of Young Lawyers; president, president-elect, vice-president, secretary, treasurer)
<b>Regulatory Functions</b>		
Admissions	Yes	No, separate Supreme Court entity oversees admissions (Board of Law Examiners); appointed by the governor on nomination from the Court; funded by application fees; SBM assists w/C&F only
Licensing	Yes	Yes
Discipline	Yes	No, separate Supreme Court entities oversee investigation (Attorney Grievance Comm'n) and adjudication (Attorney Discipline Bd); members are appointed by the Court; entities and administrator report quarterly to the Court; funded by assessment of \$120 from SBM license fees
MCLE	Yes	N/A
Client Protection Fund	Yes	Yes
UPL	Yes, but may only refer complaints	Yes, may prosecute
Custodianship Counsel	Yes	Unknown
IOLTA Registrations	No, handled by Legal Foundation of Washington	Yes
<b>Entities</b>		
Sections	29	44
Committees/Boards/Panels/Task Forces	31 (including regulatory)	23 (including regulatory)
<b>Regulatory Entities</b>		

COMPARISON OF WASHINGTON AND MICHIGAN INTEGRATED BARS

ENTITY	WSBA	STATE BAR OF MICHIGAN
Adjunct Disciplinary Counsel Panel	Yes	No, separate Supreme Court entities oversee investigation (Attorney Grievance Comm'n) and adjudication (Attorney Discipline Bd); members are appointed by the Court; entities and administrator report quarterly to the Court; funded by assessment of \$120 from SBM license fees
Board of Bar Examiners	Yes	No, separate Supreme Court entity oversees admissions (Board of Law Examiners); appointed by the governor on nomination from the Court; funded by application fees; SBM assists w/C&F only
Character and Fitness	Yes	Yes
Client Protection	Yes	Yes
Disciplinary Advisory Roundtable	Yes	N/A
Disciplinary Board	Yes	No, separate Supreme Court entities oversee investigation (Attorney Grievance Comm'n) and adjudication (Attorney Discipline Bd); members are appointed by the Court; entities and administrator report quarterly to the Court; funded by assessment of \$120 from SBM license fees
Hearing Officers	Yes	No, separate Supreme Court entities oversee investigation (Attorney Grievance Comm'n) and adjudication (Attorney Discipline Bd); members are appointed by the Court; entities and administrator report quarterly to the Court; funded by assessment of \$120 from SBM license fees
Law Clerk	Yes	N/A
LLLT	Yes	N/A
Limited Practice	Yes	N/A
MCLE	Yes	N/A
Practice of Law/UPL	Yes, may only refer complaints	Yes, may prosecute
<b>Additional Functions</b>		
Access to Justice	Access to Justice Board (Supreme Court board)	Yes (but not a Supreme Court Board)
Diversity and Inclusion	Diversity Committee; Equity and Justice Team	Diversity & Inclusion Advisory Committee
Lobbying	Yes, lobbies legislature and offers <i>Keller</i> deduction	Yes, mandatory bar dues may only fund ideological activity reasonably related to regulation of the profession; voluntary section dues may fund other ideological activity
Bar Foundation	Yes, Washington State Bar Foundation	Yes but not an MSB entity; Michigan State Bar Foundation run as a separate entity

# COMPARISON OF WASHINGTON AND MICHIGAN INTEGRATED BARS

ENTITY	WSBA	STATE BAR OF MICHIGAN
Other Programs	Moderate Means Program	Modest Means Program

## COMPARISON OF COLORADO AND NEBRASKA VOLUNTARY BARS AND DIRECT COURT SUPERVISION

STATE	COLORADO		NEBRASKA	
ENTITY	COLORADO BAR ASSOCIATION	COLORADO OFFICE OF ATTORNEY REGULATION	NEBRASKA STATE BAR ASSOCIATION	NEBRASKA ATTORNEY SERVICES DIVISION
<b>General Information</b>				
Nature of Entity	Voluntary	Under Colorado Supreme Court	Voluntary (sort of)	Under Nebraska Supreme Court
Present Size	18,000	43,446	70-80% of licensed lawyers	6,952 (active, 2018 numbers); 12,800 + total registered of varying statuses (2021)
Funding Source	Membership fees	Licensing fees, bar application fees, CLE revenues, interest	Membership fees	License fees
Membership/License Fee	\$55-250 + section fees of \$15-35	\$325 (\$25 to CPF; the rest funds ORAC, Office of Presiding Disciplinary Judge, Commission on Judicial Discipline, Lawyers Assistance Program, Mentoring Program)	\$240 (all lawyers are NSBA members by virtue of licensure but cannot enjoy benefits without paying membership fees)	\$98 (\$25 admissions, \$60 discipline, \$13 UPL)
Budget/Collected Fees	Unknown	\$11,849,829 in revenues and \$11,768,632 in expenditures and indirect costs (FY 2022 projections)	\$1,076,727 (2020 membership dues collected)	\$1,357,000 in revenues and \$1,689,163 in administrative expenditures (FY 2022 projections)
Governance	Board of Governors (elected from affiliated local bars & designated from CBA organizations, incl. sections) AND Executive Council (holds CBA corporate authority and powers, includes 7 officers, Young Lawyer chair, 3 diversity bar representatives, 3 section representatives, 4 governors, and CBA-CLE Board of Directors representative)	Supreme Court	House of Delegates (elected based on district, policy making body) AND Executive Council (administrative and executive body, incl. 6 elected district members and immediate past president, president, president-elect, president-elect designate, immediate past chair, chair, chair-elect, chair-elect designate)	Supreme Court
<b>Regulatory Functions</b>				
Admissions	No	Yes	No	Yes
Licensing	No	Yes	No	Yes
Discipline	No	Yes	No	Yes
MCLE	No	Yes, includes offering CLEs	No	Yes
Client Protection Fund	No	Yes	Yes (funded by mandatory assessments collected with assistance of NSBA)	No
UPL	No	Yes	No	Yes
Custodianship Counsel	No	Yes	No	Unknown
IOLTA Registrations	No	No, handled by the Colorado Lawyer Trust Account Foundation	No	No, handled by the Nebraska Lawyers Trust Account Foundation
<b>Entities</b>				
Sections	30	No	32	No
Committees/Boards/Panels/Task Forces	19 committees, incl. Ethics Committee (issues formal opinions); also has Young Lawyers Committee	7 regulatory committees	23 committees, incl. the Client Assistance Fund and the Nebraska Lawyers Assistance Program	10 regulatory commissions and committees and a Lawyer's Advisory Committee
<b>Regulatory Entities</b>				
Adjunct Disciplinary Counsel Panel	No	No	No	No
Board of Bar Examiners	No	Yes	No	Yes, Nebraska State Bar Commission
Character and Fitness	No	Yes	No	Falls under purview of Nebraska State Bar Commission; no separate committee
Client Protection	No	Yes	Yes (funded by mandatory assessments)	No
Disciplinary Advisory Roundtable	No	Yes, Supreme Court Advisory Committee assumes broader functions of overseeing all programs for lawyer regulation process	No	No
Disciplinary Board	No	N/A	No	Yes
Hearing Officers	No	Yes, hearing board, incl. Presiding Disciplinary Judge oversees	No	Yes
MCLE	No	Yes	No	Yes
Practice of Law/UPL	No	Yes	No	Yes
<b>Additional Functions</b>				

## COMPARISON OF COLORADO AND NEBRASKA VOLUNTARY BARS AND DIRECT COURT SUPERVISION

ENTITY	COLORADO BAR ASSOCIATION	COLORADO OFFICE OF ATTORNEY REGULATION	NEBRASKA STATE BAR ASSOCIATION	NEBRASKA ATTORNEY SERVICES DIVISION
<b>Access to Justice</b>	Access to Justice Commission; joint effort of Colorado Supreme Court & Statewide Legal Services Group	Access to Justice Commission; joint effort of Colorado Bar Association & Statewide Legal Services Group, not administered by Court	Yes, but no specific entity charged with such work	Not with Attorney Services Division, but Supreme Court has Access to Justice Commission
<b>Diversity and Inclusion</b>	Offers an Equity, Diversity, and Inclusivity Toolkit to its sections	Supports diversity through its regulatory objectives, CLE offerings, and tracking demographic data	Yes, has Diversity Section	Not with Attorney Services Division, but Supreme Court has Committee on Equity and Fairness
<b>Lobbying</b>	Yes, Legislative Policy Committee determines CBA positions	No information available, so likely no	May take positions that are political or ideological that are germane to its purposes and the quality of legal services	No information available, so likely no
<b>Bar Foundation</b>	Colorado Bar Foundation	No	Nebraska Lawyers Foundation	No
<b>Other Programs</b>	CBA-CLE offers educational programming	Not administered through ORAC but funded by license fees: Colorado Lawyer Assistance Program, Colorado Attorney Mentoring Program	Administers Nebraska Lawyers Assistance Program, Fee Arbitration	Lawyer's Advisory Committee (issues advisory opinions)

## COMPARISON OF VIRGINIA AND CALIFORNIA HYBRID MODELS OF BOTH VOLUNTARY AND MANDATORY BARS

STATE	VIRGINIA		CALIFORNIA	
ENTITY	Virginia Bar Association	Virginia State Bar	California Lawyers Association	State Bar of California
<b>General Information</b>				
Nature of Entity	Voluntary	Mandatory	Voluntary	Mandatory
Present Size	4,800	51,618	Approx. 50,000 section members; 40,000 Young Lawyers members	276,300 (end of 2020)
Funding Source	Membership fees, self-generated revenue	Membership fees, self-generated revenue	Membership fees, per section fees	Membership dues, self-generating revenues
Membership/License Fee	\$300	\$285 (incl. \$5 CPF fee, \$30 Attorney Wellness Fund fee)	\$99, plus \$99 for each additional section joined	\$515 (incl. \$25 discipline, \$40 CPF, \$10 Lawyer Assistance Program, \$45 legal aid)
Budget/Collected Fees	Unknown	\$14,800,000 (FY 2022 budget)	Annual budget of between \$7 and \$11 million since its inception	Revenue at \$206.9 million and expenses at \$194.7 million (2020 projections)
Governance	Board of Governors (a president, president-elect, immediate past president, chair and chair-elect of its Young Lawyer's Division (YLD), and chair of the Board, 6 elected members by regional representation, and two regional representatives and two at-large members that are elected by the Board)	Council (exercises powers of VSB, 81-member body: 65 elected lawyer members based on judicial circuit districting; 9 at-large members appointed by the Supreme Court; 4 conference chairs, and 3 officers) AND Executive Committee (performs administrative functions, 13 member body: 6 elected by Council and president, president-elect, immediate past president, President of the Young Lawyers Conference, Chair of the Conference of Bar Local Bar Associations, and Chair of the Diversity Conference)	Board of Representatives (representatives equal the number of sections of the CLA and one Young Lawyer member, Board elected members incl. a chair, vice chair, president, vice president, secretary, and treasurer)	Board of Trustees (develops policies and principles to guide its regulatory mission; 13 members, incl. 5 attorneys appointed by the Supreme Court; two attorneys appointed by the California Legislature; and six public members, four appointed by the Governor, one appointed by the Senate Committee on Rules, and one appointed by the Speaker of the Assembly)
<b>Regulatory Functions</b>				
Admissions	No	No, separate Supreme Court entity oversees admissions (Virginia Board of Bar Examiners); appointed by the Supreme Court; funded by application and registration fees	No	Yes
Licensing	No	Yes	No	Yes
Discipline	No	Yes	No	Yes
MCLE	No	Yes	No	Yes
Client Protection Fund	No	Yes	No	Yes
UPL	No	Yes	No	Yes
Custodianship Counsel	No	Unknown	No	Unknown
IOLTA Registrations	No	Yes	No	Yes
<b>Entities</b>				
Sections	19	20	17	No
Committees/Boards/Panels/Task Forces	7 committees; two divisions incl. Young Lawyers, Law Practice Management	Young Lawyers Conference, five standing committees, seven special committees, three regulatory boards, 17 disciplinary committees	20, including Ethics Committee, and Young Lawyers Association	15 committees and commissions, including Committee on Professional Ethics (issues advisory opinions)
<b>Regulatory Entities</b>				
Adjunct Disciplinary Counsel Panel	No	No, but it has a Standing Committee on Lawyer Discipline that monitors progress of investigations & prosecutions, among other duties	No	No
Board of Bar Examiners	No	No, separate Supreme Court entity oversees admissions (Virginia Board of Bar Examiners); appointed by the Supreme Court; funded by application and registration fees	No	Yes
Character and Fitness	No	No, separate Supreme Court entity oversees admissions (Virginia Board of Bar Examiners); appointed by the Supreme Court; funded by application and registration fees	No	No, handled by staff and the Moral Character Subcommittee of the Committee of Bar Examiners
Client Protection	No	Yes	No	Yes
Disciplinary Advisory Roundtable	No	No	No	Ad Hoc Commission on the Discipline System
Disciplinary Board	No	Yes	No	No, State Bar Court handles appeals
Hearing Officers	No	Yes, held before district committees	No	No, State Bar Court handles adjudications
MCLE	No	Yes	No	No, handled by staff
Practice of Law/UPL	No	Yes, resolved through disciplinary functions	No	No, handled by staff

## COMPARISON OF VIRGINIA AND CALIFORNIA HYBRID MODELS OF BOTH VOLUNTARY AND MANDATORY BARS

ENTITY	Virginia Bar Association	Virginia State Bar	California Lawyers Association	State Bar of California
<b>Additional Functions</b>				
<b>Access to Justice</b>	No organization-wide program; operates Pro Bono Council	Committee on Access to Legal Services	Access to Justice Committee	Yes, through various ATJ focused programs; ATJ Commission separated from SBC
<b>Diversity and Inclusion</b>	No organization-wide program; holds events and YLD has its own Diversity Program	The Diversity Conference	Diversity Advisory Council; Diversity, Equity, & Inclusion Committee	Council on Access and Fairness
<b>Lobbying</b>	Engages in legislative advocacy by proposing legislation, informing lawmakers, and appearing at legislative hearings	Likely no	May take positions and propose legislation germane to its purposes	Monitors legislative activity and represents the Bar on legislative, policy, and budget matters. Has a Keller deduction and process.
<b>Bar Foundation</b>	Virginia Bar Association Foundation	No	California Lawyers Foundation	No, but individuals can make contributions through SBC's website to California ChangeLawyers (formerly SBC's California Bar Foundation, now an independent entity)
<b>Other Programs</b>	Joint Alternative Dispute Resolution Committee (joint effort of VBA and VSB)	Joint Alternative Dispute Resolution Committee (joint effort of VBA and VSB)	Ethics Committee (issues proposed advisory opinions); Health and Wellness Committee	Lawyer Assistance Program Oversight Committee, Commission on Judicial Nominees Evaluation, various ad hoc committees related to governing the practice of law

**Overview:** The WSBA operates under the delegated authority of the Washington Supreme Court and exercises a governmental function authorized by the Washington Supreme Court to license and regulate the state’s more than 40,000 legal professionals. In furtherance of its obligation to protect and serve the public, the WSBA both regulates lawyers and other legal professionals, including lawyers, limited practice officers, and limited license legal technicians. The WSBA both regulates legal professions under the authority of the Court and serves its members as a professional association — all without public funding. The WSBA administers the bar admission process, including the bar exam; provides record-keeping and licensing functions; administers the lawyer discipline system; and provides continuing legal education for legal professionals, in addition to numerous other educational and member-service activities.

The governance of the WSBA is vested in its Board of Governors and officers. There are two governors from the seventh congressional district; one from each of the other nine districts; three at-large members, and a President, President-Elect, and Past President. The Board meets regularly at the WSBA Conference Center and at various locations around the state, and the public session portions of its meetings are open to the public. Much of the work of the Bar is carried out through its committees, boards, 29 sections, and other entities.

**President:** Hon. Brian Tollefson (ret.) [tollefsonbog@outlook.com](mailto:tollefsonbog@outlook.com) / 253.389.0071

**President-elect** Dan Clark [DanClarkBOG@yahoo.com](mailto:DanClarkBOG@yahoo.com) / 509.574.1207

**Executive Director:** Terra Nevitt [terran@wsba.org](mailto:terran@wsba.org) / 206.727.8282

**Media Contacts:** Sara Niegowski [saran@wsba.org](mailto:saran@wsba.org) / 206.733.5930

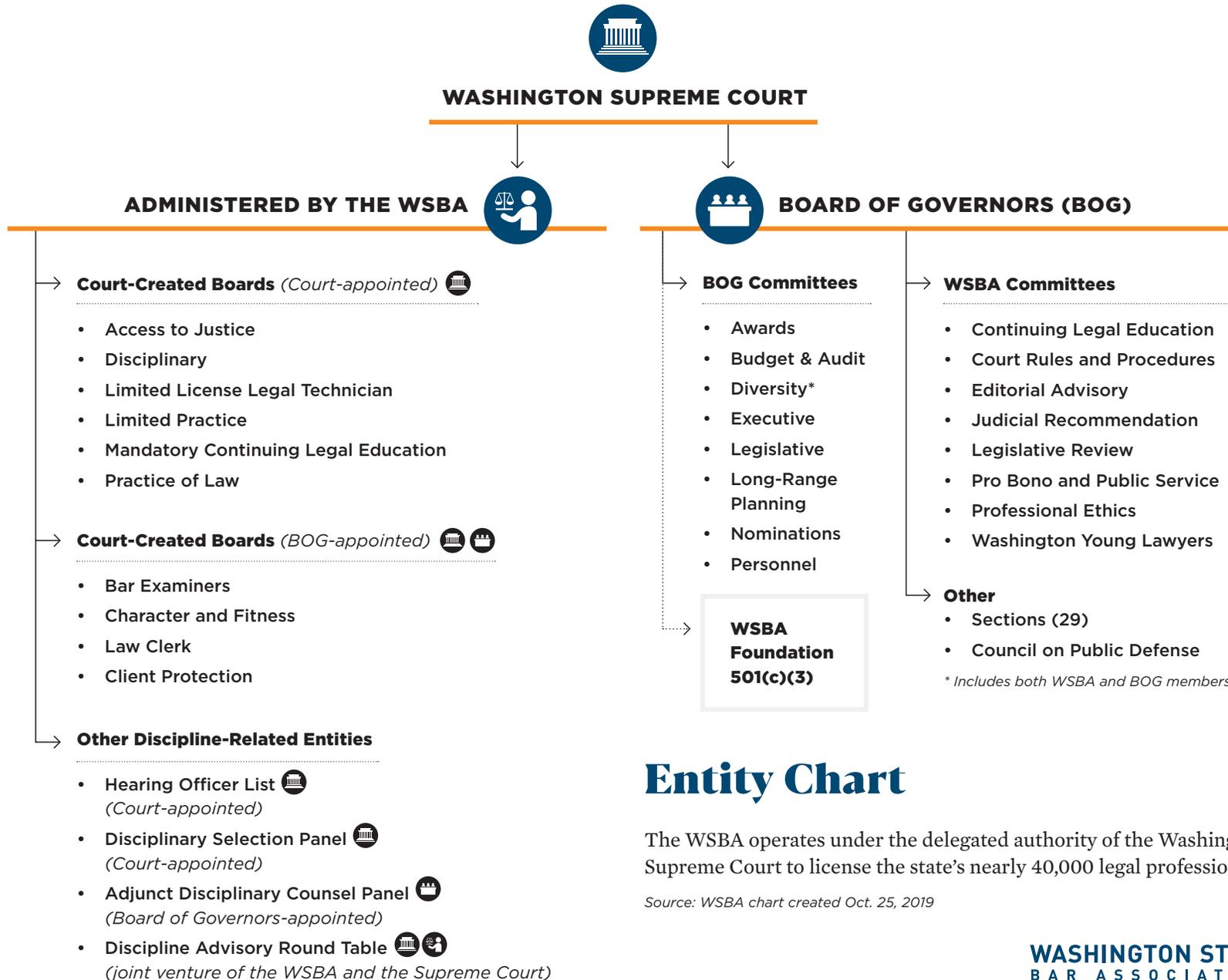
**Mission Statement:** The Washington State Bar Association’s mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice.

**Membership:** Approximately 41,152 members (27,787 active members). All legal professionals licensed to practice in the state are required to be members of the WSBA. Of its members who volunteer the information, approximately 43 percent are women and 16 percent are persons of color.

**WSBA Staff:** Approximately 138 staff members

**Other Facts:**

- Over 3,000 members provided pro bono and public service under RPC 6.1. Over 2,000 have participated with a WSBA public service program, including the Moderate Means Program and the Powerful Communities Project, and find opportunities through the Pro Bono Portal.
- The WBSA offers over 400 CLE credits every year on substantive legal topics, diversity, equity and inclusion programs and ethics issues.
- 800-1,000 new legal professionals are admitted each year.
- There are more than 67 county, specialty, and minority bar associations throughout the state, serving the needs of licensed legal professionals and the public.
- To promote public confidence and protection of the public, the WSBA administers the Client Protection Fund. This program compensates clients who are victims of attorney misappropriation. Each active or house counsel lawyer member, a active LLLT, foreign law consultant, and lawyer authorized to appear pro hac vice, is assessed \$30 a year as part of his or her annual licensing or per case license fee (for pro hac vice) for this fund.



## Entity Chart

The WSBA operates under the delegated authority of the Washington Supreme Court to license the state’s nearly 40,000 legal professionals.

Source: WSBA chart created Oct. 25, 2019

## Mission

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

## Functions and Goals

### **Regulate the Legal Profession and Improve the Quality of Legal Services**

Our goal is to protect the public by ensuring competence and integrity and by promoting professionalism in the legal profession.

### **Support the Judiciary and Improve the Administration of Justice**

Our goal is to protect and advance the quality, integrity, and impartiality of the judicial system.

### **Advance a Fair, Inclusive, and Accessible Justice System**

Our goal is to foster trust in, respect for, understanding of, and access to the justice system.

## Values

Integrity | Fairness | Justice  
Leadership | Accountability | Sustainability  
Diversity | Excellence | Well-Being

**MEMBERSHIP**

15,126 active members  
5,256 inactive members

**FEES & ASSESSMENTS**

2022 active member fees: \$613  
Professional Liability Fund  
Assessment: \$3,300

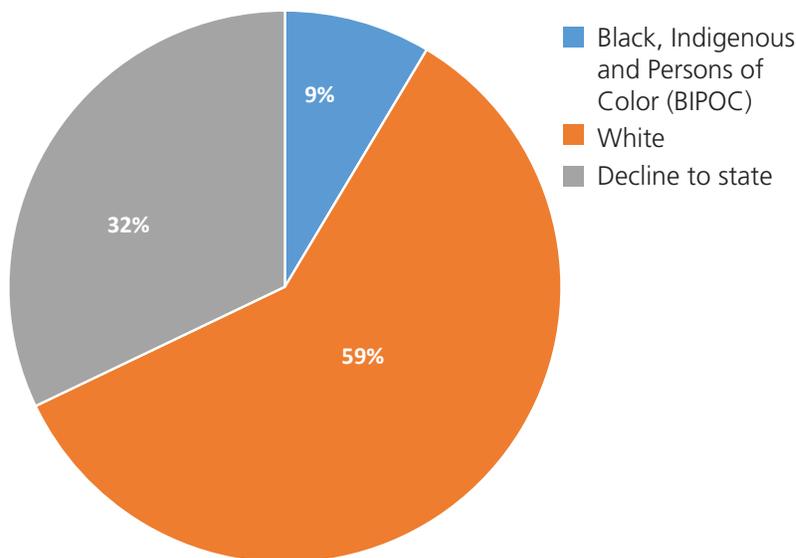
**REVENUE & EXPENSES<sup>2</sup>**

Annual revenue: \$26.1 million  
Annual expense: \$26.8 million

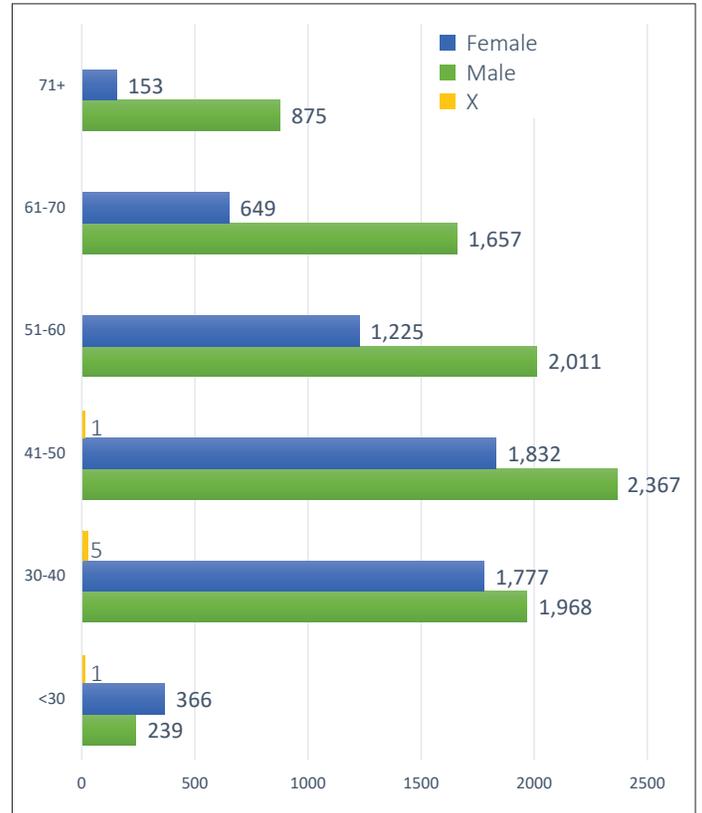
**VOLUNTEER ACTIVITY**

Sections: 700 members on 40 executive committees  
Committees, boards and councils: 825 members  
Legislative volunteers: 200 members

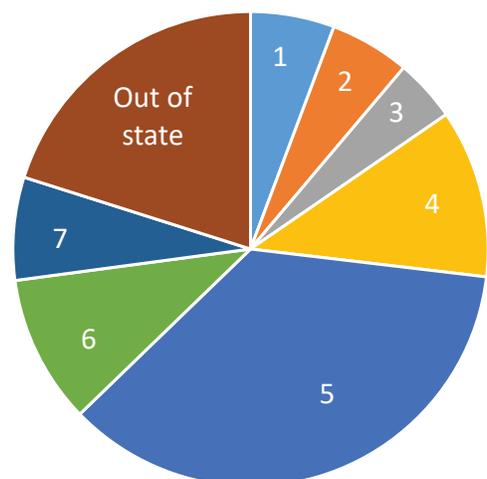
**DEMOGRAPHICS (Jan 2022)**



**ACTIVE MEMBERS BY AGE GROUP (Jan 2022)**



**ACTIVE MEMBERS BY REGION (Jan 2022)**



Region 1 – 6%	Region 5 – 36%
Region 2 – 5%	Region 6 – 10%
Region 3 – 4%	Region 7 – 7%
Region 4 – 11%	OOS – 20%

<sup>1</sup> All figures are for 2021 except as otherwise noted.

<sup>2</sup> 2022 budget. Includes amounts restricted to Legal Services, Client Security Fund, Diversity & Inclusion and the bar center. The difference between the two numbers are non-cash expenses and therefore the bar is achieving a balanced budget for the year.

# The Oregon State Bar's mission is to serve justice and the public interest. Page 49 of 118

We do this by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice. Our efforts are organized into three core functional areas, as detailed below.

## *Regulate the Legal Profession and Improve the Quality of Legal Services*

Our goal is to protect the public by ensuring competence and integrity and promoting professionalism in the legal profession. Our regulatory functions are performed under delegated authority from the judicial branch, ensuring that the courts can maintain fair and impartial review authority as the final arbiter in regulatory matters.

### **Public Protection**

#### **Admissions**

Administers the bar exam and character and fitness evaluations; makes recommendations to the Oregon Supreme Court for admission to the Oregon State Bar.

#### **Client Assistance Office**

Reviews public inquiries about the conduct of lawyers in Oregon. In 2021, opened an average of 36 new files each week. Issued 1,844 dispositions. Just over 12 percent of matters were referred to Disciplinary Counsel for further evaluation regarding potential lawyer misconduct. The remainder were dismissed with an explanation provided to the inquirer, or provided information, assistance or referrals to other services. Also provided information and assistance in response to an average of 71 telephone inquiries each week.

#### **Client Security Fund**

Reimburses clients who suffer a loss due to dishonest conduct by their lawyers. In 2021, 13 new claims involving 10 lawyers were received; and 14 claims totaling \$189,661 were approved.

#### **Fee Dispute Resolution**

Voluntary program to resolve fee disputes between clients and lawyers. In 2021, 29 petitions were filed, with eight disputes mediated and five cases arbitrated.

#### **Disciplinary Counsel's Office**

Administers a fair and efficient system for the regulation of lawyers and enforcement of ethics rules. In 2021, DCO opened 292 new files and resolved 77 matters – resulting in 46 sanctions, 27 admonitions, 3 diversions and 1 dismissal.

#### **Minimum Continuing Legal Education**

Administers MCLE Rules and Regulations to ensure lawyers maintain and improve their knowledge, skills, and competence in the delivery of legal services to the public.

#### **Unlawful Practice of Law**

Enforces restrictions against practicing law without a license in Oregon; received 35 consumer complaints for investigation in 2021.

### **Lawyer Competence**

#### **BarBooks and Fastcase**

Online legal research tools available to Oregon lawyers as part of their of bar membership. BarBooks includes 45 titles written by lawyer volunteers and is regularly used by over 6,000 members; Fastcase is an online legal research tool accessed by more than 5,000 members who viewed over 606,000 documents in 2021.

#### **Continuing Legal Education Seminars**

Produces more than 40 live CLE seminars each year. In 2021, all were offered as remote live webcasts due to the pandemic. This format is expected to continue at least through the second quarter of 2022. During 2021, OSB members had 24/7 online access to 375 hours of MP3 downloads and 528 hours of on-demand video. In addition to general practice topics, offerings included legal ethics, abuse reporting, mental health, and access to justice presentations.

#### **Ethics Advice**

Responds to approximately 4,000 requests annually for advice on the application of ethics rules. Publishes formal ethics opinions drafted by lawyer volunteers. Publishes a standing column in the Bulletin providing further ethics guidance to Oregon lawyers.

#### **Member Groups**

Supports professional networking and leadership development through sections, committees, local and affinity bars and the Oregon New Lawyers Division. A total of 8,000 bar members belong to at least one bar section.

#### **New Lawyer Mentoring Program**

Matches new lawyers with experienced mentors to complete a required curriculum in the first year of a new lawyer's practice.

#### **Professional Liability Fund**

Mandatory malpractice provider for Oregon lawyers in private practice; provides law practice management assistance and a personal assistance program focused on lawyer well-being.

# OSB AT A GLANCE

## ***Support the Judiciary and Improve the Administration of Justice***

Our goal is to protect and advance the quality, integrity and impartiality of the judicial system.

### **Judicial Selection**

Reviews appellate court candidates for gubernatorial appointment; notifies bar members of judicial vacancies; publishes a Judicial Voters Guide to assist the public in primary and general election cycles.

### **Legal Publications**

Produces Uniform Civil Jury Instructions and Uniform Criminal Jury Instructions publications.

### **Media Relations**

Manages response, including public records production, to all media inquiries; works with media outlets to advance

accurate reporting on justice system issues, supports the public education goals of the OSB; manages social media for all OSB entities; advises staff and leadership on media strategy.

### **Public Affairs**

Advocates for adequate funding of the judicial branch, indigent defense, civil legal aid and programs that promote access to justice. Works with bar sections on law improvement legislation. Supports the work of the Council on Court Procedures and Oregon Law Commission.

## ***Advance a Fair, Inclusive and Accessible Justice System***

Our goal is to foster trust in, respect for, understanding of, and access to the justice system.

### **Diversity & Inclusion**

Works to increase the diversity of the Oregon bench and bar. Encourages increasing the diverse attorneys in Oregon with resources to Oregon law students. Administers the Opportunities for Law in Oregon (OLIO), Judicial Mentorship, ReBar and Leadership Institute programs. Collaborates with the Advisory Committee on Diversity & Inclusion and the OSB Diversity Section. Engages with the diversity work of OSB Sections and affinity bar organizations.

### **Legal Services & Pro Bono Programs**

Administers court filing fees and other funding sources dedicated to legal aid, totaling approximately \$10.8 million in 2021, and ensures legal aid offices meet statewide standards. Encourages lawyers to volunteer with one of 30 OSB-certified pro bono programs.

### **Loan Repayment Assistance Program (LRAP)**

Provides forgivable loans to lawyers working in public service positions.

### **Public Legal Information**

Produces public information on legal subjects for print, video, audio and the web. The public information pages of the OSB website received 1.3 million page views in 2021, and the Legal Q&A videos were viewed more than 30,000 times.

### **Referral & Information Services**

Receives approximately 7,000 requests per month from people seeking legal help and information. Provides referrals to lawyers statewide, including a low-fee program for people of modest means and pro bono programs for teens and military personnel. Spanish-speaking staff are available during all open hours.

## **Contact Us**

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### **Kamron Graham**

#### ***President***

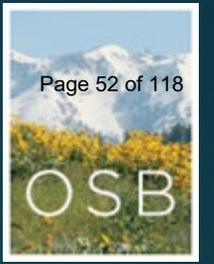
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935  
*Phone:* (503) 313-8768  
kamrongraham@osbar.org

### **Helen Hirschbiel**

#### ***Chief Executive Officer***

Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935  
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hhirschbiel@osbar.org

# Oregon State Bar



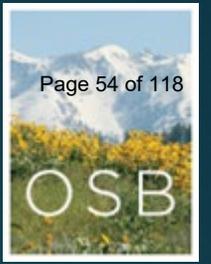
The Oregon State Bar (OSB) was established in 1935 by the Oregon Legislative Assembly to license and discipline lawyers, regulate the practice of law and provide a variety of services to bar members and the public. The bar is a public corporation and an instrumentality of the Oregon Judicial Department, funded by membership and program fees.

# Oregon State Bar



## ► Membership

The OSB has more than 15,000 active members. Approximately half of our members engage in the private practice of law. The rest work primarily in government, corporate and business settings. Nearly 6,000 of our active members are women. More than 2,500 reside in a state other than Oregon.

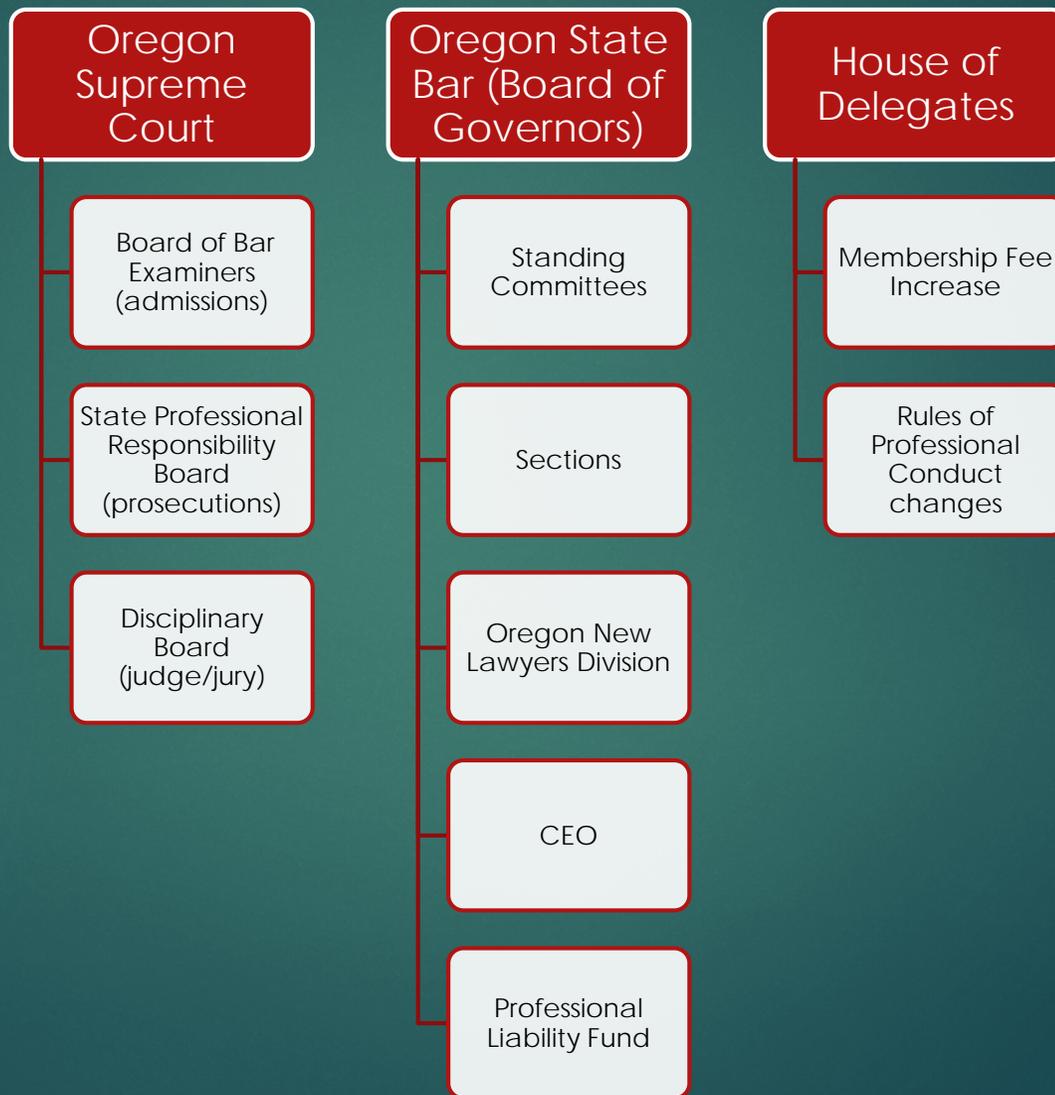


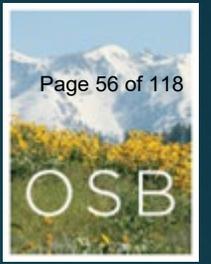
# Governance

- ▶ An eighteen-member volunteer Board of Governors oversees the activities of the OSB.
  - ▶ Fourteen board members are lawyers, elected by the membership by geographic region.
  - ▶ The other four board members are public (non-lawyer) members appointed based on their areas of interest and expertise.
  - ▶ The Board of Governors has established numerous committees and interests group to advise and make recommendations to the board on matters involving the legal profession and justice system.
- ▶ The OSB House of Delegates serves as the representative assembly of the membership, voting on proposed changes to rules, membership fees and other matters.
  - ▶ It has more than 200 members, most of whom are elected by geographic region.
  - ▶ Other delegates represent OSB Sections and local bar associations, and seven public members are appointed by the Board of Governors on a regional basis. The House of Delegates meets annually.
- ▶ The Oregon Supreme Court has authority over appointments to the Disciplinary Board and the Board of Bar Examiners. Members of these boards are also volunteers, and receive staff and administrative support from the OSB.
- ▶ The OSB's Chief Executive Office oversees bar operations, managing a staff of approximately 90 people and a \$15 million annual operating budget.



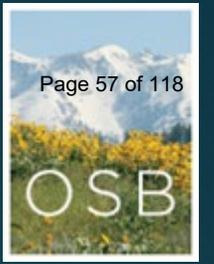
# Oregon State Bar





# Oregon Supreme Court Oversight

- ▶ Appoints regulatory boards
  - ▶ Board of Bar Examiners
  - ▶ State Professional Responsibility Board
  - ▶ Disciplinary Board
  - ▶ Unlawful Practice of Law Committee
- ▶ Final approval of regulatory rules
  - ▶ Oregon RPCs, DB, SCRA
- ▶ Final decision maker
  - ▶ Admissions, reinstatements, resignations
  - ▶ Review of appealed disciplinary decisions
- ▶ Approves OSB regulatory budgets
  - ▶ DCO, Admissions, CAO, MCLE, General Counsel



# Board of Governors Responsibilities

- ▶ Govern
  - Establish mission, strategic plan, programs and policies of the bar
  - Monitor implementation of mission, plan, programs and policies
- ▶ Provide financial oversight
  - Monitor financial condition of bar
  - Ensure adequate resources for operations, programs, services
  - Approve annual budget
- ▶ CEO selection, support, evaluation
- ▶ Ambassadors
  - Share information with stakeholders
  - Listen to and bring concerns of stakeholders to the board

# House of Delegates

- ▶ Representative assembly of the membership
  - ▶ BOG members, elected delegates, appointed public members, section chairs, local bar presidents
- ▶ Authority
  - ▶ Approve member fee increases
  - ▶ Approve changes to Rules of Professional Conduct
  - ▶ Direct BOG as to future action; modify or rescind past BOG action
- ▶ Limits on authority
  - ▶ Cannot direct action that is illegal
  - ▶ No control over PLF assessments
  - ▶ May not interfere with Supreme Court authority



## Idaho State Bar Overview

The Idaho State Bar (ISB) is a self-governing state agency of Idaho. Portions of the Idaho Code pertaining to the practice of law in Idaho date back to 1881, however, the present “integrated” Bar was established by the Legislature in 1923 and 1925. As an integrated Bar, all attorneys practicing law in Idaho must be licensed by the Idaho State Bar.

The ISB operates under power and authority delegated by the Idaho Supreme Court through its rule-making power and under statutory authority of the Legislature. The Bar is governed by five commissioners, elected from Idaho’s seven judicial districts. Two commissioners are elected from the Fourth District; one represents the First and Second Districts; one the Third and Fifth Districts; and one, the Sixth and Seventh Districts. Commissioners serve staggered three-year terms.

The ISB is financed by license fees paid by each Idaho attorney together with miscellaneous fees and revenues. It is totally self-sufficient and requires no tax dollars. Most of the activities carried out by the ISB are accomplished by the volunteer efforts of individual attorneys working with staff support.

Pursuant to the Idaho Bar Commission Rules, the ISB is responsible for administering the following functions: Admissions, Right to Practice after Admission, Mandatory Continuing Legal Education, Professional Conduct, Client’s Assistance Fund, Fee Arbitration, UPOL, Governance, Specialization and Practice Sections. The ISB also publishes *The Advocate*, a monthly magazine for attorneys and judges across the state, holds an annual meeting, and serves as a statewide referral service for lawyers’ services.

### **REGULATORY FUNCTIONS**

#### **Admissions**

The admissions function includes the application process, character and fitness screening, administration of the Bar exam and the grading process and organizing the admissions ceremonies. Committees: Character and Fitness, licensing legal interns, Reasonable Accommodations and Bar Exam Preparation.

#### **Licensing/Membership**

This function includes the annual licensing process, administering the mandatory CLE, specialization and malpractice insurance requirements, tracking pro hac vice petitions and keeping all membership records.

#### **Discipline**

Bar Counsel’s office handles the public’s complaints, concerns, or problems with lawyers. This includes dealing with telephone inquiries, investigation, and prosecution of all complaints. Also, this department administers the client assistance fund, fee arbitration cases, and the unauthorized practice of law. The lawyers also answer ethics questions from lawyers and prepare and present ethics CLE programs. Committees: Client Assistance Fund, UPOL, Professional Conduct Board, and Fee Arbitration panels.

## **Governance**

The Board of Commissioners is the governing body of the Bar. The Commissioners meet regularly to oversee the various functions of the Bar. Member input and recommendations are generated through the fall resolution process. This process allows members of the Bar to have the opportunity to recommend changes in rules of the court statutes, policies, or rules of the Bar, and to discuss issues of interest or concern. The Idaho State Bar cannot take a position on legislation unless the members have approved the issue during the resolution process.

## **MEMBER SERVICES**

### **Sections**

Sections are created to enhance the skills of the members and serve the interests of the public. Section activities include CLE programs, educational programs for the public, publications and articles, committees to study rule changes, and technical assistance to the Legislature. As of February 2022, the total for ISB section membership is 4,294. Currently, there are 23 sections:

Animal Law	Government & Public Sector Lawyers
Agricultural Law	Health Law
Appellate Practice	Idaho Legal History
Business & Corporate Law	Indian Law
Child Protection	Intellectual Property Law
Commercial Law & Bankruptcy	Litigation
Dispute Resolution	Professionalism & Ethics
Diversity	Real Property
Employment & Labor Law	Taxation, Probate, & Trust Law
Environment & Natural Resources	Water Law
Law	Workers Compensation
Family Law	Young Lawyers

### **District Bar Associations**

There are seven district bar associations. Each year, 7.5% of the license fees collected from each district is returned to the district bar associations. The DBA's generally plan their own activities with limited help from the bar. An orientation is held each spring for new DBA Presidents. The DBA's are an integral part of Bar governance through their involvement in the resolution process.

### **Annual Meeting**

By rule, the ISB must hold an annual meeting each year. The type and length of the meeting is not specified in the rules. The annual meeting is held each year in different locations throughout the state. The meeting generally includes 8-10 CLE programs, 3 or 4 organized meals, a keynote speaker, entertainment, hosted receptions, and award presentations.

### **Communications**

This function includes publishing *The Advocate* and generating information about the various activities, appointments, awards and programs of the bar and foundation. It also involves updating the website and social media, creating brochures, articles, informational pamphlets, and publishing the annual ISB Desk Book, and *The Advocate*. The Bar website provides information about the bar, foundation, sections, as well as information for the public.

## **Lawyer Referral Service**

“The Idaho State Bar’s Lawyer Referral Service connects the public with qualified Idaho attorneys.”

- Helping determine if referral to an attorney is appropriate
- Providing legal information and suggestions of information services
- Introducing public to attorneys charging a reasonable fee, with the initial half hour at a reduced price
- Directing callers of limited means to other sources of assistance
- Notifying attorneys of referrals made to them

Callers are screened and many are given information about other agencies/services that may be of assistance. The Modest Means program was established to connect clients who do not qualify for legal aid services with attorneys who are willing to help clients at a lower rate.

## **Other/Special Programs**

**Lawyer Assistance Program** - The Bar offers confidential assistance to lawyers suffering from mental health problems, or alcohol or drug dependency.

**Fastcase** - A web-based, legal research library available free of charge to all Idaho attorneys. It is an easily searchable, continually updated database of case law, statutes, and regulations.

**Awards** - Each year the Bar Commissioners select award recipients in the following areas: Distinguished Lawyer, Distinguished Jurist, Pro Bono, Service, Professionalism, Outstanding Young Lawyer, and Section of the Year.

**Member Benefits** – Numerous discounts and benefits are available to assist you in your practice, enhance your career, expand your professional network, ensure your commitment to the public, provide leadership opportunities, and support your everyday lifestyle.

**Idaho Academy of Leadership for Lawyers (IALL)** - The mission of IALL is to promote diversity and inspire the development of leadership within the legal profession. IALL brings together lawyers from different practice areas with a variety of backgrounds from all across Idaho. IALL builds upon the participant’s leadership skills and promote leadership experiences by:

- Teaching accepted and recognized leadership skills and philosophies;
- Fostering professional relationships within the Idaho legal community and the greater community;
- Promoting professional obligations and community service; and
- Raising awareness among lawyers of the broad range of issues and challenges facing leaders today.

**Special Task Forces** - Periodically, the Bar Commissioners appoint special task forces to deal with current concerns and issues.

**Nebraska State Bar Association**  
*“Helping lawyers help people”*



August 30, 2017

State Bar of Wisconsin  
President Paul Swanson  
PO Box 7158  
Madison, WI 53707-7158

Dear President Swanson:

In response to the recent petition seeking to make dues to the State Bar of Wisconsin voluntary, the Nebraska State Bar Association is taking this opportunity to provide you with information about its recent experience.

On December 6, 2013, the Nebraska Supreme Court released its opinion in *In Re Petition for a Rule Change to Create a Voluntary State Bar of Nebraska*. In essence, the Nebraska Supreme Court Opinion states that mandatory dues can only be used for the purposes of regulating the legal profession and that all other activities of the state bar, while certainly laudable and even appreciated, will not be funded by mandatory dues. Regulatory functions are defined in the opinion as 1) admitting qualified applicants to membership in the Bar Association, 2) maintaining the records of membership, 3) enforcing the ethical rules governing the Bar Association's members, 4) regulating the mandate of continuing legal education, 5) maintaining records of trust account requirements for lawyers, and 6) pursuing those who engage in the unauthorized practice of law.

To accomplish this, the Court's order: 1) removed the regulatory functions of the NSBA and placed them within the Court; and 2) raised the mandatory Supreme Court assessment to cover the Court's costs to take on these regulatory functions; and 3) made dues to the Nebraska State Bar Association voluntary.

All licensed attorneys are still required to be "members" of the Association but they are not required to pay dues (in essence we are a hybrid mandatory/voluntary bar). The Nebraska State Bar Association is not truly voluntary because it is still controlled by the Nebraska Supreme Court. The NSBA can deny member benefits to attorneys who do not pay dues. However, non-dues paying members are still allowed to be involved in Bar Governance (run for President, serve on the House of Delegates or Executive Council, etc.).

The Court did not find that the NSBA was in violation of Keller or that it was infringing on the constitutional rights of its members. Their rationale is clearly stated in their opinion-- "by

drawing the line in this way, we will clearly avoid the morass of continuing litigation experienced in other jurisdictions.”

The immediate challenge for the NSBA in transitioning from a mandatory to a voluntary state bar was budgetary. At the time of the opinion, the 2014 dues statement had already been sent and 20% had already been collected. Because the NSBA did not want to raise the price to practice law in the state of Nebraska and so that we wouldn't be in the position of asking those that had already paid dues to pay more, the NSBA set dues to the Association at the former rate minus the Court's new assessment.

The reason for the dramatic decrease to the NSBA's budget is two-fold. First, it is our belief that the court “over-assessed,” charging more than twice what the NSBA spent to run the same regulatory functions.<sup>1</sup> So while the NSBA was able to reduce its budget because it was no longer providing regulatory functions, it lost twice what it cost to administer those functions. Second, is the loss of revenue from the reduction of dues-paying members.

Years later, we are just now fully appreciating the financial impact of the decision. We saw an immediate loss (25%) of membership from those with active law licenses. The retention rate of lawyers with inactive law licenses in Nebraska continues to decline and is currently at 35%. The loss of inactive members make sense. Two-thirds of our inactive lawyers reside in a different state.

Following the decision, the Nebraska State Bar Association went from having a staff of 20 to a staff of 13. Programmatic cuts had to be made. One of the advantages of a mandatory bar association is that it can look beyond itself to serve both the court system and the public. Voluntary bar associations are inward-looking and must primarily focus on benefits to membership (i.e., strengthening their value proposition for membership and communicating that value proposition). Unfortunately, the cuts to the NSBA budget not only hurt programs that support the profession, but the largest cuts were to programs that support the courts and the public.

Under our new structure, all licensed lawyers pay an annual license fee directly to the Judicial Branch. In 2017, the Nebraska Legislature, attempted to sweep all of the attorney license fees collected by the Judicial Branch, to help cover the state's significant budget shortfall. The Nebraska State Bar Association and Nebraska Supreme Court spent the entire legislative session opposing this effort with a separation of powers argument—that the Supreme Court has inherent authority to regulate the legal profession and establish fees to do so. It is, therefore, unconstitutional for the legislature to take those fees for an alternate use. We were successful this year, however, there are no protections in place to safeguard attorney license fees moving forward.

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<sup>1</sup> These programs are staffed at the same levels they were under the NSBA. In fact, to ensure a smooth transition, the NSC hired NSBA employees to continue administering regulatory functions.

Many of our lingering challenges are related to the fact that all licensed attorneys are “members” of an association, whether they pay dues or not. The first challenge is in regards to governance. That is, non-dues paying members are still allowed to be involved in bar governance (run for President, serve on the House of Delegates or Executive Council). The Court’s stated rationale for this is that there are several references to the membership of the Nebraska State Bar Association in Nebraska’s constitution and statutes, as meaning all attorneys licensed to practice law in the state (e.g. for purposes of selection for a Judicial Nominating Commission or a Judicial Qualification Commission). The remaining activities of the NSBA are non-regulatory, they are voluntary and funded by voluntary dues. Yet someone, who did not pay dues to the Association can vote on the NSBA budget, the NSBA’s legislative positions, what benefits are made to dues paying and non-dues paying members, etc. While perhaps unlikely, it would be possible for non-dues paying members to gain a majority within the House of Delegates.

Second, the impetus for the petition to deunify the Nebraska State Bar Association was because of a state senator (also an attorney) who was unhappy with the NSBA’s legislative program. Although the senator had the opportunity to restrict his dues from supporting lobbying activities, he was unhappy with the fact that an association that he was required to be a member of, frequently lobbied against him as the “voice of the legal profession”. The Nebraska Supreme Court ruling has done little to address his underlying concern. The Nebraska Supreme Court’s opinion has given the NSBA even more authority to lobby. Because all licensed attorneys are “members” of the NSBA, the NSBA still speaks on behalf of all of those members.

Finally, the fact that all licensed attorneys are “members” of the Association has created considerable confusion. There are attorneys who do not want to be considered “members” of the NSBA and are upset that they are considered such. There are attorneys who do not pay dues to the Association but feel that because they are “members” that they should still be entitled to benefits. There are dues paying members who are upset that attorneys who do not pay dues are considered “members” and can be involved in governance. From an association perspective, this has created a marketing challenge. Instead of “member benefits” (which under our system implies all attorneys are entitled to them), we have created benefits for “dues paying members”. Prior to the court decision “dues” included the mandatory assessment, and so for many attorneys there is no differentiation between paying their Supreme Court Assessment and paying dues, which leads many back to the assumption that they are entitled to benefits.

If we can provide any additional information that could be useful for your purposes, please do not hesitate to ask.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth Neeley". The signature is written in a cursive, flowing style with a large initial 'E' and 'N'.

Elizabeth Neeley, Ph.D.  
Executive Director  
Nebraska State Bar Association

NEBRASKA ADVANCE SHEETS  
286 NEBRASKA REPORTS

1018

IN RE PETITION FOR A RULE CHANGE TO CREATE A VOLUNTARY  
STATE BAR OF NEBRASKA: TO ABOLISH NEB. CT. R. CHAPTER 3,  
ARTICLE 8, AND TO MAKE WHATEVER OTHER RULE CHANGES  
ARE NECESSARY TO TRANSITION FROM A MANDATORY  
TO A VOLUNTARY STATE BAR ASSOCIATION.

\_\_\_ N.W.2d \_\_\_

Filed December 6, 2013. No. S-36-120001.

1. **Constitutional Law: Attorneys at Law.** A state may constitutionally require a lawyer to be a member of a mandatory or unified bar to which compulsory dues are paid.
2. **Attorneys at Law.** The compelled association of an integrated bar is justified by the state's interest in regulating the legal profession and improving the quality of legal services.
3. **Constitutional Law: Attorneys at Law.** A state may constitutionally fund germane activities out of the mandatory dues of all members.
4. \_\_\_: \_\_\_. The Nebraska Constitution does not expressly vest the power to define and regulate the practice of law in any of the three branches of government.
5. **Constitutional Law.** In the absence of an express grant of power to any of the three branches of government, the power must be exercised by the branch to which it naturally belongs.
6. **Rules of the Supreme Court: Attorneys at Law.** The Nebraska Supreme Court has the inherent power to promulgate rules providing for an integrated bar.
7. **Constitutional Law: Attorneys at Law.** The practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to define and regulate its practice naturally and logically belongs to the judicial department of our state government.
8. **Constitutional Law.** Compulsory subsidies for private speech are subject to exacting First Amendment scrutiny and cannot be sustained unless two criteria are met. First, there must be a comprehensive regulatory scheme involving a mandated association among those who are required to pay the subsidy. Second, compulsory fees can be levied only insofar as they are a necessary incident of the larger regulatory purpose which justified the required association.

Petition to create voluntary state bar association. Petition granted in part, and in part denied.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, McCORMACK, MILLER-LERMAN, and CASSEL, JJ.

PER CURIAM.

### INTRODUCTION

Scott Lautenbaugh, a Nebraska attorney (petitioner), filed a petition with this court, asking that we abolish, strike, or repeal

NEBRASKA ADVANCE SHEETS  
IN RE PETITION FOR RULE TO CREATE VOL. STATE BAR ASSN. 1019  
Cite as 286 Neb. 1018

chapter 3, article 8, of the Nebraska Supreme Court Rules, and make whatever other rule changes are necessary to remove any requirement that attorneys licensed in Nebraska be members of the Nebraska State Bar Association (Bar Association). We invited public comment on the petition and, on September 30, 2013, heard oral presentations on behalf of petitioner and the Bar Association.

We deny the petition to create a purely voluntary bar, but we determine that the rules creating and establishing the Bar Association should be amended in the light of developments in compelled-speech jurisprudence from the U.S. Supreme Court since integration of the Bar Association in 1937. In the sections that follow, we (1) recognize the continuing constitutional legitimacy of mandatory or unified state bar associations, (2) recall the constitutional basis for and reasons justifying integration of the bar in 1937, (3) summarize the experience in other jurisdictions, (4) examine the evolution of compelled-speech jurisprudence, and (5) focus on the relevance of “germaneness.” Finally, we adopt the administrative changes we deem necessary to serve the important purposes of an integrated bar while both (1) ensuring that the Bar Association remains clearly within the permitted scope of constitutional jurisprudence and (2) avoiding the protracted litigation experienced elsewhere.

MANDATORY STATE BAR  
ASSOCIATIONS

[1] Petitioner does not challenge the constitutionality of mandatory state bar associations. Analogizing state bar associations to “union-shop” arrangements, the U.S. Supreme Court established long ago that a state may constitutionally require a lawyer to be a member of a mandatory or unified bar to which compulsory dues are paid.<sup>1</sup>

[2,3] The core of petitioner’s grievance in this matter arises out of the 1990 holding of the Supreme Court in

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<sup>1</sup> *Lathrop v. Donohue*, 367 U.S. 820, 842, 81 S. Ct. 1826, 6 L. Ed. 2d 1191 (1961).

## NEBRASKA ADVANCE SHEETS

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*Keller v. State Bar of California*,<sup>2</sup> where it took up the question of “permissible expenditures” of mandatory bar dues. Relying on *Abood v. Detroit Board of Education*,<sup>3</sup> a governmental employee union case, the Court delineated the First Amendment boundaries of a bar association’s expenditures of compulsory dues.

*Abood* held that a union could not expend a dissenting individual’s dues for ideological activities not “germane” to the purpose for which compelled association was justified: collective bargaining. Here the compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity. The difficult question, of course, is to define the latter class of activities.<sup>4</sup>

Thus, the Court held, “the guiding standard must be whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or ‘improving the quality of the legal service available to the people of the State.’”<sup>5</sup>

It is that “difficult question” of the use of mandatory bar dues for “germane” versus “nongermane” activities which, as in some other states, forms the basis for the challenge to Nebraska’s mandatory bar which is before us today.

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<sup>2</sup> *Keller v. State Bar of California*, 496 U.S. 1, 14, 110 S. Ct. 2228, 110 L. Ed. 2d 1 (1990).

<sup>3</sup> *Abood v. Detroit Board of Education*, 431 U.S. 209, 97 S. Ct. 1782, 52 L. Ed. 2d 261 (1977).

<sup>4</sup> *Keller v. State Bar of California*, *supra* note 2, 496 U.S. at 13-14.

<sup>5</sup> *Id.*, 496 U.S. at 14.

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INTEGRATION OF BAR  
ASSOCIATION

In 1937, this court granted a petition to integrate the bar of the State of Nebraska.<sup>6</sup> At that time, the petitioners felt that the majority of the members of the bar favored integration by Supreme Court rule to provide better service to the public by the legal profession, to combat the unauthorized practice of law, and to improve the ethical standards of the profession.<sup>7</sup> In general, the 1937 petition sought rules of this court providing for the regulation of the bar of this state.

[4-7] In that proceeding, this court for the first time pondered its power to integrate the bar by rule of the court, noting that the Nebraska Constitution did not expressly vest the power to define and regulate the practice of law in any of the three branches of government. We reasoned that in the absence of an express grant of power to any of the branches, the power must be exercised by the branch to which it naturally belonged. In concluding that this court had the inherent power to promulgate rules providing for an integrated bar, we explained that we had the exclusive power to regulate the conduct and qualifications of attorneys as officers of the court, that the proper administration of justice was the main business of a court, and that “[t]he practice of law is so intimately connected and bound up with the exercise of judicial power in the administration of justice that the right to define and regulate its practice naturally and logically belongs to the judicial department of our state government.”<sup>8</sup> Because the bench and bar were so intimately related, we concluded that the problems of one were the problems of the other.

In our 1937 opinion, this court set forth the initial rules creating, controlling, and regulating the Bar Association. We formed the Bar Association “[f]or the advancement of the administration of justice according to law, and for the

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<sup>6</sup> See *In re Integration of Nebraska State Bar Ass’n*, 133 Neb. 283, 275 N.W. 265 (1937).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 289, 275 N.W. at 268.

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advancement of the honor and dignity of the legal profession, and encouragement of cordial intercourse among the members thereof, for the improvement of the service rendered the public by the Bench and Bar . . . .”<sup>9</sup> At that time, those persons who were residents of Nebraska licensed to practice law in the state constituted the membership of the Bar Association. All members were compelled to pay dues.

In that same opinion, we also observed that our inherent power to integrate the bar included the authority to rescind the rules providing for integration. We stated, “In the event of a failure of the plan to function as hoped, it can be corrected or abandoned by the amendment or revocation of the rule by the court in the exercise of its sound judicial discretion.”<sup>10</sup> This petition presents the first attempt before this court to eliminate the mandatory bar in Nebraska.

#### ACTIONS ELSEWHERE TO ELIMINATE MANDATORY BAR

Other jurisdictions have been confronted with actions to abolish the mandatory bar. Thirty-two states and the District of Columbia require attorneys to become members of a bar and to pay dues as a condition of practicing law in that jurisdiction.<sup>11</sup> Aside from the temporary suspension of mandatory bar membership by the Wisconsin Supreme Court from 1988 to 1992, discussed in more detail below, no state association has converted from mandatory to voluntary status.<sup>12</sup> We note that the mandatory status of the Puerto Rico Bar Association was eliminated in 2009 by an act of the legislature,<sup>13</sup> and the

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<sup>9</sup> *Id.* at 291, 275 N.W. at 269. See, also, Neb. Ct. R. § 3-802(A).

<sup>10</sup> *Id.* at 290, 275 N.W. at 269.

<sup>11</sup> Ralph H. Brock, “*An Aliquot Portion of Their Dues:*” *A Survey of Unified Bar Compliance with Hudson and Keller*, 1 Tex. Tech J. Tex. Admin. L. 23 (2000); ABA Division for Bar Services, *2011 State and Local Bar Membership, Administration and Finance Survey* (2012).

<sup>12</sup> The Strategic Planning Committee of the State Bar of Wisconsin, *Future of the State Bar: Mandatory/ Voluntary Membership Report* (February 2010), <http://www.wicourts.gov/supreme/docs/1101petitionreport.pdf> (last visited Dec. 2, 2013).

<sup>13</sup> See 2009 P.R. Laws 121, § 2, and 2009 P.R. Laws 135, § 2.

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law in Puerto Rico now provides for voluntary membership.<sup>14</sup> However, in September 2013, legislation was filed to return to mandatory bar membership.<sup>15</sup>

We briefly recount recent efforts in Wisconsin, New Mexico, and New Hampshire to eliminate the mandatory state bar.

WISCONSIN BAR ASSOCIATION

Integration of the bar in Wisconsin has been a contentious matter from the beginning. Upon the first motion seeking integration, the Supreme Court of Wisconsin postponed the matter to a time after the lawyers in military service returned home from World War II.<sup>16</sup> When the matter of integration next came before the Supreme Court of Wisconsin, the court concluded that a voluntary bar was preferable and that the bar should not be integrated.<sup>17</sup> But upon the third motion for integration, the Supreme Court of Wisconsin determined that the bar should be integrated when proper rules and procedures had been adopted by further order of the court.<sup>18</sup> Thus, the Wisconsin bar became an integrated bar on January 1, 1957, under rules and bylaws promulgated by the court.<sup>19</sup> The U.S. Supreme Court later upheld a constitutional challenge to integration of the bar's membership.<sup>20</sup>

The Supreme Court of Wisconsin had further opportunities to consider whether the bar should remain integrated. In 1977<sup>21</sup> and again in 1980,<sup>22</sup> the court approved continuation of the integrated bar.

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<sup>14</sup> P.R. Laws Ann. tit. 4, § 774 (2013).

<sup>15</sup> See P.R. S.B. PS 729 (Sept. 6, 2013).

<sup>16</sup> See *Integration of Bar Case*, 244 Wis. 8, 11 N.W.2d 604 (1943).

<sup>17</sup> See *In re Integration of Bar*, 249 Wis. 523, 25 N.W.2d 500 (1946), *overruled in part*, *In re Integration of Bar*, 5 Wis. 2d 618, 93 N.W.2d 601 (1958).

<sup>18</sup> See *In re Integration of Bar*, 273 Wis. 281, 77 N.W.2d 602 (1956).

<sup>19</sup> See *Lathrop v. Donohue*, *supra* note 1.

<sup>20</sup> See *id.*

<sup>21</sup> See *In re Regulation of the Bar of Wisconsin*, 81 Wis. 2d xxxv (1977).

<sup>22</sup> *Matter of Discontinuation of Wis. State Bar*, 93 Wis. 2d 385, 286 N.W.2d 601 (1980).

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A challenge to the constitutionality of the integrated bar led to a temporary suspension of mandatory membership. In *Levine v. Supreme Court of Wisconsin*,<sup>23</sup> a federal district court found that the mandatory membership requirement violated the litigant's First Amendment rights of free speech and free association and was not justified by a compelling state interest. As a result, the Supreme Court of Wisconsin suspended enforcement of its mandatory bar membership rules.<sup>24</sup> On appeal, the Seventh Circuit reversed, concluding that *Lathrop v. Donohue*<sup>25</sup>—which upheld the constitutionality of integration—was binding precedent.<sup>26</sup> The Supreme Court of Wisconsin reinstated the integrated bar effective July 1, 1992.<sup>27</sup>

The bar in Wisconsin remains mandatory amid unrest. A member satisfaction survey conducted for the bar in 2008 revealed that a majority of the respondents—57 percent—would vote for a voluntary association if given the opportunity to do so.<sup>28</sup> In July 2011, two attorneys filed a petition renewing their request that the Supreme Court of Wisconsin abolish the integrated bar.<sup>29</sup> The court, with three justices dissenting, denied the petition without a public hearing.<sup>30</sup>

STATE BAR OF NEW MEXICO

In 2003, two petitioners sought to modify a New Mexico Supreme Court rule<sup>31</sup> to change the bar from a mandatory bar to a voluntary bar. In response to the petition, the Board of

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<sup>23</sup> *Levine v. Supreme Court of Wisconsin*, 679 F. Supp. 1478 (W.D. Wis. 1988).

<sup>24</sup> *In Matter of State Bar of Wisconsin*, 169 Wis. 2d 21, 485 N.W.2d 225 (1992).

<sup>25</sup> *Lathrop v. Donohue*, *supra* note 1.

<sup>26</sup> *Levine v. Heffernan*, 864 F.2d 457 (7th Cir. 1988).

<sup>27</sup> *In Matter of State Bar of Wisconsin*, *supra* note 24.

<sup>28</sup> The Strategic Planning Committee of the State Bar of Wisconsin, *supra* note 12.

<sup>29</sup> Wis. S. Ct. Order 11-04 (June 6, 2012).

<sup>30</sup> *Id.*

<sup>31</sup> Rule 24-101 NMRA.

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Bar Commissioners of the State Bar of New Mexico identified policy supporting a mandatory bar, such as a mandatory bar's being more able to promote justice and the legal system's ability to make justice obtainable. The board also identified policies supporting a voluntary bar, including the freedom of association and a voluntary bar's freedom and independence from the court. The New Mexico Supreme Court denied the petition without a public hearing.

NEW HAMPSHIRE BAR  
ASSOCIATION

In New Hampshire, the bar was first unified in 1968 for a trial period of 3 years.<sup>32</sup> The Supreme Court of New Hampshire reasoned that mandatory membership was “an integral part of the inherent power of this court to regulate the practice of law and to supervise” those engaging in the practice.<sup>33</sup> In 1972, the court reexamined unification, concluded that the New Hampshire Bar Association had benefited from the trial experience, and ordered the bar unified on a permanent basis.<sup>34</sup>

During the 2003 legislative session, the New Hampshire General Court enacted legislation which purported to require the bar association to place on the ballot with the election of the association's officers the question of whether membership in the bar association should be required.<sup>35</sup> The bar association brought an original action challenging the constitutionality of the legislative act, and the Supreme Court of New Hampshire declared the statute to be unconstitutional.<sup>36</sup> The court reasoned that “because we have elected to regulate the practice of law through unification, [the statute at issue], which permits de-unification without our involvement and contrary to our

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<sup>32</sup> *In re Unification of the New Hampshire Bar*, 109 N.H. 260, 248 A.2d 709 (1968).

<sup>33</sup> *Id.* at 264, 248 A.2d at 712.

<sup>34</sup> *In re Unified New Hampshire Bar*, 112 N.H. 204, 291 A.2d 600 (1972).

<sup>35</sup> See *In re Petition of New Hampshire Bar Ass'n*, 151 N.H. 112, 855 A.2d 450 (2004).

<sup>36</sup> *Id.*

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specific order, encroaches upon inherent judicial authority.”<sup>37</sup>  
The bar remains unified.<sup>38</sup>

FIRST AMENDMENT  
COMPELLED-SPEECH  
JURISPRUDENCE

Mandatory bars present issues under the First Amendment to the U.S. Constitution because members are required to join the group—and pay dues—in order to practice law. “These requirements implicate the First Amendment freedom of association, which includes the freedom to choose not to associate, and the First Amendment freedom of speech, which also includes the freedom to remain silent or to avoid subsidizing group speech with which a person disagrees.”<sup>39</sup>

Since the integration and creation of our Bar Association in 1937, the legal landscape concerning compelled speech has evolved. As discussed below, the U.S. Supreme Court has determined that some mandatory associations, such as some unions and state bar associations, do not violate the First Amendment, because the forced speech serves legitimate purposes for the benefit of its entire membership. The critical inquiry in forced speech cases is whether the speech or activity being “forced” on the dissenting member is “germane” to the “group’s constitutionally permissible purposes.”<sup>40</sup> In *Lathrop*,<sup>41</sup> a Wisconsin attorney argued that his compelled membership in the state bar violated his rights under the 14th Amendment to the U.S. Constitution because the bar engaged in political activities which he opposed. The U.S. Supreme Court reasoned that the bulk of the bar’s activities served the function of elevating the educational and ethical standards of the bar in order to improve the quality of legal services available to the citizens of the state. The Court stated:

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<sup>37</sup> *Id.*, 151 N.H. at 119, 855 A.2d at 456.

<sup>38</sup> ABA Division for Bar Services, *supra* note 11.

<sup>39</sup> *Kingstad v. State Bar of Wis.*, 622 F.3d 708, 712-13 (7th Cir. 2010).

<sup>40</sup> 1 Rodney A. Smolla, *Smolla and Nimmer on Freedom of Speech* § 4:26 (2013), available at Westlaw FREESPEECH.

<sup>41</sup> *Lathrop v. Donohue*, *supra* note 1.

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We think that the Supreme Court of Wisconsin, in order to further the State's legitimate interests in raising the quality of professional services, may constitutionally require that the costs of improving the profession in this fashion should be shared by the subjects and beneficiaries of the regulatory program, the lawyers, even though the organization created to attain the objective also engages in some legislative activity.<sup>42</sup>

The Court found no violation of the 14th Amendment by the requirement that lawyers practicing in the state become members of the state bar and pay reasonable annual dues, but the Court reserved judgment on the attorney's claim that his free speech rights were violated by the bar's use of his mandatory dues to support political activities.

In *Abood v. Detroit Board of Education*,<sup>43</sup> every local governmental employee represented by a union, even though not a union member, was required to pay to the union, as a condition of employment, a service fee equal in amount to union dues. The U.S. Supreme Court considered whether that arrangement violated the constitutional rights of employees who object to public-sector unions or to various union activities financed by the compulsory service fees. The Court reasoned:

We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective-bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.<sup>44</sup>

Thus, the Court held that the agency-shop clause was valid insofar as the service fees were used to finance expenditures

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<sup>42</sup> *Id.*, 367 U.S. at 843.

<sup>43</sup> *Abood v. Detroit Board of Education*, *supra* note 3.

<sup>44</sup> *Id.*, 431 U.S. at 235-36.

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by the union for purposes of collective bargaining, contract administration, and grievance adjustment.

In *Teachers v. Hudson*,<sup>45</sup> employees who did not belong to a union challenged the procedure used to determine the proportionate share that they were required to contribute to support the union as a collective bargaining agent, alleging that it violated their 1st and 14th Amendment rights and permitted the use of their proportionate shares for impermissible purposes. The U.S. Supreme Court held that “the constitutional requirements for the Union’s collection of agency fees include an adequate explanation of the basis for the fee, a reasonably prompt opportunity to challenge the amount of the fee before an impartial decisionmaker, and an escrow for the amounts reasonably in dispute while such challenges are pending.”<sup>46</sup>

As noted at the outset of our opinion, it is the seminal and oft-cited case of *Keller v. State Bar of California*<sup>47</sup> which is the foundation of this petition and, indeed, most claims challenging mandatory state bar associations. In *Keller*, members of the State Bar of California sued the bar, alleging that it violated their rights under the First Amendment by using their membership dues to finance certain ideological or political activities to which they were opposed. The Supreme Court observed that the relationship of a state bar and its members was analogous to the relationship of employee unions and their members and that agency-shop laws were enacted to prevent those who receive the benefit of union negotiation but who do not join the union and pay dues from avoiding paying their fair share of the cost of a process from which they benefit.

Furthermore, the Court stated that it was appropriate that all of the lawyers who derive benefits from being admitted

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<sup>45</sup> *Teachers v. Hudson*, 475 U.S. 292, 106 S. Ct. 1066, 89 L. Ed. 2d 232 (1986).

<sup>46</sup> *Id.*, 475 U.S. at 310.

<sup>47</sup> *Keller v. State Bar of California*, *supra* note 2.

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to practice law “should be called upon to pay a fair share of the cost of the professional involvement in this effort.”<sup>48</sup> The Supreme Court determined:

[T]he compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.<sup>49</sup>

In order to define activities not germane to the bar association’s goals, the guiding standard is “whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or ‘improving the quality of the legal service available to the people of the State.’”<sup>50</sup> The Court declared that “an integrated bar could certainly meet its *Abood* obligation by adopting the sort of procedures described in *Hudson*.”<sup>51</sup>

*United States v. United Foods, Inc.*<sup>52</sup> teaches that the test to determine what group speech is constitutionally permissible is not whether the speech is political or ideological in nature, but, rather, whether the speech is germane. The Supreme Court iterated that “speech need not be characterized as political before it receives First Amendment protection”<sup>53</sup> and that “[l]awyers could be required to pay moneys in support of activities that were germane to the reason justifying the compelled association in the first place, for example,

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<sup>48</sup> *Id.*, 496 U.S. at 12.

<sup>49</sup> *Id.*, 496 U.S. at 13-14.

<sup>50</sup> *Id.*, 496 U.S. at 14.

<sup>51</sup> *Id.*, 496 U.S. at 17.

<sup>52</sup> *United States v. United Foods, Inc.*, 533 U.S. 405, 121 S. Ct. 2334, 150 L. Ed. 2d 438 (2001).

<sup>53</sup> *Id.*, 533 U.S. at 413.

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expenditures . . . that related to ‘activities connected with disciplining members of the Bar or proposing ethical codes for the profession.’”<sup>54</sup>

The germaneness of an expenditure by a mandatory bar for a nonideological activity was considered in *Romero v. Colegio de Abogados de Puerto Rico*.<sup>55</sup> In that case, the mandatory bar in Puerto Rico required members to purchase life insurance from its group life insurance program. There was no provision which would allow a member to refuse the life insurance and retain the portion of the member’s dues that would otherwise have been spent on life insurance premiums. The First Circuit determined that the required payment for group life insurance was unconstitutional, because it was not germane to the bar association’s purpose of regulating the legal profession and improving the quality of legal services. As the First Circuit stated, “[T]hat an individual may be compelled to associate and financially contribute for some purposes does not mean she may be compelled to associate and financially contribute for all purposes.”<sup>56</sup>

Likewise, in *Kingstad v. State Bar of Wis.*,<sup>57</sup> three Wisconsin attorneys objected to the state bar’s use of a portion of their mandatory dues to fund a public image campaign. The Seventh Circuit held that in order to withstand scrutiny under the First Amendment, expenditures by the state bar which are funded by mandatory dues must be germane to legitimate purposes of the bar, regardless of the ideological and political nature of the activity. In other words, a bar member may not, under *Kingstad*, be compelled to subsidize “nongermane” activities of any type. The Seventh Circuit determined, however, that the disputed public image campaign—which had the goal of improving the public’s perception of Wisconsin lawyers—was germane to the legitimate purposes of the bar, because the

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<sup>54</sup> *Id.*, 533 U.S. at 414.

<sup>55</sup> *Romero v. Colegio de Abogados de Puerto Rico*, 204 F.3d 291 (1st Cir. 2000).

<sup>56</sup> *Id.* at 301.

<sup>57</sup> *Kingstad v. State Bar of Wis.*, *supra* note 39.

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expenditure was reasonably related to the purpose of improving the quality of legal services.

Most recently, the legal landscape was again altered to some degree with *Knox v. Service Employees Intern. Union*,<sup>58</sup> wherein the U.S. Supreme Court considered whether a union could require objecting nonmembers to pay a special fee for the purpose of financing the union's political and ideological activities without running afoul of the First Amendment. The Supreme Court recalled that it had held "[t]he First Amendment . . . does not permit a public-sector union to adopt procedures that have the effect of requiring objecting nonmembers to lend the union money to be used for political, ideological, and other purposes not germane to collective bargaining."<sup>59</sup>

The *Knox* Court cast doubt on the constitutional validity of opt-out systems for dissenting members. The Court stated, "By authorizing a union to collect fees from nonmembers and permitting the use of an opt-out system for the collection of fees levied to cover nonchargeable expenses, our prior decisions approach, if they do not cross, the limit of what the First Amendment can tolerate."<sup>60</sup> The *Knox* Court further stated, "Our cases have tolerated a substantial impingement on First Amendment rights by allowing unions to impose an opt-out requirement at all."<sup>61</sup> With regard to the collection of special assessment dues at issue in *Knox*, the Court determined that "the union should have sent out a new notice allowing nonmembers to opt in to the special fee rather than requiring them to opt out."<sup>62</sup> We note that the *Knox* Court did not strike down the use of an opt-out system altogether, but the concurrence points out that its continued viability is in doubt, stating that "while the majority's novel rule is, on its face, limited to

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<sup>58</sup> *Knox v. Service Employees Intern. Union*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2277, 183 L. Ed. 2d 281 (2012).

<sup>59</sup> *Id.*, 132 S. Ct. at 2284-85.

<sup>60</sup> *Id.*, 132 S. Ct. at 2291.

<sup>61</sup> *Id.*, 132 S. Ct. at 2293.

<sup>62</sup> *Id.*

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special assessments and dues increases, the majority strongly hints that this line may not long endure.”<sup>63</sup>

## RELEVANCE OF “GERMANENESS”

The proponents and opponents of the mandatory bar disagree on the relevance of germaneness under *Keller*<sup>64</sup> and *Kingstad*.<sup>65</sup> The Bar Association contends that *Keller* and its progeny require only that objecting members not be required to pay for nongermane political and ideological lobbying. Contrarily, an opponent of the mandatory bar argues that under *Kingstad*, it is no longer enough that an objecting member’s mandatory dues not be used for ideological and political activities by the Bar Association; rather, the mandatory dues must be used only for germane purposes, regardless of the nature of the activity.<sup>66</sup>

One commentator and supporter of the mandatory bar, who submitted comments on behalf of the Bar Association, concedes that *Kingstad* is a “partially contrary opinion” to the bar’s view that *Keller* focuses primarily on the political or ideological nature of the bar’s activities, not its germaneness.<sup>67</sup> In other words, the Bar Association believes that it can use mandatory dues to finance “nongermane” activities so long as the activities are not “political and ideological.”<sup>68</sup> It is urged that *Kingstad* is a misinterpretation of *Keller* and its progeny. That argument is premised on the view that the U.S. Supreme Court’s “characterization of *Keller*” in *United Foods, Inc.*,<sup>69</sup>

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<sup>63</sup> *Id.*, 132 S. Ct. at 2299 (Sotomayor, J., concurring in the judgment; Ginsburg, J., joins).

<sup>64</sup> *Keller v. State Bar of California*, *supra* note 2.

<sup>65</sup> *Kingstad v. State Bar of Wis.*, *supra* note 39.

<sup>66</sup> See comment letter from James C. Creigh to Clerk of the Nebraska Supreme Court and Court of Appeals (May 29, 2012) (on file in case No. S-36-120001).

<sup>67</sup> Letter from Prof. Michael Fenner, Creighton Univ. School of Law, to Jane Schoenike, Exec. Dir., Nebraska State Bar Assn. (Feb. 15, 2012) (on file in case No. S-36-120001).

<sup>68</sup> *Id.*

<sup>69</sup> *United States v. United Foods, Inc.*, *supra* note 52.

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the principal foundation of the *Kingstad* holding, cannot be used to support a “limitation on non-ideological and non-political speech expenditures” of a bar association because it takes that characterization “out of context and tries to make it stand for too much.”<sup>70</sup>

[8] However, the *Kingstad* analysis and its reliance on *United Foods, Inc.* appear to be reinforced by the U.S. Supreme Court’s recent *Knox* opinion. The *Knox* Court explained its decision in *United Foods, Inc.* as follows:

We made it clear that compulsory subsidies for private speech are subject to exacting First Amendment scrutiny and cannot be sustained unless two criteria are met. First, there must be a comprehensive regulatory scheme involving a “mandated association” among those who are required to pay the subsidy. . . . Such situations are exceedingly rare because, as we have stated elsewhere, mandatory associations are permissible only when they serve a “compelling state interes[t] . . . that cannot be achieved through means significantly less restrictive of associational freedoms.” . . . Second, even in the rare case where a mandatory association can be justified, compulsory fees can be levied only insofar as they are a “necessary incident” of the “larger regulatory purpose which justified the required association.”<sup>71</sup>

That second criterion set forth in *Knox* reinforces the *Kingstad* “germaneness” analysis and the significance of that factor in protecting “associational freedoms.” The two-part *Knox* test focuses directly on the *United Foods, Inc.* characterization of *Keller* despite the “mundane commercial nature of [the] speech.”<sup>72</sup>

Thus, there appears to be ample support for the view expressed in *Kingstad* that germaneness is central to a modern view of *Keller*.

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<sup>70</sup> Fenner, *supra* note 67.

<sup>71</sup> *Knox v. Service Employees Intern. Union*, *supra* note 58, 132 S. Ct. at 2289 (citations omitted).

<sup>72</sup> *Id.*

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ADMINISTRATIVE  
RESOLUTION

Having said all that, however, we need not today decide the precise boundaries of First Amendment compelled-speech jurisprudence in 2013. The nature of the proceeding before this court, i.e., a petition for a rule change under the court's inherent authority, does not require us to resolve a case or controversy between two parties as would a proceeding under this court's appellate or original action jurisdiction. The present petition requires this court to assess the future and the structure of the mandatory bar in Nebraska at an administrative level and determine, based on trends in the law since 1937, how to best meet the needs of the judicial system, Nebraska attorneys, and the citizens of this state.

As noted at the outset, there were several important reasons underlying our 1937 decision to integrate the bar in Nebraska.<sup>73</sup> Those reasons still exist and remain valid justifications for a mandatory bar to this day. This court recognized in 1937 that "a few unethical practitioners ha[d] degraded the public esteem of the bar as a whole."<sup>74</sup> Our decisions in disciplinary cases since 1937 demonstrate the continued necessity of regulating the bar and ensuring that ethical rules for lawyers are maintained and enforced. This court also observed in 1937 that informed public opinion

favor[ed] bar integration by supreme court rule as a means of providing better service to the public by the legal profession, of effectively combating the unauthorized practice of law, and of improving the ethical standards of the profession and giving to it the high public esteem that it should enjoy.<sup>75</sup>

The demand for additional legal services has grown exponentially since 1937. In this age of instantaneous communications reaching to virtually every household, the need to combat the unauthorized practice of law presents new challenges. And

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<sup>73</sup> *In re Integration of Nebraska State Bar Ass'n*, *supra* note 6.

<sup>74</sup> *Id.* at 290, 275 N.W. at 268.

<sup>75</sup> *Id.* at 284, 275 N.W. at 266.

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justifying the public's favorable view of the practicing bar remains a vital reason for an integrated bar.

Furthermore, the laws enacted by our Legislature and constitutional provisions adopted by the citizens of this state indicate that the people of Nebraska have come to rely on the existence of the Bar Association and depend upon this court's oversight of that association and the practice of law.<sup>76</sup>

In our view, the best solution is to modify the court's rules creating and establishing the Bar Association (and other related rules) to limit the use of mandatory dues, or assessments, to the regulation of the legal profession. This purpose clearly includes the functions of (1) admitting qualified applicants to membership in the Bar Association, (2) maintaining the records of membership, (3) enforcing the ethical rules governing the Bar Association's members, (4) regulating the mandate of continuing legal education, (5) maintaining records of trust fund requirements for lawyers, and (6) pursuing those who engage in the unauthorized practice of law. The mandatory Supreme Court assessments supporting these functions will be paid to the Bar Association on behalf of the Nebraska Supreme Court in much the same way that the existing disciplinary assessment is administered. By limiting the use of mandatory assessments to the arena of regulation of the legal profession, we ensure that the Bar Association remains well within the limits of the compelled-speech jurisprudence of the U.S. Supreme Court and avoid embroiling this court and the legal profession in unending quarrels and litigation over the germaneness of an activity in whole or in part, the constitutional adequacy of a

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<sup>76</sup> See, Neb. Const. art. V, § 21(4) (members of "bar of the state" on judicial nominating commissions); Neb. Const. art. V, § 28 (membership of Commission on Judicial Qualifications); Neb. Rev. Stat. §§ 7-204 (Reissue 2012); 20-506 (Supp. 2013); 23-3407 (Reissue 2012); 24-229 (Cum. Supp. 2012); 24-715 (Reissue 2008); 24-806 (Reissue 2008); 24-809 (Reissue 2008); 24-1201 (Reissue 2008); 25-2905 (Reissue 2008); 29-3924 (Reissue 2008); 43-3318 (Reissue 2008); 43-3342.05 (Supp. 2013); 55-422 (Reissue 2010); 76-557 (Reissue 2009); 76-1003 (Reissue 2009); 76-2802 (Reissue 2009); 76-2805 (Reissue 2009); 83-4,124 (Supp. 2013); and 84-1503 (Supp. 2013).

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particular opt-in or opt-out system, or the appropriateness of a given grievance procedure.

The remaining activities of the Bar Association will be financed solely by revenues other than mandatory assessments. Obviously, voluntary dues would be a significant portion of those revenues. Voluntary bar dues fall outside the realm of the compelled-speech jurisprudence. Many members of the Bar Association may well elect to pay the voluntary dues assessment—particularly if the Bar Association strictly adheres to the use of such funds for purposes clearly benefiting the bar as a whole and avoids entanglement in ideological or political issues or legislation. The Bar Association has, over the years, developed and administered many laudable and worthwhile programs which have served the legal profession well. The Volunteer Lawyers Project with its legal self-help desks, the Nebraska Lawyers Assistance Program, the Casemaker Digest, its continuing legal education programs, and the SCOPE mentoring program are but a few of the worthy services offered by the Bar Association. Such services and programs and others like them can continue to thrive with the aid of voluntary dues, grants, and gifts from those who choose to support the voluntary components of the Bar Association.

We disagree with the parade of horrors predicted by both petitioner and the Bar Association regarding such an arrangement. Petitioner cautioned during his oral presentation that such a bar would be “cumbersome” compared to a purely voluntary bar. But petitioner’s approach fails to preserve the regulatory structure erected beginning in 1937 and would abandon the public’s reliance upon the existence of a mandatory bar. And our prior segregation of a bar-disciplinary assessment clearly demonstrates that administrative issues can be managed easily. Thus, we conclude that petitioner’s fear is unfounded. The Bar Association, on the other hand, asserted that having to perform an item-by-item germaneness analysis would be “not workable” and “way too expensive.” But our approach entirely avoids any such difficulty. We recognize that we have intentionally chosen to draw the line in a manner that forgoes the opportunity to expend mandatory assessments for some

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purposes that might well be adjudged as germane. By drawing the line for use of mandatory bar assessments well within the bounds of the compelled-speech jurisprudence, we ensure that the assessments—which will be administered by the Supreme Court—will be used only for activities that are clearly germane. Here again, our experience with the disciplinary assessment shows that this separation between mandatory and voluntary dues can be readily accomplished. And by drawing the line in this way, we will clearly avoid the morass of continuing litigation experienced in other jurisdictions.

### CONCLUSION

Although we reject petitioner's request for complete deunification of the Bar Association, we sustain the petition to the extent that we amend this court's rules to limit the use of mandatory bar dues, now to be referred to as "mandatory membership assessments," to the regulation of the legal profession. The Bar Association may collect voluntary dues to finance nonregulatory activities which may benefit the legal profession as a whole. We attach to this opinion the necessary rule changes in chapter 3, "Attorneys and the Practice of Law," of the Nebraska Supreme Court Rules, which include amendments to the following articles thereof:

- Article 1: Admission Requirements for the Practice of Law;
- Article 3: Discipline Procedures for Lawyers;
- Article 8: State Bar Association; Creation; Control; and Regulation;
- Article 9: Trust Fund Requirements for Lawyers; and
- Article 10: Unauthorized Practice of Law.
- Nebraska Commission on Unauthorized Practice of Law Administrative Rules, Regulations, and Procedures.

The amendments to articles 3 and 8, and the amendments to Neb. Ct. R. §§ 3-100 and 3-1010, shall be effective on January 1, 2014. In order to ensure an orderly transition of administrative functions regarding admissions, trust funds, and the unauthorized practice of law, all other amendments to the rules, regulations, and procedures identified above shall be effective on April 1, 2014.

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And we reiterate that the need for further amendments may arise. We have already quoted the recognition in our 1937 opinion that correction or abandonment of a rule may be accomplished by amendment or revocation in the exercise of our sound judicial discretion.<sup>77</sup> While abandonment and revocation are unlikely, correction by amendment may be required as the implementation of these changes progresses.

We recognize that as of the date of issuance of this opinion, the billing statements for bar dues for 2014 have been distributed. Indeed, this court just recently approved the rates for bar dues and the disciplinary assessment required for 2014. Therefore, in order to effectuate the directive of this court based on this opinion and ensure an orderly transition in the structure of the financing of the Bar Association, we direct that the Bar Association conduct, as soon as practicable, a special mailing advising each of its members that (1) the member must pay mandatory membership assessments established by the Supreme Court in the amount appropriate to the member's class of membership as set forth below:

<b>Membership Class</b>	<b>§ 3-100(B) (Adm.)</b>	<b>§ 3-301(E) (Discipline)</b>	<b>§ 3-1010(B) (UPL)</b>	<b>Total</b>
Regular Active	\$25.00	\$60.00	\$13.00	\$98.00
Junior Active	\$25.00	\$60.00	\$13.00	\$98.00
Senior Active	\$25.00	\$60.00	\$13.00	\$98.00
Judicial Active	\$25.00	\$60.00	\$13.00	\$98.00
Military Active	0	0	0	0
Regular Inactive	\$12.50	\$30.00	\$ 6.50	\$49.00
Emeritus Inactive	0	0	0	0

(2) the member may elect to pay the voluntary dues component of the Bar Association by paying such voluntary dues in an amount to be established by the Bar Association for the 2014 calendar year, with credit for any amount previously paid in excess of the mandatory membership assessments; and (3) if the member elects not to pay the voluntary dues component, the member shall be entitled to a refund of any amounts

<sup>77</sup> See *In re Integration of Nebraska State Bar Ass'n*, *supra* note 6.

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previously paid by the member for the 2014 calendar year in excess of the mandatory membership assessments.

Thus, we grant the petition in part and, in part, deny the petition.

PETITION GRANTED IN PART, AND IN PART DENIED.

***ATTACHMENT TO CASE NO. S-36-120001***

**CHAPTER 3**

**ATTORNEYS AND THE PRACTICE OF LAW**

**ARTICLE 1**

**ADMISSION REQUIREMENTS FOR  
THE PRACTICE OF LAW**

**Preamble.**

. . . .

**§ 3-100. Supreme Court jurisdiction.**

(A) The Supreme Court exercises jurisdiction over all matters involving the licensing of persons to practice law in the State of Nebraska. Accordingly, the Supreme Court has adopted the following rules governing admission to the practice of law.

(B) Every attorney admitted to practice in the State of Nebraska shall pay a bar admissions assessment for each calendar year from January 1 to December 31, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Court. The first bar admissions assessment shall be due on or before January 1, 2014. In accordance with Neb. Ct. R. § 3-803(D), such assessment shall be paid to the Treasurer of the Nebraska State Bar Association and shall be used to defray the costs of bar admissions administration and enforcement as established by these rules. Different classifications of bar admissions assessments may be established for Active Jr., Active Sr., Active, Inactive, Military, and Emeritus members as those membership classes are defined in Neb. Ct. R. § 3-803. Members newly admitted to the practice of law in

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the State of Nebraska shall not pay a bar admissions assessment for the remainder of the calendar year in which they are admitted.

(C) Members who fail to pay the bar admissions assessment shall be subject to suspension from the practice of law as provided in Neb. Ct. R. § 3-803(E).

. . . .

**§ 3-103. Director of admissions.**

The Supreme Court's shall appoint a director of admissions (director), employed by the Court pursuant to Neb. Ct. R. § 3-803(A)(2), who shall serve under the supervision of the Court and perform such duties for the Commission as these rules may require. The director of admissions shall not be a member of the Commission, but shall, for purposes of these rules, act as the director of the Bar Commission.

. . . .

**§ 3-106. Communications in official confidence; immunity.**

The records, papers, applications, and other documents containing information collected and compiled by the Commission, its members, its the director, Commission employees, agents, or representatives are held in official confidence for all purposes other than cooperation with another bar licensing authority. Provided, however, that an applicant's appeal to the Supreme Court may result in such communications becoming public record. The Commission, its members, its the director, and all Commission employees, agents, or representatives are immune from all civil liability for damages for conduct and communications occurring in the performance of and within the scope of the Commission's duties relating to the examination, character and fitness qualification, and licensing of persons seeking to be admitted to the practice of law. Records, statements of opinion, and other information regarding an applicant communicated to the Commission by any person or entity, firm, governmental authority, or institution, are privileged, and civil suits for damages predicated thereon may not be instituted.

. . . .

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**§ 3-115. Reasonable accommodation.**

. . . .

(E) **Forms.** All forms necessary to complete a request for special testing accommodations will be available at no charge from the ~~D~~irector of the Nebraska State Bar Commission. The applicant may file any additional documentation in support of the request.

. . . .

APPENDIX C  
POLICY ON APPLICANTS WITH A DISABILITY

. . . .

IV. COMMISSION DECISIONS

A. Procedures for Review of Requests

. . . .

2. In reviewing a request, the commission will follow these procedures.

(a) The commission will make a determination, and the ~~sec-~~retary director of the commission will send notification of the determination to the applicant, no fewer than 25 days before the examination.

. . . .

APPENDIX D  
NEBRASKA STATE BAR COMMISSION  
EMERGENCY PREPAREDNESS PLAN

. . . .

**Policies and Procedures to Be Followed in  
Case of Emergencies**

During the examination, the Site Supervisor and staff members will be wearing radios so they can be immediately contacted in the event of an emergency. The Site Supervisor must rapidly go to the site of any incident or emergency and quickly assess the situation. If the situation requires it, 911 should be called

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immediately. The safety of the applicants, proctors, and staff is always of primary concern. The ~~Executive Director~~ director of admissions must be contacted promptly and given a report of the incident or emergency. If 911 is called, the Site Supervisor should immediately notify facility staff so that they can assist in meeting the emergency personnel and directing them to the appropriate location.

In any situation where a dispute arises, the Site Supervisor or staff member should attempt to calm the applicant and inform the applicant that the matter is being reported to the ~~Executive Director~~ director of admissions so that a decision can be made on how to proceed. As with any incident, the “Emergency Report” form (Form A) should be completed by the Site Supervisor as soon as possible.

. . . .

**Delayed Starting Time**

While there may be very good reasons for delaying the examination, every attempt should be made to start the examination on time. If time permits, the Site Supervisor should contact the ~~Executive Director~~ director of admissions to report the delay and get instructions on when to begin the afternoon session. The ~~Executive Director~~ director of admissions will advise of the correct action to take, but in any event, the afternoon session should not begin less than 1 hour after the applicants have been dismissed from the morning session.

In the event of a natural disaster, the ~~Executive Director~~ director of admissions should be contacted prior to the start of the examination, as soon as the problem is identified. If the decision is made to give all applicants extra time, the Speaker will be directed to make such an announcement. If a decision is made to give individual applicants extra time, a board staff member will advise each affected applicant that he/she has been granted a certain amount of extra time. The applicant will be instructed to continue the examination after the other applicants have been dismissed. The applicant will be stopped individually when the extra time is up.

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**Extended Time**

Generally, extended time to complete an examination session by the amount of time lost due to a personal incident is not given.

If it is determined that a Major Disruption has occurred or that a small number of applicants have been negatively affected by a circumstance beyond their control and that it is possible to maintain the integrity of the testing environment, then the examination can be stopped for up to 1½ hours if the test site can accommodate the extended time. The Speaker should begin to read the disruption text that is attached as Appendix A to this Emergency Preparedness Plan. This should only be read after receiving instructions from the ~~Executive Director~~ director of admissions to do so.

....

**Restart or Dismiss**

After a determination to stop an examination has been made, the ~~Executive Director~~ director of admissions needs to determine whether to restart the examination or dismiss the examinees for the session. An examination can be restarted after the following criteria have been considered:

....

**Disputed Time Announcements**

The Site Supervisor is responsible for the accuracy of time announcements. The Site Supervisor will stand at the podium to ensure the announcements are the correct time and given at the appropriate time. If an applicant disputes a time announcement, the Site Supervisor should be contacted immediately. The Site Supervisor should report any such dispute to the ~~Executive Director~~ director of admissions and complete a “Record of Irregularity” form (Form B).

**Flooding, Etc., at Facility**

As soon as such an incident is determined, the Site Supervisor must contact the ~~Executive Director~~ director of admissions immediately. Several proctors should be assigned to the

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entrances of the examination room to advise the applicants that the situation is being assessed and further information will be provided as soon as it becomes available. Facility staff should be contacted immediately to determine what can be done to rectify the situation and make whatever arrangements are necessary to start the examination on time or as close to on time as possible.

**Fire Drills**

The Site Supervisor should immediately determine if the fire alarm is a drill or an actual alarm. If it is a drill, the Site Supervisor should immediately contact facility staff and have the alarm shut off. The ~~Executive Director~~ director of admissions should then be contacted to determine if the disruption was significant enough to warrant the granting of additional testing time. If the alarm is valid, the procedures for the evacuation of the facility, stated below, should be followed.

**Evacuation of Facility**

Before the examination, you should review the set-up diagram of the facility to familiarize yourself with the location of all exits. If time permits, the ~~Executive Director~~ director of admissions should be contacted immediately and evacuation procedures should be followed. The examination must be stopped and the time noted. The proctors should begin to move the applicants out of the building. The applicants may resist all efforts to be “herded.” However, sufficient presence should be displayed to avoid panic. A calm, solicitous approach, suggesting that the orderly and rapid exit and reassembly is to the applicant’s personal advantage is much more likely to result in a successful emergency exit than is an attitude on the part of the proctors which tends to demand military precision or gives the impression of such demands. If there is time, proctors should collect all examination materials. If there is a threat of fire, the last person out should close the doors. If there is a bomb threat, the doors should be left open.

. . . .

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### **Noise From Another Group Using Facility**

The Site Supervisor must go directly to the facility staff and demand that the noise be stopped. If the facility staff does comply with the demand, the ~~Executive Director~~ director of admissions should be contacted as soon as the problem has been resolved with the action that was taken. If the facility staff refused to comply with the demand, the Site Supervisor must contact the ~~Executive Director~~ director of admissions immediately.

When noise problems occur outside of the facility, the Site Supervisor must immediately go to the source of the noise and attempt to get the noise stopped. The Site Supervisor should then return to the room and make notes regarding the problem. An exact diagram of the room should be drawn so that the ~~Executive Director~~ director of admissions will know exactly which of the applicants were affected by the noise problem. Make sure proctors in the area write a detailed incident report on the "Record of Irregularity" form (Form B). If the Site Supervisor is unsuccessful in stopping the noise, the ~~Executive Director~~ director of admissions should be contacted to determine a course of action. Any of the Applicants who complain should be moved to another area if there is space available. It may be determined that the examination will be stopped until the noise ceases; however, the ~~Executive Director~~ director of admissions can only make that decision.

### **Electrical Problems**

. . . .

In the event of a power outage, the exact time of the outage and the length of time of the outage should be documented. The Site Supervisor should notify the ~~Executive Director~~ director of admissions immediately of any such outage. The applicants should be given additional time that is equal to the length of time of the outage.

Please note: The Site Supervisor should first check to see if the electrical problem may have been caused by plugs being kicked out of wall or floor outlets.

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**Applicants Leaving Examination Room**

Any applicant who leaves the examination room prior to completing the session should not be readmitted. If he/she objects, the ~~Executive Director~~ director of admissions should be contacted immediately to report the situation and ask for guidance.

.....

**MBE Answer Sheet**

If an applicant marks circles (M/C) in their question book, contact the ~~Executive Director~~ director of admissions for guidance.

.....

**People Wanting to Learn Whereabouts of Applicants**

All applicant information is confidential, and no staff member or proctor is to release any information regarding the whereabouts of an applicant. If the inquirer states that it is an emergency, the information should be taken and the ~~Executive Director~~ director of admissions must be contacted immediately for further guidance. No indication is to be given regarding whether or not an applicant is present. These instructions relate to the media and law enforcement personnel as well.

**Possible Imposters**

In the possibility that an imposter is suspected of taking the examination for someone else, the incident must be well documented. The Site Supervisor and the Section Supervisor must provide a detailed description of the applicant; carefully observe the applicant involved and state, in detail, the reason for suspecting that the applicant is an imposter. Do not interrupt the applicant or otherwise disturb him/her. During the roll call portion of the examination, the Section Supervisor should pay extra attention that the photo identification provided is valid. The ~~Executive Director~~ director of admissions should be contacted immediately to report the suspected imposter. The Site Supervisor should clandestinely take the suspected imposter's photograph with the digital camera (at each test site).

.....

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### **Complaints of Harassment by Proctors**

The Site Supervisor should go to the spot and observe the situation. After the session is complete, he/she should interview the complaining applicant. The Site Supervisor should not get involved with an argument or take either side. It is his/her primary responsibility to calm both parties and gather facts.

The Site Supervisor should advise the complaining applicant that the matter will be reported in detail to the ~~Executive Director~~ director of admissions and that if he/she wishes to file an additional statement, it should be forwarded to the ~~Executive Director~~ director of admissions. The Site Supervisor should offer to move the applicant to a vacant seat in another section. The Site Supervisor should get a detailed account of the incident from the proctor and submit it in conjunction with his/her report of the incident.

### **Unruly Applicants**

The Site Supervisor and security personnel should observe the applicant and immediately determine if the applicant should be moved to another area of the testing room, or escorted out of the testing room. The Site Supervisor should contact the ~~Executive Director~~ director of admissions prior to having the applicant leave the testing room.

. . . .

### **Typographical Errors**

If such an error is reported, the ~~Executive Director~~ director of admissions should be contacted immediately. Make no comment to any proctor or applicant regarding the error. Advise anyone inquiring about the error that the matter is being reported and that they should answer the question as stated. If the applicant feels there is an issue, the applicant should submit a detailed written description to the ~~Executive Director~~ director of admissions immediately after the bar examination has concluded.

### **Receipt of Threat to Safety**

Notice of the possibility of a condition that might require the emergency exit from an examination site can arrive from

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a variety of sources. Possibly an applicant may return from lunch with a rumor of a planned disruption which he or she has overheard. A member of the facility staff may report some reference to an emergency. A bomb threat might be incoming on the telephone. Irrespective of the source and nature of the information received, the recipient should gain all possible information. The “Response to Personally Delivered Threat Information” form (Form D) should be made available in all sections. Upon rapid, thorough, and accurate completion of the form, it should be quickly hand-delivered to either the ~~Executive Director~~ director of admissions or Site Supervisor, whoever happens to be the most readily available.

In the event the threat is such that the site will probably be uninhabitable preventing reentry, a dismissal exit should occur, but must first be approved by the ~~Executive Director~~ director of admissions. The time remaining in the session would also be a consideration. If there is only the threat of unknown validity, the emergency should be thoroughly analyzed before the exit is ordered.

### **Death or Serious Injury Notification**

. . . .

The ~~Executive Director~~ director of admissions must be advised before any action is taken or the applicant is notified. The ~~Executive Director~~ director of admissions or, if delegated, the Site Supervisor will personally make the notification. . . .

### **Media Coverage (TV, Newspapers, Magazines, Etc.)**

If media personnel, such as reporters or camera men, are present at the bar examination site, the Site Supervisor or his/her designee must notify the ~~Executive Director~~ director of admissions as soon as possible. Only the Site Supervisor is authorized to speak to the media and then, can ONLY discuss topics regarding general bar examination information that could be found on the Board’s Web site. It must be remembered that ALL applicant information, including their identity, is confidential. . . .

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NEBRASKA STATE BAR COMMISSION  
EMERGENCY REPORT

Name of Emergency: \_\_\_\_\_

\_\_\_\_\_

Number of Applicants affected: \_\_\_\_\_

Location of Test Site: \_\_\_\_\_

Proximity of Emergency to Other Applicants: \_\_\_\_\_

Did Applicants leave their seats?: \_\_\_\_\_ If so, how many?: \_\_\_\_\_

Examination numbers of applicants who left their seat: \_\_\_\_\_

Did other Applicants assist?: \_\_\_\_\_

Examination numbers of applicants who assisted: \_\_\_\_\_

\_\_\_\_\_

What time did it occur?: \_\_\_\_\_ How much time was left in the session?: \_\_\_\_\_

What portion of the examination was being administered (PT, Essay, MBE)?: \_\_\_\_\_

Was there excessive noise?: \_\_\_\_\_ If so, describe in detail: \_\_\_\_\_

\_\_\_\_\_

Other relevant details?: \_\_\_\_\_

\_\_\_\_\_

Time ~~Executive Director~~ director of admissions was called: \_\_\_\_\_

Time ~~Executive Director~~ director of admissions returned call with instructions on how to proceed: \_\_\_\_\_

Decision was: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FORM A  
(Emergency Preparedness Plan)

.....

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NEBRASKA BAR COMMISSION  
DISRUPTION TEXT

(To be used in instances where a disruption has occurred and stopping of the examination is required.)

Stop writing (typing) now. I repeat, stop writing (typing) now. Put your pencils (pens) down and do not make any further marks on your examination papers until you are told to begin writing (typing). Please do not converse with other applicants or leave your seat. A disruption has occurred at this examination site. It is the decision of the ~~Executive Director~~ director of admissions that this examination session be temporarily stopped until the disruption is dealt with. I repeat, it is the direction of the ~~Executive Director~~ director of admissions that this examination session be temporarily stopped until the disruption is dealt with.

(Describe the disruption if appropriate.)

Again, do not converse with other applicants or leave your seat. I will keep you updated regarding the situation as information is relayed to me.

(Keep repeating sequences advising them not to write (type), talk or leave their seats, if you are advised to evacuate the test site, refer to the exit text.)

(If you are advised to restart the examination.)

(Describe how the disruption has been dealt with.)

(Announce)

Due to the disruption, applicants at this test site will receive \_\_\_\_\_ of extra time to complete this session of the examination. You have exactly \_\_\_\_\_ minutes to finish this session of the examination after I tell you to begin.

BEGIN.

APPENDIX A  
(Emergency Preparedness Plan)

....

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APPENDIX E

FEES

Examination Fee:	An application fee of \$490 payable by <b>bank cashier's check or money order</b> , payable to the <del>Director</del> <u>Secretary</u> , Nebraska State Bar Commission, must accompany your application. The Nebraska State Bar Commission <b>does not</b> accept cash, personal checks, or firm checks.
. . . .	
Motion Fee:	The required \$925 for a Class I-A, Class I-B, and Class I-C applicant must be paid in <b>bank cashier's check or money order only</b> , made payable to the <del>Director</del> <u>Secretary</u> , Nebraska State Bar Commission. The Nebraska State Bar Commission <b>does not accept</b> cash, personal checks, or firm checks.

Late Application Fee: \$150 for applications received no more than 30 days past the filing deadline.

. . . .

**CHAPTER 3**  
**ATTORNEYS AND THE PRACTICE OF LAW**  
**ARTICLE 3**  
**DISCIPLINE PROCEDURES FOR LAWYERS**

**§ 3-301. Jurisdiction.**

. . . .

(E) Every attorney admitted to practice in the State of Nebraska shall pay a disciplinary assessment for each calendar year from January 1 to December 31, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Court. ~~The first disciplinary assessment shall~~

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~~be due on or before January 1, 2001.~~ The disciplinary assessment shall be paid to the Treasurer of the Association and shall be used to defray the costs of disciplinary administration and enforcement as established by these rules. Different classifications of disciplinary assessments may be established for Active Jr., Active Sr., Active, Inactive, Military, and Emeritus members as those membership classes are defined in Neb. Ct. R. § 3-803. Members newly admitted to the practice of law in the State of Nebraska shall not pay a disciplinary assessment for the remainder of the calendar year in which they are admitted.

. . . .

**§ 3-310. Procedure: Nebraska Supreme Court.**

. . . .

(N) The Court may disbar, suspend, censure, or reprimand the Respondent, place him or her on probation, or take such other action as shall by the Court be deemed appropriate. All orders of public discipline shall be forwarded by the Clerk to the Supreme Court's Director of Admissions membership secretary of the Nebraska State Bar Association.

. . . .

**§ 3-311. Disability inactive status: Incompetency or incapacity.**

. . . .

(D) If, upon due consideration of the matter, the Court concludes the member is incapacitated from continuing to practice law, it shall enter an order placing the member on disability inactive status on the grounds of such disability until further order of the Court, and any pending disciplinary proceeding against the member shall be held in abeyance. Members on disability inactive status shall not be required to pay ~~annual dues or disciplinary~~ mandatory membership assessments to the Nebraska State Bar Association required by Neb. Ct. R. § 3-803(D).

. . . .

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**CHAPTER 3**  
**ATTORNEYS AND THE PRACTICE OF LAW**  
**ARTICLE 8**  
**STATE BAR ASSOCIATION; CREATION;**  
**CONTROL; AND REGULATION**

. . . .

**§ 3-802. Purpose and authority.**

(A) Purpose. The purposes of this Association are to assist in the collection and distribution of Nebraska Supreme Court mandatory membership assessments used to pay all costs associated with the Court's regulation of the practice of law; improve the administration of justice; to foster and maintain high standards of conduct, integrity, confidence, and public service on the part of those engaged in the practice of law; to safeguard and promote the proper professional interests of the members of the Bar; to provide improvements in the education and qualifications required for admission to the Bar, the study of the science of jurisprudence and law reform, and the continuing legal education of the members of the Bar; to improve the relations of the Bar with the public; to carry on a continuing program of legal research; and to encourage cordial relations among the members of the Bar. All of these purposes are to the end that the public responsibilities of the legal profession may be more effectively discharged.

(B) Government. Subject to the inherent authority of the Nebraska Supreme Court, ~~the~~ supreme authority of this Association shall be vested in the membership thereof through the exercise of the power of Initiative and Referendum in such manner as may be prescribed in the bylaws. Subject thereto, and except as otherwise provided by the rules of the Supreme Court, the control over the business and affairs of this Association shall be vested in a House of Delegates, as provided in § 3-805. Subject to the overall control of the House of Delegates, the Executive Council shall function as the administrative and executive organ of the Association as provided in § 3-806. The officers of the Association, as hereinafter

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enumerated, shall have the prerogatives, responsibilities, and qualifications and shall perform the duties of the respective offices, all as provided in § 3-804.

**§ 3-803. Membership.****(A) Requirements and Records of Membership.**

(1) All persons who, on the date that these rules go into effect, are admitted to the practice of law in this State, by order of the Nebraska Supreme Court, shall constitute the members of this Association, subject to due compliance with the requirements for membership hereinafter set forth, including payment of mandatory membership assessments as may be fixed by the Nebraska Supreme Court.

(2) The Director of Admissions, who shall be an employee of the Nebraska Supreme Court, shall maintain all records of membership of the Association and perform all other duties and responsibilities required by the Supreme Court and these rules.

(B) Classes. Members of this Association shall be divided into four classes, namely: Active members, Inactive members, Law Student members, and Emeritus members.

(1) All members who are licensed to engage in the active practice of law in the State of Nebraska, who do not qualify for and apply for Inactive membership status, and who are not Law Student members, shall be Active members.

(2) Any member who is not actively engaged in the practice of law in the State of Nebraska, or who is a nonresident of the State of Nebraska and not actively engaged in the practice of law in Nebraska, and who is not an Emeritus member, may, if he or she so elects, be placed in Inactive membership status.

A member desiring to be placed in Inactive membership status shall file written application therefor with the Secretary Director of Admissions and, if otherwise qualified, shall be placed in such inactive status classification. No Inactive members shall practice law in Nebraska, or vote or hold office in this Association. Any Inactive member may, on filing application

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with the Secretary Director of Admissions and upon payment of the required dues, and compliance with such requirements as may be imposed by the Supreme Court to show fitness to engage in the active practice of law in this State, become an Active member.

(3) Any member who attained the age of 75 years of age during the dues year being billed or has been actively engaged in the practice of law in the State of Nebraska for 50 years or more during the dues year being billed may, if he or she so elects, be placed in an Emeritus membership status. A member desiring to be placed in an Emeritus membership status shall file written application therefor with the Secretary Director of Admissions and, if otherwise qualified, shall be placed in the Emeritus status classification. A member electing Emeritus classification shall not be required to pay membership dues to this Association. No Emeritus member shall practice law in Nebraska, or vote or hold office in this Association. Any Emeritus member may, on filing application with the Secretary Director of Admissions and upon payment of the required dues and compliance with the requirements as may be imposed by the Supreme Court to show fitness to engage in the active practice of law in this State, become an Active member.

. . . .

(6) In order to make information available to the public about the financial responsibility of each active member of this Association for professional liability claims, each such member shall, upon admission to the Bar, and ~~with~~ as part of each application for renewal thereof, submit the certification required by this rule. For purposes of this rule, professional liability insurance means:

. . . .

Each active member shall certify to ~~this Association~~ the Nebraska Supreme Court, through its Director of Admissions, on or before January 1 of each year: 1) whether or not such member is currently covered by professional liability insurance, other than an extended reporting endorsement;

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2) whether or not such member is engaged in the private practice of law involving representation of clients drawn from the public; 3) whether or not such member is a partner, shareholder, or member in a domestic professional organization as defined by the rule governing Limited Liability Professional Organizations, and 4) whether or not the active member is exempt from the provisions of this rule because he or she is engaged in the practice of law as a full-time government attorney or in-house counsel and does not represent clients outside that capacity.

The foregoing shall be certified by each active member of this Association ~~in~~ on such form as may be prescribed by ~~the Nebraska Supreme Court~~ this Association ~~which shall be included within the Association's annual mandatory assessment and voluntary dues statement, and~~ Such certifications shall be made available to the public by ~~such any means as may be~~ designated by the ~~House of Delegates~~ Supreme Court. Failure to comply with this rule shall result in suspension from the active practice of law until such certification is received. An untruthful certification shall subject the member to appropriate disciplinary action. All members shall notify the Secretary Director of Admissions in writing within 30 days if 1) professional liability insurance providing coverage to the member has lapsed or is not in effect, or 2) the member acquires professional liability coverage as defined by this rule.

All certifications not received by April 1 of the current calendar year shall be considered delinquent. The Secretary Director of Admissions shall send written notice, by certified mail, to each member then delinquent in the reporting of professional liability insurance status, which notice shall be addressed to such member at his or her last reported address, and shall notify such member of such delinquency. All members who shall fail to provide the certification within 30 days thereafter shall be reported to the Supreme Court by the Secretary Director of Admissions, and the Supreme Court shall enter an order to show cause why such member shall not be

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suspended from membership in this Association. The Supreme Court shall enter such an order as it may deem appropriate. If an order of suspension shall be entered, such party shall not practice law until restored to good standing.

. . . .

(C) Registration. All members not already registered with the ~~Secretary of this Association~~ Director of Admissions shall, within 60 days after being admitted to the practice of law by the Supreme Court of this State, register with the ~~Secretary of this Association~~ Director of Admissions by setting forth the member's full name, business address, and signature. All members shall promptly notify the ~~Secretary~~ Director of Admissions, in writing, of any change in such address.

(D) ~~Dues~~ Mandatory Membership Assessments.

(1) Payment of ~~Assessments Dues~~. Each member shall pay mandatory membership assessments dues to this Association for each calendar year from January 1 to December 31 following, payable in advance on or before January 1 of each year, in such amounts as may be fixed by the Supreme Court pursuant to Neb. Ct. R. §§ 3-100(B), 3-301(E), and 3-1010(B). All ~~dues such assessments~~ shall be paid to the Treasurer of this Association ~~and shall constitute the funds for furthering the purposes of this Association, remitted to the Nebraska Supreme Court and shall be used for the administration and enforcement of the regulation of the practice of law by the Court~~. Different classifications of ~~dues assessments~~ may be established for Active, Inactive, and Law Student members and for those members who have been admitted to the Bar of any State or other jurisdiction for a period of less than 5 years and for those members who are serving in the Armed Forces of the United States, while so serving. Members newly admitted to this Association shall receive a complimentary membership for the remainder of the current calendar year. ~~The Annual mandatory membership assessments dues~~ beginning calendar year 2009 2014 shall be as follows:

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<b>Membership Class</b>	<b>§ 3-100(B) (Adm.)</b>	<b>§ 3-301(E) (Discipline)</b>	<b>§ 3-1010(B) (UPL)</b>	<b>Total</b>
<u>Regular Active*</u>	<u>\$25.00</u>	<u>\$60.00</u>	<u>\$13.00</u>	<u>\$98.00</u>
<u>Junior Active**</u>	<u>\$25.00</u>	<u>\$60.00</u>	<u>\$13.00</u>	<u>\$98.00</u>
<u>Senior Active***</u>	<u>\$25.00</u>	<u>\$60.00</u>	<u>\$13.00</u>	<u>\$98.00</u>
<u>Judicial Active</u>	<u>\$25.00</u>	<u>\$60.00</u>	<u>\$13.00</u>	<u>\$98.00</u>
<u>Military Active****</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>Regular Inactive</u>	<u>\$12.50</u>	<u>\$30.00</u>	<u>\$ 6.50</u>	<u>\$49.00</u>
<u>Emeritus Inactive</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

\* (Members who have been admitted to the Bar of any State or other jurisdiction for more than 4 calendar years following the calendar year of admission.)

\*\* (Members who have been admitted to the Bar of any State or other jurisdiction for 4 or fewer calendar years following the calendar year of admission.)

\*\*\* (Members 75 years of age or older during the assessments year being billed.)

\*\*\*\* (A member actively engaged in the Armed Forces of the United States at the beginning of any calendar year shall be exempt from payment of assessments for such year upon submitting to the Director of Admissions, prior to the date of delinquency provided for in this Article, satisfactory proof that he or she is so engaged; upon receipt of such proof, the Director of Admissions shall issue a membership card to the member under the classification held by the member prior to his or her induction in the service and shall cause the records of this Association to show that such card was issued without payment of dues.)

<u>Active</u> ( <u>Members who have been admitted to the Bar of any State or other jurisdiction for more than 4 calendar years following the calendar year of admission.</u> )	<u>\$275</u>
<u>Junior Active</u> ( <u>Members who have been admitted to the bar of any State or other jurisdiction for 4 or fewer calendar years following the calendar year of admission.</u> )	<u>\$160</u>

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<del>Senior Active (Members 75 years of age or older during the dues-year being billed.)</del>	<del>\$ 70</del>
<del>Inactive</del>	<del>\$ 65</del>
<del>Military (A member actively engaged in the Armed Forces of the United States at the beginning of any calendar year shall be exempt from payment of dues for such year upon submitting to the Secretary, prior to the date of delinquency provided for in this Article, satisfactory proof that he or she is so engaged; upon receipt of such proof, the Secretary shall issue a membership card to the member under the classification held by the member prior to his or her induction in the service and shall cause the records of this Association to show that such card was issued without payment of dues.)</del>	<del>\$ 0</del>
<del>Emeritus</del>	<del>\$ 0</del>

Effective January 1, 1999, and each year thereafter, a ~~(2)~~ A late fee of \$25 shall be assessed each Active or Inactive member whose ~~dues~~ mandatory assessments are received after January 1, a late fee of \$50 shall be assessed on ~~dues~~ mandatory assessments received on or after February 1, and a late fee of \$75 shall be assessed on ~~dues~~ mandatory assessments received on or after March 1.

~~(3) Funds collected by mandatory assessments pursuant to Neb. Ct. R. §§ 3-100(B) and 3-1010(B) shall be used by the Nebraska Supreme Court's Director of Admissions and Counsel on Unauthorized Practice of Law for regulatory management and oversight as required by the Court under its constitutional and inherent authority.~~

~~(2) Lobbying and Related Activities:~~

~~(a) This Association may use dues to analyze and disseminate to its members information on proposed or pending legislative proposals.~~

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~~(b) All lobbying activities shall be subject to the following restrictions: The annual dues notice shall offer the members of the Bar an opportunity to direct that the stated amount of their dues intended for lobbying activities be placed instead in a restricted account. Funds from this account shall be budgeted by the Executive Council for activities which will promote the administration of justice or improvements of the legal system. The established budget for lobbying activities shall be reduced by the amount that is directed to the restricted account.~~

(E) Delinquency and Reinstatement. All ~~dues and~~ mandatory membership assessments not paid by April 1 of the current calendar year shall be considered delinquent; and the Secretary Director of Admissions shall send written notice, by certified mail, to each member then delinquent in the payment of his or her ~~dues and~~ assessments, which notice shall be addressed to such member at his or her last reported address, and shall notify such member of such delinquency. All members who shall fail to pay delinquent ~~dues and~~ assessments within 30 days thereafter shall be reported to the Supreme Court by the Secretary Director of Admissions, and the Supreme Court shall enter an order to show cause why such member shall not be suspended from membership in this Association. The Supreme Court shall, after hearing thereon, enter such an order as it may deem appropriate. If an order of suspension shall be entered, such party shall not practice law until restored to good standing. Whenever a member suspended for nonpayment of ~~dues and/or~~ mandatory membership assessments shall make payment of all arrears, and shall satisfy the Supreme Court of his or her qualification to then return to the active practice of law, such member shall be entitled to reinstatement upon request. The Secretary Director of Admissions shall keep a complete record of all suspensions and reinstatements. No person, while his or her membership is suspended, shall be entitled to exercise or receive any of the privileges of membership in this Association.

(F) Suspension or Disbarment. Any member who shall be suspended or disbarred from the practice of law by the Supreme

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Court shall, during the period of such suspension or disbarment, be likewise suspended or barred from membership in this Association. On reinstatement to practice by the Supreme Court, such party shall, on written request and upon payment of the requisite fees and/or mandatory assessments, be restored to membership in this Association.

(G) Fees. Nothing herein contained shall be construed to limit the power of this Association, or of any of its sections or committees, to assess voluntary registration fees or attendance fees for meetings, institutes, or continuing legal education sessions as may be approved or determined from time to time by the House of Delegates or the Executive Council.

(H) Resignation. Any member may resign either active or inactive membership in this Association by tendering his or her written resignation to the Clerk of the Supreme Court of Nebraska on a form to be provided. This form shall include an affidavit to be completed by the member seeking to resign, stating that the member has not been suspended or disbarred in any other state or by any court; that the member has not voluntarily surrendered his or her license to practice law in any other state or to any court in connection with any investigation or disciplinary proceeding against the member; that to the member's knowledge he or she is not then under investigation, nor has a complaint or charges pending against him or her with reference to any alleged violation of professional responsibilities as a lawyer; and that the member agrees to be subject to the jurisdiction of the Supreme Court for a period of 3 years from the date his or her resignation is accepted for the purpose of disciplinary proceedings for any alleged violation of his or her professional responsibilities as a lawyer. During this 3-year period, the acceptance of his or her resignation may be set aside by the Supreme Court upon application filed in the Supreme Court by the Counsel for Discipline. If the affidavit is completed, the Supreme Court may accept the resignation, provided the resigning member's ~~dues~~ mandatory membership assessments are not delinquent, or may accept it upon payment of any such delinquent ~~dues~~ assessments, unless the member

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seeking to resign has been suspended for the nonpayment of dues assessments as provided for in § 3-803(E), in which event the submitted resignation shall not be acted upon until the member seeking resignation has been reinstated as provided for in said section. In the event the affidavit is not fully completed, or any exception is taken to it, the tendered resignation shall be rejected. The Clerk shall keep a complete record of all requests for resignation and all resignations and shall report to the Secretary Director of Admissions the names and addresses of members whose resignations have been accepted by the Supreme Court.

(I) Reinstatement Following Resignation. Whenever a former member of this Association who resigned is readmitted to the practice of law in Nebraska by the Supreme Court, the member shall pay dues mandatory membership assessments for the year in which he or she is readmitted and be reinstated as a member of this Association.

(J) Voluntary Dues for Lobbying and Related Activities.

This Association may establish, collect, and use voluntary membership dues to analyze and disseminate to its members information on proposed or pending legislative proposals and any other nonregulatory activity intended to improve the quality of legal services to the public and promote the purposes of the Association as set forth in § 3-802.

**§ 3-804. Officers.**

. . . .

(G) Duties and Powers.

. . . .

(5) The Secretary shall be the custodian of the records and archives of this Association; ~~shall maintain the membership and all other records of this Association;~~ shall report the minutes of all meetings of this Association, the Executive Council, and the House of Delegates; and shall perform such other duties and responsibilities as may be provided by the bylaws and these rules.

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(6) The Treasurer shall be the custodian of and shall supervise the collection and disbursement of all funds and properties of this Association, shall disburse the funds of this Association as provided in §§ 3-803(D) and 3-809, and shall have such other duties and responsibilities as may be provided by the bylaws and these rules.

(7) The Executive Director shall have such responsibilities and perform such duties as shall be delegated to him or her by the Nebraska Supreme Court, Executive Council, and the House of Delegates and shall perform such other duties and responsibilities as may be provided by the bylaws.

. . . .

**§ 3-805. House of delegates.**

(A) Duties and Powers. Except as otherwise provided by the Nebraska Supreme Court, ~~T~~he House of Delegates shall be the governing body of this Association; shall exercise overall jurisdiction over the affairs of this Association; shall determine and implement the policies and objectives of this Association; shall, consistent with these rules and the purposes of this Association, prepare, adopt, and amend bylaws for the government and operation of this Association, including the provisions for an annual meeting of this Association; and shall perform such other functions as are provided by these rules and the bylaws.

. . . .

(H) Personnel and Publications. Except as otherwise provided by the Nebraska Supreme Court and these rules, ~~T~~he House of Delegates shall have the power and the duty to fully administer this Article, including the power to employ necessary personnel and to establish the policies of this Association relating to official publications thereof.

. . . .

**§ 3-808. Meetings.**

(A) Annual Meeting. This Association ~~shall~~ may have one regular meeting annually at a time and place to be fixed by the

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Executive Council. Each member of this Association shall be notified thereof by the Secretary by mail.

. . . .

~~(D) Emergency Meetings. In case of extreme emergency, the Executive Council, with the approval of the Supreme Court, may dispense with the calling of the Annual Meeting, but in such event shall call, in lieu thereof, a special session of the House of Delegates. In the case of extreme emergency, the Executive Council may call a special meeting, in such manner as may be determined by such Council, of all persons licensed to practice law in Nebraska.~~

**§ 3-809. Budget and audit.**

(A) Budget Preparation and Approval. The Budget and Planning Committee of this Association, consisting of not more than 13 members, shall study the income and expenses of this Association, based on its collection and expenditure of its annual voluntary dues, and shall prepare and submit to the Executive Council a proposed budget for each fiscal year of this Association. The Executive Council shall, upon receipt of such proposed budget, pass upon the same, and shall thereupon prepare and submit an annual budget of this Association's receipts and expenditures to the House of Delegates for its consideration and approval. Such proposed budget shall not be effective until 30 days after it shall be approved by a majority vote of the House of Delegates at a meeting for which at least 30 days' notice, including a copy of the proposed budget, has been given. The House of Delegates by majority vote thereof may amend or modify the proposed budget prior to its final adoption.

. . . .

(D) Circulation of Budget and Audit. The Executive Council, prior to the Annual Meeting of this Association, ~~shall file with the Clerk of the Supreme Court~~ and shall cause to be distributed to the voluntary members of this Association a copy of the current annual budget, the proposed budget for the succeeding year, and an annual statement showing a balance sheet and operating statement for the last preceding fiscal year.

. . . .

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**§ 3-811. Bylaws.**

Suitable bylaws, not inconsistent with these rules, shall be adopted by the House of Delegates and shall be amended as necessary to reflect all Supreme Court amendments to these rules.

....

**§ 3-813. Enabling rules.**

....

(B) Effective Date. These rules shall become effective on January 1, ~~1971~~ 2014.

....

**§ 3-814. Filing bylaws and rules.**

The Nebraska State Bar Association shall at all times keep on file with the Clerk of the Nebraska Supreme Court and Court of Appeals a current copy of its bylaws and all rules under which its House of Delegates, Executive Council, and various committees and sections operate.

**CHAPTER 3**

**ATTORNEYS AND THE PRACTICE OF LAW**

**ARTICLE 9**

**TRUST FUND REQUIREMENTS FOR LAWYERS**

....

**§ 3-905. Trust account affidavit rules.**

....

(E) Until otherwise directed by the Supreme Court, the affidavits and any other information required by § 3-905 shall be collected and maintained by the Bar Association on behalf of the Nebraska Supreme Court.

....

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**CHAPTER 3**  
**ATTORNEYS AND THE PRACTICE OF LAW**  
**ARTICLE 10**  
**UNAUTHORIZED PRACTICE OF LAW**

. . . .

**§ 3-1010. Jurisdiction.**

(A) Except as otherwise provided by § 3-1012(B), the Supreme Court, in the exercise of its inherent jurisdiction to define the practice of law and to prohibit the unauthorized practice of law within the State of Nebraska, adopts the following procedures, which shall govern proceedings under these rules concerning the unauthorized practice of law (UPL).

(B) Every attorney admitted to practice in the State of Nebraska shall pay a UPL assessment for each calendar year from January 1 to December 31, payable in advance on or before January 1 of each year, in such amount as may be fixed by the Court. The first UPL assessment shall be due on or before January 1, 2014. In accordance with Neb. Ct. R. § 3-803(D), such assessment shall be paid to the Treasurer of the Nebraska State Bar Association and shall be used to defray the costs of the administration and enforcement of the unauthorized practice of law as established by these rules. Different classifications of UPL assessments may be established for Active Jr., Active Sr., Active, Inactive, Military, and Emeritus members as those membership classes are defined in Neb. Ct. R. § 3-803. Members newly admitted to the practice of law in the State of Nebraska shall not pay a UPL assessment for the remainder of the calendar year in which they are admitted.

(C) Members who fail to pay the UPL assessment shall be subject to suspension from the practice of law as provided in Neb. Ct. R. § 3-803(E).

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**§ 3-1011. Commission; creation.**

. . . .

(C) The Chief Justice shall appoint one member to chair the Commission and one member as the secretary of the Commission.

. . . .

**§ 3-1012. Commission; jurisdiction and duties.**

. . . .

~~(E) The Supreme Court hereby appoints the Executive Director of the Nebraska State Bar Association as Secretary of the Commission.~~

**§ 3-1013. Counsel; appointment and duties.**

(A) There shall be a Counsel on Unauthorized Practice of Law (CUPL), who shall be a member of the Nebraska State Bar Association.

(B) The CUPL shall be an employee of the Nebraska Supreme Court State Bar Association, which shall fund the operations of the office of the CUPL from the mandatory Supreme Court assessment established pursuant to § 3-1010(B).

(C) The CUPL shall perform for the Nebraska Supreme Court and the Commission all duties as required by these rules.

(D) The CUPL shall investigate all matters within the jurisdiction of the Commission in accordance with procedures adopted by the Commission and approved by the Supreme Court and shall perform the following duties:

(1) Maintain records of all matters coming within the jurisdiction of the Commission.

(2) Secure facilities for the administration of proceedings under these rules and receive and file all requests for investigation and complaints concerning matters within the jurisdiction of the Commission.

(3) Employ such staff, including investigative and clerical personnel, subject to the approval of the Supreme Court

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Commission, as may be necessary to carry out the duties of the office.

(4) Perform such other duties as ~~the Commission or the Supreme Court~~ or the Commission may require.

. . . .

**NEBRASKA COMMISSION ON UNAUTHORIZED PRACTICE OF LAW ADMINISTRATIVE RULES, REGULATIONS, AND PROCEDURES**

. . . .

**III. Officers.**

**a. Chairperson.** The Chief Justice of the Supreme Court shall annually designate a chairperson from among the Commission members. Neb. Ct. R. § 3-1011(C).

**b. Vice Chairperson and Other Officers.** The Commission shall elect a vice chairperson each year, and such other officers as it may deem necessary to carry out the purposes of the Commission. Neb. Ct. R. § 3-1011(E).

**c. Secretary.** The Secretary of the Commission ~~shall be the custodian of all records of the Commission and shall keep minutes of all meetings held by the Commission, or its designated committees or panels. All such records and minutes shall be kept at the offices of the Counsel on the Unauthorized Practice of Law, who shall be the custodian of such records~~ NSBA. Neb. Ct. R. § 3-1012(E)13.

. . . .

**VI. Administration of Commission.**

**a. Counsel on Unauthorized Practice of Law.** Neb. Ct. R. § 3-1013.

**i.** The Counsel on Unauthorized Practice of Law (CUPL) ~~will~~ shall be hired by the ~~Executive Director of the NSBA Nebraska Supreme Court~~ and shall be an employee of the NSBA Court. The NSBA Court shall provide to the CUPL any

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additional staff support as ~~designated by the Executive Director approved by the Court.~~ Neb. Ct. R. § 3-1013(BD)(3).

ii. The CUPL shall not be entitled to a vote on Commission matters.

iii. The CUPL shall be responsible for the duties prescribed in the Court Rules, Neb. Ct. R. § 3-1013, and other duties as assigned by the Supreme Court; or the Commission, ~~or Executive Director of the NSBA.~~

iv. The CUPL shall send out notices of meetings of the Commission and prepare the preliminary agenda for each meeting.

**b. Budget.** ~~The Executive Director of the NSBA and the CUPL, with the input of the Commission, shall prepare an annual budget for the performance of the Commission's activities. The Commission's budget will be part of the full NSBA budget and will be subject to the same process for approval. NSBA~~ The Nebraska Supreme Court shall pay, from the UPL assessment mandated by Neb. Ct. R. §§ 3-1010(B) and 3-803(D), all expenses reasonably and necessarily incurred by the Commission pursuant to the budget and the expense policy of the NSBA. Members of the Commission shall be entitled to reimbursement for reasonable expenses incurred in the performance of their official duties.

**c. Letterhead.** Use of Commission letterhead shall be limited to official business of the Commission and specifically shall not be used in connection with any political campaign or to support or oppose any public issue, or for personal or charitable purposes.

....

**VIII. Advisory Opinions.**

....

**g. Publication of Advisory Opinions.** The Commission may arrange for the publication of advisory opinions in the Nebraska Lawyer magazine, on the NSBA Web site, on the Nebraska Supreme Court Web site, or elsewhere as it deems

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appropriate. Opinions so published shall not, insofar as practicable, identify the party or parties making the inquiry, the complainant, or the respondent without the written permission of the party or parties making the request.

. . . .

## **X. Investigation.**

The complainant and the respondent may be interviewed, and such other and further review or investigation may be conducted as is deemed appropriate. The complainant may submit additional information. During the course of the investigation, the CUPL and/or the Commission may use its power, as provided in the Court Rules, to subpoena witnesses, compel production of documentary evidence, swear witnesses, take testimony, and cause transcripts to be made. Neb. Ct. R. § 3-1014(B) through (D).

**a. Methods of Investigation.** The CUPL may use such methods and means of conducting the investigation as the Commission shall deem appropriate, including written correspondence, electronic correspondence, telephone calls, teleconferences, personal meetings, consultation with law enforcement and government officials, hiring outside investigators, online research, or other legal organizations, ~~and any other NSBA resources~~. All communications shall strictly comply with the Court Rules regarding confidentiality, Neb. Ct. R. § 3-1020(C) through (G); however, CUPL may disclose basic information that is essential to the conduct of the investigation.

. . . .