

# Chapter 9

## 1983 REPLACEMENT PART

### Attorneys; Law Libraries

#### OREGON STATE BAR

- 9.005 Definitions for ORS 9.010 to 9.665
- 9.010 Status of attorney and Oregon State Bar
- 9.025 Board of governors; number; eligibility; term; effect of membership
- 9.030 Voting rights; eligibility of members for board
- 9.040 Election of governors
- 9.050 Recall of governors
- 9.060 Vacancies; election of officers
- 9.070 Duties of officers; bonds of secretary and treasurer; deposit and disbursement of fees
- 9.080 Function of board; duties generally; professional liability fund; quorum; status of employes of Oregon State Bar; fee for registration of professional corporation
- 9.090 Appropriation and disbursement of funds
- 9.100 Statement of receipts and expenditures
- 9.110 Rules; special meetings; quorum at bar meetings
- 9.120 Annual meetings of bar; reports and recommendations
- 9.130 Authority of bar members at meetings and on questions referred

#### MEMBERSHIP IN THE BAR

- 9.160 Practice of law by persons other than active members
- 9.180 Classes of membership
- 9.191 Annual membership fees; professional liability assessments
- 9.200 Effect of failure to pay membership fees; reinstatement
- 9.210 Board of bar examiners; fees of applicants for admission to bar
- 9.220 General requirements for admission
- 9.240 Appearance of attorneys licensed in other jurisdictions
- 9.250 Oath of qualified applicant; order for admission
- 9.260 Resignation of attorney
- 9.270 Forwarding copy of resignation to State Court Administrator; readmission to practice

#### ATTORNEY AND CLIENT RELATIONSHIP

- 9.310 Attorney defined; counsel
- 9.320 Necessity for employment of attorney; effect of employment
- 9.330 Authority of an attorney
- 9.340 Challenge by party of attorney's authority to appear for party
- 9.350 Challenge of attorney's authority to appear for adverse party
- 9.360 Compelling delivery by attorney of money or papers
- 9.370 Compelling delivery when attorney claims lien
- 9.380 Mode of changing attorneys
- 9.390 Notice of change

#### PROFESSIONAL CONDUCT

- 9.460 Duties of attorneys
- 9.490 Formulation of rules of professional conduct

#### PROHIBITED CONDUCT

- 9.500 Solicitation of personal injury business by nonlawyer
- 9.505 Payment for referring claims resulting from personal injury or death
- 9.510 Solicitation by attorneys
- 9.515 Referral of claims, suits or actions between attorneys; division of fees
- 9.520 Acceptance and prosecution of solicited claims

#### BAR DISCIPLINARY PROCEEDINGS

- 9.527 Grounds for disbarment, suspension or reprimand
- 9.529 Status of proceedings relating to discipline, admission or reinstatement
- 9.532 Local professional responsibility committees; state professional responsibility board; powers; witnesses; subpoenas; oaths
- 9.534 Disciplinary board; procedure before board; oaths; subpoenas; hearing; record
- 9.536 Board decision; appeal to Supreme Court; review; costs
- 9.537 Civil immunity of witnesses; bar officials and employes
- 9.539 Application to admission and reinstatement proceedings
- 9.542 Rules of board of governors
- 9.545 State lawyers assistance committee duties; information confidential

#### CLIENT SECURITY FUND

- 9.615 Definitions for ORS 9.615 to 9.665
- 9.625 Plan to relieve client losses
- 9.635 Sources of client security fund
- 9.645 Annual payment by state bar members
- 9.655 Investigation of claim of loss; subpoena
- 9.665 Authority for reimbursement of client; subrogation for amount paid

#### SEARCH OR SEIZURE OF LAWYER FILES OR PREMISES

- 9.695 Status of files or work premises of lawyer; inadmissibility of evidence subject to search or seizure

#### ASSUMING PRACTICE OF NONPERFORMING ATTORNEY

- 9.705 Definitions for ORS 9.705 to 9.755
- 9.710 Jurisdiction of circuit court when attorney fails to devote adequate attention to practice or interest of clients

## COURTS OF RECORD; COURT OFFICERS; JURIES

- 9.715 Effect of failure to respond to inquiry from Oregon State Bar  
9.720 Court assuming law practice; hearing  
9.725 Appointment of custodian of law practice; duties of custodian and court  
9.730 Restriction of custodian's practice  
9.735 Compensation for custodian; lien status of compensation order  
9.740 Court orders appealable; stay  
9.745 Statutes of limitation suspended  
9.750 Applicability of lawyer-client privilege to examination of files and records  
9.755 Final report of custodian; petition for compensation; court approval

### LAW LIBRARIES

- 9.760 Supreme Court Library; copying services; fees  
9.770 Librarian and assistants; compensation; bond; applicability of public employees' retirement and unemployment compensation laws  
9.780 Exchange of legal books and publications  
9.790 Secretary of State furnishing librarian with copies for exchange  
9.800 Sale of surplus codes and session laws  
9.810 Terms of sale; disposition of proceeds  
9.820 Law libraries in Multnomah County  
9.830 Disposition of library fees in Multnomah County  
9.840 Law libraries in counties other than Multnomah County  
9.850 Disposition of library fees in counties other than Multnomah County

### PENALTIES

- 9.990 Penalties

### CROSS REFERENCES

- Administrative supervision over other courts, 1.002  
Attorney as witness, 40.340  
County public defender services, by contract between county and attorneys, 151.010  
Employer's right to representation by attorney in proceedings under Oregon Safe Employment Act, 654.293  
Handicapped child, duty to report, 343.193  
Law Improvement Committee membership, 173.315  
Lawyer-client privilege, 40.225  
Legislative review of public need for Oregon State Bar, 182.605 to 182.635  
Liability of attorney of nonresident plaintiff for defendant's costs and disbursements, 20.160  
Location of meetings of Oregon State Bar, 192.630  
Military court assignments of attorneys, 398.012, 398.136  
Minor Court Rules Committee, attorney as member, 1.510

Stenographer-employer privilege, 40.265  
Temporary appointment of attorney as judge, Const. Art. VII (A), §2a  
Trust deed, trustee, 86.790

### 9.010

Professional corporation, Bar to regulate attorneys, 58.365

### 9.080

Suggested fee schedule under Workers' Compensation Law, 656.388

### 9.160

Justice's court, who may act as attorney, 52.060  
Practice of law, when prohibited:  
County clerk or law partner, 205.510, 205.990  
District attorney and deputies, 8.726  
Judge or law partner, 1.220  
Public defender (county) and staff, 151.030  
State Court Administrator and staff, 8.160  
Trust companies, 709.160

### 9.200

Members in military service, not suspended for failure to pay fees, 408.450

### 9.310

Challenge as juror for implied bias on grounds of attorney-client relationship, 136.220

### 9.320

Small claims department, appearance of certain parties by attorney not required, 46.415, 55.090

### 9.460

Adoption proceedings of children cared for under Ch. 418, certain attorneys not to represent prospective parents, 418.295  
Appellant without funds, appointment of counsel in post-conviction proceeding, 138.500, 138.590  
Child abuse, duty of attorney to report, 418.750  
Counsel for defendant in criminal proceeding, appointment, 135.045, 135.050  
District attorney, law partner thereof handling divorce cases and cases in which state is party, 8.730  
Judge or law partner acting as attorney, 1.220  
Juvenile proceeding, appointment of attorney to represent child or parent, 419.498, 419.563  
Professional corporations, Ch. 58  
State officers and legislators acting as attorney in prosecution of claim against the state, Const. Art. XV, §7

### 9.760

Penalty for detention of overdue library books, 357.975, 357.990

### 9.780

Distribution of legislative publications, 171.206 to 171.255

**OREGON STATE BAR**

**9.005 Definitions for ORS 9.010 to 9.665.** As used in ORS 9.010 to 9.665, unless the context or subject matter requires otherwise:

(1) "Attorney" and "member" mean a member of the bar.

(2) "Oregon State Bar," "state bar" and "bar" mean the Oregon State Bar created by the State Bar Act set forth in ORS 9.005 to 9.665.

(3) "Board" and "board of governors" mean the board of governors of the bar.

(4) "Executive director" means the chief administrative employe of the bar, appointed by the board. The executive director may, but need not be, a member of the bar; and the executive director shall serve at the board's discretion and shall perform such duties as the board shall prescribe.

(5) "Governor" means a member of the board of governors of the bar.

(6) "Rules of procedure" means the rules of procedure relative to admission, discipline, resignation and reinstatement of members of the bar adopted by the board and approved by the Supreme Court. [1975 c.641 §2; 1979 c.252 §14]

**9.010 Status of attorney and Oregon State Bar.** (1) An attorney, admitted to practice in this state, is an officer of the court; and the Oregon State Bar is a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon and is authorized to carry out the provisions of ORS 9.030 to 9.580.

(2) The Oregon State Bar has perpetual succession and a seal, and it may sue and be sued. Notwithstanding the provisions of ORS 278.005 to 278.315, 278.200 to 278.215 and 279.711, it may, in its own name, for the purpose of carrying into effect and promoting its objectives, enter into contracts and acquire, hold, own, encumber, insure, replace, deal in and with and dispose of real and personal property.

(3) No obligation of any kind incurred or created under this section shall be, or be considered, an indebtedness or obligation of the State of Oregon. [Amended by 1955 c.463 §1; 1965 c.461 §1]

**9.020** [Amended by 1971 c.103 §1; repealed by 1973 c.114 §5]

**9.025 Board of governors; number; eligibility; term; effect of membership.** (1) The Oregon State Bar shall be governed by a board of governors consisting of 15 members. Twelve of the members shall be active members of the Oregon State Bar, who on appointment,

on nomination, on election and during the full term for which the member was appointed or elected, maintain the principal office of law practice in the region of this state in which the active members of the Oregon State Bar eligible to vote in the election at which the member was elected maintain their principal offices. Three of the members shall be appointed by the board of governors from among the public. They shall be residents of this state and shall not be active or inactive members of the Oregon State Bar.

(2) For the purpose of eligibility for nomination and to vote in the election of a member of the board of governors who is an elective member, and for appointment to the board of governors, the State of Oregon is divided into six regions, constituted as follows:

(a) Region One—Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco and Wheeler Counties.

(b) Region Two—Lane County.

(c) Region Three—Coos, Curry, Douglas, Jackson and Josephine Counties.

(d) Region Four—Benton, Clatsop, Columbia, Lincoln, Polk, Tillamook, Washington and Yamhill Counties.

(e) Region Five—Multnomah County.

(f) Region Six—Clackamas, Linn and Marion Counties.

(3) There shall be elected to the board of governors, for a term of three years, by the active members of the Oregon State Bar who maintain their principal offices in:

(a) Region One—One member in 1975 and in each third year thereafter.

(b) Region Two—One member in 1973 and in each third year thereafter.

(c) Region Three—One member in 1975 and in each third year thereafter.

(d) Region Four—One member in 1974 and in each third year thereafter.

(e) Region Five—Two members in 1973 and in each year thereafter.

(f) Region Six—One member in 1973 and in each year thereafter, except in 1975 and in each third year thereafter.

(4) No judge of a municipal, state or federal court or any other full-time judicial officer, shall be eligible for appointment or election to the board of governors.

(5) The term of any member of the board of governors shall terminate on the date of the

death or resignation of the member, or if the member is required to be a member of the Oregon State Bar, the term terminates on the date:

(a) Of the termination of active membership in the Oregon State Bar by the member for any reason;

(b) When the member discontinues to maintain the principal office of practice in the region in which it was maintained at the time of the appointment or election of the member; or

(c) When the member assumes office as a judge of a municipal, state or federal court, or fills a full-time judicial office.

(6) No member of the board of governors shall be eligible, during the term of office, for service pro tempore as a judge of any municipal, state or federal court. [1973 c.114 §1; 1981 c.193 §3]

**9.030 Voting rights; eligibility of members for board.** Members shall vote in and be eligible for nomination and election to the board of governors from the region in which they maintain their principal offices. [Amended by 1971 c.103 §2; 1973 c.114 §2]

**9.040 Election of governors.** The election of governors shall be held on the third Monday of August of each year. Nomination shall be by petition signed by at least 10 members entitled to vote for such nominee. Election shall be by ballot. Nominating petitions shall be filed with the executive director of the bar at least 30 days before the election. The executive director shall mail ballots, containing the nominations for the office of governor in each region, to every eligible active member in such region, on or before the first day of August preceding such election. Ballots shall be deposited in person or by mail with the executive director on or before the day of the election. The executive director, with two assistants to be selected by the executive director, shall canvass the votes and record the result thereof. The candidate in each region receiving the highest vote shall be declared elected, except that, in region five, the candidate receiving the highest vote and the candidate receiving the next highest vote shall be declared elected. The balloting shall be so conducted that only eligible active members can vote, and the secrecy of the ballot shall be preserved. [Amended by 1973 c.114 §3; 1979 c.252 §15]

**9.050 Recall of governors.** On petition signed by 25 percent of the members in any region for the recall of any governor elected from that region, the executive director shall serve notice forthwith on such governor of the filing of the petition; and, if the governor does not resign

within 10 days from the date of such service, the executive director shall mail ballots to each active member of the bar within the region eligible to vote, submitting the question whether such governor shall be recalled. If a majority of the members voting at such election vote in favor of the recall, then the governor shall be recalled. [Amended by 1973 c.114 §4; 1979 c.252 §16]

**9.060 Vacancies; election of officers.** A president, vice president, secretary and treasurer shall be elected by the governors each year immediately following the annual election of governors and before the newly elected governors have qualified. The president and vice president shall be elected from among the board members. All officers shall continue in office until their successors are elected and qualify. Vacancies in the board of governors, or in any of the offices, shall be filled by the board by appointment for the remainder of the term. The secretary, the treasurer and such other assistants as the board may require, may be selected from within or without the membership of the board, and shall be paid such compensation as the board shall determine. All officers shall take office immediately upon their election.

**9.070 Duties of officers; bonds of secretary and treasurer; deposit and disbursement of fees.** (1) The president shall preside at all meetings of the state bar and of the board of governors, and in the absence or inability to act of the president, the vice president shall preside. However, the board of governors may designate another member of the bar to preside at meetings of the state bar. Other duties of the president and vice president and the duties of the secretary and treasurer shall be such as the board of governors may prescribe.

(2) The secretary and the treasurer shall each give bond, with some qualified surety company as surety, in such amount as the board shall fix, conditioned for the faithful accounting for all money received by them in their official capacities.

(3) All fees shall be paid into the treasury of the state bar, and when so paid shall become part of its funds and shall be disbursed only on order of the board of governors. [Amended by 1981 c.193 §4]

**9.080 Function of board; duties generally; professional liability fund; quorum; status of employes of Oregon State Bar; fee for registration of professional corporation.** (1) The state bar shall be governed by the board of governors, except as provided in ORS 9.130. The board is charged

with the executive functions of the state bar and shall at all times direct its power to the advancement of the science of jurisprudence and the improvement of the administration of justice. It shall have the authority to adopt, alter, amend and repeal bylaws and to adopt new bylaws containing provisions for the regulation and management of the affairs of the state bar not inconsistent with law.

(2)(a) The board shall have the authority to require all active members of the state bar engaged in the private practice of law in Oregon to carry professional liability insurance and shall be empowered, either by itself or in conjunction with other bar organizations, to do whatever is necessary and convenient to implement this provision, including the authority to own, organize and sponsor any insurance organization authorized under the laws of the State of Oregon and to establish a lawyer's professional liability fund. This fund shall pay, on behalf of members of the state bar in the private practice of law, all sums as may be provided under such plan which any member shall become legally obligated to pay as money damages because of any claim made against such member as a result of any act or omission of such member in rendering or failing to render professional services for others in the member's capacity as an attorney or caused by any other person for whose acts or omissions the member is legally responsible. The board shall have the authority to assess each member of the state bar in the private practice of law whose principal office is in Oregon for contributions to such fund, and to establish definitions of coverage to be provided by such fund. Any fund so established shall not be subject to the Insurance Code of the State of Oregon. Records of a claim against the fund are exempt from disclosure under ORS 192.410 to 192.500.

(b) For purposes of paragraph (a) of this subsection, an attorney is not engaged in the private practice of law if the attorney is a full-time employe of a corporation other than a corporation incorporated under ORS chapter 58, the state, an agency or department thereof, a county, city, special district or any other public or municipal corporation or any instrumentality thereof. However, an attorney who practices law outside of the attorney's full-time employment is engaged in the private practice of law.

(3) The board may appoint such committees, officers and employes as it deems necessary or proper and fix and pay their compensation and necessary expenses. At any meeting of the board, two-thirds of the total number of members then in office shall constitute a quorum. It shall pro-

mote and encourage voluntary county or other local bar associations.

(4) Except as provided in this subsection, an employe of the state bar shall not be considered an "employe" as the term is defined in the public employes' retirement laws. However, an employe of the state bar may, at the option of the employe, for the purpose of becoming a member of the Public Employes' Retirement System, be considered an "employe" as the term is defined in the public employes' retirement laws. The option, once exercised by written notification directed to the Public Employes' Retirement Board, may not be revoked subsequently, except as may otherwise be provided by law. Upon receipt of such notification by the Public Employes' Retirement Board, an employe of the state bar who would otherwise, but for the exemption provided in this subsection, be considered an "employe," as the term is defined in the public employes' retirement laws, shall be so considered. The state bar and its employes shall be exempt from the provisions of the State Personnel Relations Law. No member of the state bar shall be considered an "employe" as the term is defined in the public employes' retirement laws, the unemployment compensation laws and the State Personnel Relations Law solely by reason of membership in the state bar.

(5) The fee for registration of a professional corporation organized to provide legal services and the fee for annual renewal of a certificate of registration shall be established by the board each year. In establishing such fees, the board shall consider and be guided by the total anticipated cost to the state bar of issuing, renewing and amending certificates of registration.

[Amended by 1955 c.463 §2; 1975 c.641 §3; 1977 c.527 §1; 1979 c.508 §1; 1983 c.128 §2]

**9.090 Appropriation and disbursement of funds.** The board may make appropriations and disbursements from the funds of the bar and pay all necessary expenses. [Amended by 1969 c.314 §5; 1979 c.252 §17]

**9.100 Statement of receipts and expenditures.** The board shall have prepared annually an itemized statement showing the total amount of receipts and expenditures of the state bar for the 12 months preceding. Such statement shall be certified promptly under oath by the president and treasurer to the Chief Justice of the Supreme Court.

**9.110 Rules; special meetings; quorum at bar meetings.** The board may formulate and declare rules necessary or expedient for carrying out the functions of the state bar and

shall fix the manner and time of calling special meetings of the state bar. The board shall, however, call a special meeting of the state bar when so requested in writing by no fewer than 50 voting members from each of the regions specified in ORS 9.025. A quorum at any regular or special meeting of the state bar shall consist of 200 active members. [Amended by 1975 c.641 §4; 1981 c.193 §5]

**9.120 Annual meetings of bar; reports and recommendations.** An annual meeting of the bar shall be held at a time and place fixed by the board of governors. At the annual meeting, reports of the proceedings by the board since the last annual meeting, reports of other officers and committees and recommendations of the board shall be received.

**9.130 Authority of bar members at meetings and on questions referred.** (1)(a) Except as otherwise provided in paragraph (b) of this subsection and subsection (5) of this section, at any meeting of the state bar, the active members present, by a majority vote, may modify or rescind any action or decision of the board of governors and also may instruct the board as to future action, and the board shall be bound by any such action of the bar.

(b) A proposal which is adopted or defeated at any meeting of the bar shall be submitted to a vote of the membership conducted by mail ballot if, within 60 days after the vote at the meeting, it is requested by the following:

(A) By the board of governors on its own motion or, in its discretion, when desired by a section or committee; or

(B) By written petition of five percent of the membership or, if there has been a division of the house with respect to the proposal at the meeting of members, by written petition of a number of members of the bar exceeding the votes on the prevailing side at the meeting.

(2) The board of governors may, on its own motion, and at any time, refer to the members of the bar by mail ballot, any question or measure deemed by the board to be appropriate for submission to the members.

(3) By written initiative petition, signed by not less than five percent of the members of the bar, any measure appropriate for consideration by the members may be submitted to a vote of the membership conducted by mail ballot. Such initiative petition shall contain the full text of the measure so proposed.

(4) The board of governors shall cause to be conducted any mail ballots called for by subsection (1), (2) or (3) of this section pursuant to

bylaws or rules and regulations adopted by the board of governors for the conduct of such balloting. Any request or petition for a vote of the membership submitted pursuant to this section shall be filed with the executive director of the bar.

(5) The right of the bar to direct, modify or rescind an act of the board shall not include power to invalidate payments previously made under the direction of the board, shall not include power to direct, modify or rescind any assessment by the board for contributions to a professional liability fund under ORS 9.080 (2), and shall not apply to those powers of the board which are subject to the control or approval of or review by the Supreme Court, except as provided in ORS 9.490. [Amended by 1979 c.508 §2; 1981 c.193 §2; 1983 c.373 §1]

## MEMBERSHIP IN THE BAR

**9.160 Practice of law by persons other than active members.** Except for the right reserved to litigants by ORS 9.320 to prosecute or defend a cause in person, no person shall practice law or represent himself as qualified to practice law unless he is an active member of the Oregon State Bar.

**9.180 Classes of membership.** All persons admitted to practice law in this state thereby shall become active members of the bar. Every member shall be an active member unless, at the member's request, or for reasons prescribed by statute, the rules of the Supreme Court, or the rules of procedure, the member is enrolled as an inactive member. An inactive member may, on compliance with the rules of the Supreme Court and the rules of procedure and payment of all required fees, again become an active member. Inactive members shall not hold office or vote, but they shall have such other privileges as the board may provide. [Amended by 1961 c.499 §1; 1979 c.252 §18]

**9.190** [Amended by 1957 c.271 §1; 1961 c.138 §1; part renumbered 9.200 (2); repealed by 1969 c.602 §1 (9.191 enacted in lieu of 9.190)]

**9.191 Annual membership fees; professional liability assessments.** (1) Except as provided in subsection (2) of this section, the annual membership fees to be paid by members of the state bar on or before February 1 of each year shall be established by the board, and notice thereof shall be published and distributed to the membership on or before August 15 of the preceding year. Any increase in annual membership fees over the amount established for the preceding year must be approved by a majority

of members voting thereon at the annual meeting of the members.

(2) The annual membership fees for the year of admission to be paid by persons admitted to practice law in this state after February 1 of that year shall be established by the board.

(3) In establishing annual membership fees, the board shall consider and be guided by the anticipated financial needs of the state bar for the year for which the fees are established, time periods of membership and active or inactive status of members. Annual membership fees may include any amount assessed under any plan for professional liability insurance for attorneys engaged in the private practice of law in Oregon as provided in ORS 9.080 (2). No annual membership fees shall be required or assessed by the board for members who have been admitted to practice law in Oregon for 50 years or more except that such member shall be required to pay any amount assessed under any plan for professional liability insurance if such member is in the private practice of law in Oregon. [1969 c.602 §2 (enacted in lieu of 9.190); 1973 c.21 §1; 1975 c.641 §5; 1977 c.527 §2; 1979 c.508 §3]

**9.200 Effect of failure to pay membership fees; reinstatement.** (1) Any member in default in payment of membership fees established under ORS 9.191 (1) for a period of 90 days, or any person in default in payment of membership fees established under ORS 9.191 (2) for a period of 30 days after admission or as otherwise provided by the board, or any member in default in payment of assessed contributions to a professional liability fund under ORS 9.080 (2) for a period of 30 days, shall, after 60 days' written notice of the delinquency, be suspended from membership in the bar. The notice of delinquency shall be sent by the executive director, by registered or certified mail, to the member in default at the last-known post-office address of the member. Failure to pay the fees or contributions within 60 days after the date of the deposit of the notice in the post office shall automatically suspend the delinquent member. The names of all members suspended from membership for nonpayment of fees or contributions shall be certified by the executive director to the State Court Administrator and to each of the judges of the Court of Appeals, circuit, tax and district courts of the state.

(2) An active member delinquent in the payment of such fees or contributions shall not be entitled to vote.

(3) A member suspended for delinquency in payment of such fees or contributions shall be reinstated only on compliance with the rules of

the Supreme Court and the rules of procedure and payment of all required fees or contributions. [Amended by 1957 c.271 §1; 1961 c.499 §2; subsection (2) formerly part of 9.190; 1979 c.508 §4a]

**9.210 Board of bar examiners; fees of applicants for admission to bar.** The Supreme Court shall appoint 12 members of the Oregon State Bar to a board of bar examiners. The Supreme Court shall also appoint two public members to the board who are not active or inactive members of the Oregon State Bar. The board shall examine applicants and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court. With the approval of the Supreme Court, the board may fix and collect fees to be paid by applicants for admission, which fees shall be paid into the treasury of the bar. [Amended by 1979 c.252 §20; 1981 c.193 §6]

**9.220 General requirements for admission.** An applicant for admission as attorney must apply to the Supreme Court and show that the applicant:

(1) Is a resident of this state, and at least 18 years old, which proof may be made by the applicant's affidavit.

(2)(a) Is a person of good moral character.

(b) For purposes of this section and ORS 9.025, 9.070, 9.110, 9.130, 9.210, 9.250, 9.527 and 9.545, the lack of "good moral character" may be established by reference to acts or conduct that reflect moral turpitude or to acts or conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness and respect for the rights of others and for the laws of the state and the nation. The conduct or acts in question should be rationally connected to the applicant's fitness to practice law.

(3) Has the requisite learning and ability, which must be shown by the examination of the applicant, by the judges, or under their direction, in open court, at the term at which the application is made, except as provided in ORS 9.210. However, no rule shall establish any maximum on the number of times an applicant may apply for and take the bar examination whenever presented if the reason for refusing admission to practice law is failure to pass the bar examination. [Amended by 1973 c.827 §2; 1981 c.193 §7; 1983 c.373 §2]

**9.230** [Repealed by 1981 c.193 §12]

**9.240 Appearance of attorneys licensed in other jurisdictions.** An attorney of the highest court of record in any other state or country may appear, if associated with an active member of the Oregon State Bar, as counsel for a party in a particular action, suit or proceeding then pending in court, or before a judicial officer of this state. [Amended by 1961 c.499 §3]

**9.250 Oath of qualified applicant; order for admission.** If an applicant for admission as an attorney is found qualified, the court shall administer an oath to the applicant, that in the practice of law the applicant will support the Constitution and laws of the United States and of this state, and be of faithful and honest demeanor in office. The court shall then direct an order to be entered to the effect that the applicant is a resident of this state, of the age of 18 years, of good moral character, and possesses the requisite learning and ability to practice as an attorney in all the courts of this state, and has taken the oath of office. Upon the entry of the order, the applicant is entitled to practice as such attorney. [Amended by 1973 c.827 §3; 1981 c.193 §8]

**9.260 Resignation of attorney.** An attorney may, at any time, file in the office of the executive director a written resignation. After filing a resignation, the attorney is not entitled to the rights nor subject to the disabilities or prohibitions incident to that relation, except that the attorney is still subject to the power of the court in respect to matters arising prior to the resignation of the attorney. [Amended by 1953 c.604 §1; 1979 c.252 §21]

**9.270 Forwarding copy of resignation to State Court Administrator; readmission to practice.** The executive director shall immediately forward a copy thereof to the State Court Administrator, who shall file it in the office of the State Court Administrator. An attorney who has resigned may be readmitted to practice only on compliance with the rules of the Supreme Court and rules of procedure. [Amended by 1953 c.604 §1; 1961 c.499 §4; 1971 c.193 §17; 1979 c.252 §22]

## ATTORNEY AND CLIENT RELATIONSHIP

**9.310 Attorney defined; counsel.** An attorney is a person authorized to represent a party in the written proceedings in any action, suit or proceeding, in any stage thereof. An attorney, other than the one who represents the

party in the written proceedings, may also represent a party in court, or before a judicial officer, in which case he is known as counsel, and his authority is limited to the matters that transpire in the court or before such officer at the time.

**9.320 Necessity for employment of attorney; effect of employment.** Any action, suit, or proceeding may be prosecuted or defended by a party in person, or by attorney, except that the state or a corporation appears by attorney in all cases, unless otherwise specifically provided by law. Where a party appears by attorney, the written proceedings must be in the name of the attorney, who is the sole representative of his client as between him and the adverse party, except as provided in ORS 9.310. [Amended by 1975 c.451 §171]

**9.330 Authority of an attorney.** An attorney has authority to bind his client in any of the proceedings in an action, suit or proceeding, by his agreement, filed with the clerk or entered upon the journal of the court; and he also has authority to receive money or property claimed by his client in an action, suit or proceeding, during the pendency thereof, or within three years after judgment or decree, and upon the payment or delivery thereof to discharge the claim or acknowledge satisfaction of the judgment or decree. This section does not prevent a party from employing a new attorney to issue execution upon a judgment or decree, or to take other proceedings prescribed by law for its enforcement, and when he does so, the authority of the former attorney ceases.

**9.340 Challenge by party of attorney's authority to appear for party.** If it is alleged by a party for whom an attorney appears that he does so without authority, and the allegation is verified by the affidavit of the party, the court may, if it finds the allegation true, at any stage of the proceedings relieve the party for whom the attorney has assumed to appear from the consequences of the attorney's acts.

**9.350 Challenge of attorney's authority to appear for adverse party.** The court or judge thereof may, on motion of either party and on showing reasonable grounds therefor, require the attorney for an adverse party to prove the authority under which he appears, and until he does so, may stay all proceedings by him on behalf of the party for whom he assumes to appear.

**9.360 Compelling delivery by attorney of money or papers.** When an attorney refuses to deliver over money or papers to a

person from whom or for whom he has received them in the course of professional employment, he may be required by an order of the court in which a judicial proceeding was prosecuted or defended, or if none were prosecuted or defended, then by an order of the circuit court or judge thereof for the county where such attorney resides or may be found, to do so within a specified time, or show cause why he should not be punished for a contempt.

**9.370 Compelling delivery when attorney claims lien.** If an attorney claims a lien, under the provisions of ORS 87.440, upon the money or papers subject to delivery under ORS 9.360, the court shall:

(1) Impose, as a condition of making the order, the requirement that the client give security, in form and amount to be directed, to satisfy the lien when determined in an action or suit; or

(2) Summarily inquire into the facts on which the claim of a lien is founded, and determine the same; or

(3) Direct the trial of the controversy by a jury, or refer it, and upon the verdict or report, determine the same as in other cases. [Amended by 1975 c.648 §70]

**9.380 Mode of changing attorneys.** The attorney in an action, suit, or proceeding, may be changed, or the relationship of attorney and client terminated, as follows:

(1) Before judgment, decree or final determination, upon the consent of the attorney filed with the clerk or entered upon the journal; or,

(2) At any time, upon the order of the court or judge thereof, based on the application of the client or the attorney, for good and sufficient cause.

**9.390 Notice of change.** When an attorney is changed as provided in ORS 9.380, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, shall be given to the adverse party. Until then he is bound to recognize the former attorney.

## PROFESSIONAL CONDUCT

**9.460 Duties of attorneys.** An attorney shall:

(1) Support the Constitution and laws of the United States and of this state;

(2) Maintain the respect due to courts and judicial officers;

(3) Counsel or maintain such actions, suits, or proceedings or defenses only as may appear to him legal and just, except the defense of a person charged with a public offense;

(4) Employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth, and never seek to mislead the court or jury by any artifice or false statement of law or fact;

(5) Maintain inviolate the confidence, and at every peril to himself, preserve the secrets of his clients;

(6) Abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

(7) Not encourage the commencement or continuance of an action, suit or proceeding from any motives of passion or interest; and,

(8) Never reject, for any consideration personal to himself, the cause of the defenseless or the oppressed.

**9.470** [Repealed by 1965 c.353 §2]

**9.480** [Amended by 1965 c.353 §1; 1981 c.193 §9; renumbered 9.527]

**9.490 Formulation of rules of professional conduct.** The board of governors, with the approval of the state bar given at any regular or special meeting, shall formulate rules of professional conduct, and when such rules are adopted by the Supreme Court, shall have power to enforce the same. Such rules shall be binding upon all members of the bar.

## PROHIBITED CONDUCT

**9.500 Solicitation of personal injury business by nonlawyer.** No person shall solicit within the state any business on account of a claim for personal injuries to any person, or solicit any litigation on account of personal injuries to any person within the state, and any contract wherein any person not an attorney agrees to recover, either through litigation or otherwise, any damages for personal injuries to any person shall be void.

**9.505 Payment for referring claims resulting from personal injury or death.** No person shall offer or promise payment of money or other consideration, or accept any offer or promise of payment of money or other consideration, nor shall any person pay or accept money or other consideration, for referring to an attorney any claim for damage resulting from

personal injury or death. [1961 c.561 §1]

**9.510 Solicitation by attorneys.** No attorney shall solicit business at factories, mills, hospitals or other places, or retain members of a firm or runners or solicitors for the purpose of obtaining business on account of personal injuries to any person, or for the purpose of bringing damage suits on account of personal injuries.

**9.515 Referral of claims, suits or actions between attorneys; division of fees.** (1) Nothing contained in ORS 9.505 shall prevent referral of claims, suits or actions between attorneys.

(2) The provisions of ORS 9.505 shall not prohibit the referral of claims, suits or actions between attorneys or the dividing of fees for legal services with another lawyer based upon a division of services or responsibility. [1961 c.561 §§2, 3]

**9.520 Acceptance and prosecution of solicited claims.** No attorney shall accept from a solicitor described in ORS 9.500 any claim for damages, or bring an action for damages on account of any claim obtained from such solicitor. Any agreement between an attorney and such solicitor regarding compensation to be paid to the attorney or solicitor is void.

**9.525** [1975 c.641 §8; repealed by 1983 c.618 §1]

### BAR DISCIPLINARY PROCEEDINGS

**9.527 Grounds for disbarment, suspension or reprimand.** The Supreme Court may disbar, suspend or reprimand a member of the bar whenever, upon proper proceedings for that purpose, it appears to the court that:

(1) The member has committed an act or carried on a course of conduct of such nature that, if the member were applying for admission to the bar, the application should be denied;

(2) The member has been convicted in any jurisdiction of an offense which is a misdemeanor or involving moral turpitude or a felony under the laws of this state, or is punishable by death or imprisonment under the laws of the United States, in any of which cases the record of the conviction shall be conclusive evidence;

(3) The member has wilfully disobeyed an order of a court requiring the member to do or forbear an act connected with the legal profession;

(4) The member is guilty of wilful deceit or misconduct in the legal profession;

(5) The member is guilty of wilful violation of any of the provisions of ORS 9.460 or 9.510;

(6) The member is guilty of gross or repeated negligence or incompetence in the practice of law; or

(7) The member has refused an invitation for an informal interview with the board of governors or its designees under ORS 9.545.

[Formerly 9.480]

**Note:** Section 10, chapter 618, Oregon Laws 1983, provides:

**Sec. 10.** The provisions of sections 2 to 9 of this Act shall first become operative on January 1, 1984, and shall apply to all formal charges filed on or after that date.

**9.529 Status of proceedings relating to discipline, admission or reinstatement.** Bar proceedings relating to discipline, admission and reinstatement are neither civil nor criminal in nature. They are sui generis and within the inherent power of the Supreme Court to control. The grounds for denying any applicant admission or reinstatement or for the discipline of attorneys set forth in this chapter are not intended to limit or alter the inherent power of the Supreme Court to deny any applicant admission or reinstatement to the bar or to discipline a member of the bar. [1983 c.618 §3]

**9.530** [Repealed by 1965 c.353 §2]

**9.532 Local professional responsibility committees; state professional responsibility board; powers; witnesses; subpoenas; oaths.** (1) The board of governors shall create local professional responsibility committees to investigate the conduct of attorneys. The composition and authority of local professional responsibility committees shall be as provided in the rules of procedure.

(2) The board of governors shall also create a state professional responsibility board to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure.

(3)(a) The state professional responsibility board and local professional responsibility committees shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the member being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(b) A witness in an investigation conducted by the state professional responsibility board or a local professional responsibility committee who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The state professional responsibility board or local professional responsibility committees may enforce any subpoena issued pursuant to paragraph (a) of this subsection by application to any circuit court.

(c) Any member of the state professional responsibility board or a local professional responsibility committee may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection. [1983 c.618 §4]

**9.534 Disciplinary board; procedure before board; oaths; subpoenas; hearing; record.** (1) The Supreme Court shall appoint a disciplinary board to hear formal charges against members of the bar. The composition and authority of, and procedure before, the disciplinary board or panels thereof shall be as provided in the rules of procedure.

(2) A member, formally accused of misconduct by the bar, shall be given reasonable written notice of the charges against the member, a reasonable opportunity to defend against the charges, the right to be represented by counsel, and the right to examine and cross-examine witnesses. The member shall also have the right to appear and testify, and the right to the issuance of subpoenas for attendance of witnesses and the production of books, papers or documents in the defense of the member.

(3) Rules of evidence and discovery in disciplinary proceedings shall be as provided in the rules of procedure.

(4)(a) The disciplinary board shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the accused member, and the production of books, papers and documents pertaining to the matter before the disciplinary board.

(b) A witness in a disciplinary proceeding who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. Subpoenas issued pursuant to paragraph (a) of this subsection may be enforced by application to any circuit court.

(c) Any member of the disciplinary board may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection.

(5) The hearing before the disciplinary board shall be held in the county in which the member charged maintains an office for the practice of law, the county in which the member resides, or the county in which the offense is alleged to have been committed. With the consent of the member, the hearing may be held elsewhere in the state.

(6) A record of all hearings shall be made and preserved by the disciplinary board. [1983 c.618 §5]

9.535 [1975 c.641 §9; 1979 c.450 §1; repealed by 1983 c.618 §1]

**9.536 Board decision; appeal to Supreme Court; review; costs.** (1) Upon the conclusion of a hearing, the disciplinary board shall file with the Supreme Court Administrator a written decision in the matter. If the decision of the disciplinary board finds the accused attorney has not committed the alleged wrongdoing or determines that the accused attorney should be disciplined by way of reprimand or suspension from the practice of law up to a period of 60 days, the bar or the accused, as the case may be, may seek review by the Supreme Court. Such review shall be a matter of right upon the request of either party. Otherwise, the decision of the disciplinary board shall be final. The procedure for seeking discretionary review and on review shall be as provided in the rules of procedure.

(2) If the decision of the disciplinary board is to suspend the accused attorney from the practice of law for a period of longer than 60 days or to disbar the accused attorney, the matter shall be reviewed by the Supreme Court. The procedure on review shall be as provided in the rules of procedure.

(3) When a matter is before the Supreme Court for review, the court shall consider the matter de novo and may adopt, modify or reject the decision of the disciplinary board in whole or in part and thereupon enter an appropriate order.

(4) The Supreme Court, or the disciplinary board in cases where its decision has become final, may award judgment in any bar proceeding for all or part of a party's actual and necessary costs and disbursements incurred. The procedures for recovery of such costs and disbursements shall be the same as in civil cases.

(5) The State Court Administrator shall enter any judgment for costs and disbursements in the records of the Supreme Court and shall

forward a certified copy of the judgment to the clerk of the circuit court of the county in which the member or applicant resides or maintains an office for the practice of law or other business. If a judgment for costs and disbursements is entered against the bar, the State Court Administrator shall forward a certified copy of the judgment to the clerk of the circuit court of the county in which the bar maintains its principal place of business. On receipt of a certified copy of the judgment, the clerk of the circuit court shall file it and cause it to be entered in the circuit court journal and docketed in the judgment lien docket of the county. Such judgment shall thereafter have the same force and effect, may be enforced by execution in the same manner, may be renewed in the same manner and, upon payment, shall be satisfied in the same manner as other judgments entered in circuit court. [1983 c.618 §6]

**9.537 Civil immunity of witnesses; bar officials and employes.** (1) Any person who has made a complaint to the bar concerning the conduct of an attorney, or who has given information or testimony in or relative to a proposed or pending admission, reinstatement or disciplinary proceeding shall be absolutely immune from civil liability for any such acts.

(2) The Oregon State Bar, its officers, the members of local professional responsibility committees, the state professional responsibility board, the board of bar examiners, the board of governors, the disciplinary board, and bar counsel, investigators and employes of the bar shall be absolutely immune from civil liability in the performance of their duties relative to proposed or pending admission, reinstatement or disciplinary proceedings. [1983 c.618 §7]

**9.539 Application to admission and reinstatement proceedings.** ORS 9.534 and 9.536 apply to admission and reinstatement proceedings to the extent provided in the rules of procedure. However, the Supreme Court shall review the decisions of the disciplinary board in all such matters. [1983 c.618 §8]

**9.540** [Amended by 1961 c.499 §5; 1971 c.193 §18; repealed by 1973 c.490 §1 (9.541 enacted in lieu of 9.540)]

**9.541** [1973 c.490 §2 (enacted in lieu of 9.540); repealed by 1975 c.641 §13]

**9.542 Rules of board of governors.** The board of governors, subject to the approval of the Supreme Court, may adopt rules of procedure relating to the investigation of the conduct of attorneys and applicants for admission and reinstatement to the bar, and relating to the conduct of admission, reinstatement and disciplinary proceedings. [1983 c.618 §9]

**9.545 State lawyers assistance committee duties; information confidential.**

(1)(a) The board of governors may create a state lawyers assistance committee for the purpose of implementing a lawyers assistance program and, pursuant thereto, authorize the state lawyers assistance committee to investigate and resolve complaints or referrals regarding lawyers whose performance or conduct may impair their ability to practice law or professional competence. The board may also create local lawyers assistance committees to investigate complaints or referrals for the state lawyers assistance committee.

(b) The board of governors may adopt rules for the processing and resolution of complaints or referrals under the lawyers assistance program.

(c) The purpose of lawyers assistance is to provide supervision and assistance to those lawyers whose performance or conduct may impair their ability to practice law or professional competence.

(2)(a) Any information provided to, or obtained by, the state lawyers assistance committee or any local lawyers assistance committee, or designees thereof shall be exempt from the provisions of ORS 192.410 to 192.500 and shall be inadmissible as evidence in any disciplinary or civil proceeding. The limitations placed on the disclosure and admissibility of information in this section shall not apply to information relating to a lawyer's noncooperation with the state lawyers assistance committee, any local lawyers assistance committee or designees thereof or to information otherwise obtained by the bar from any other source.

(b) All meetings of the state lawyers assistance committee and the local lawyers assistance committees created by the board shall be exempt from the provisions of ORS 192.610 to 192.690.

(3) Any person who makes a complaint or referral to the bar as to the competence of an attorney or provides information or testimony in connection with the lawyers assistance program authorized by this section shall not be subject to an action for civil damages as a result thereof.

(4) With respect to their acts in connection with the lawyers assistance program authorized by this section, the same privileges and immunities from civil and criminal proceedings that apply to prosecuting and judicial officers of the state shall apply to the board of governors, all officers and employes of the bar, and the members of the state lawyers assistance committee, local lawyers assistance committees, and their designees.

(5) For the purposes of this section, designees shall include investigators, attorneys, counselors, staff personnel and any other individual or entity acting on behalf of or at the request of the state lawyers assistance committee or local lawyers assistance committees created by the board of governors. [1983 c.617 §2 (enacted in lieu of 9.595)]

**9.550** [Amended by 1961 c.499 §6; 1973 c.490 §3; 1975 c.641 §6; 1979 c.252 §23; repealed by 1983 c.618 §1]

**9.560** [Amended by 1963 c.106 §1; 1973 c.490 §4; 1975 c.641 §7; 1979 c.252 §24; repealed by 1983 c.618 §1]

**9.570** [Repealed by 1983 c.618 §1]

**9.580** [Repealed by 1983 c.618 §1]

**9.590** [Repealed by 1953 c.609 §2]

**9.595** [1981 c.193 §11; repealed by 1983 c.618 §1 (9.545 enacted in lieu of 9.595)]

**9.600** [Repealed by 1953 c.609 §2]

**9.610** [Repealed by 1953 c.609 §2]

#### CLIENT SECURITY FUND

**9.615 Definitions for ORS 9.615 to 9.665.** As used in ORS 9.615 to 9.665, "client security fund" means a fund created under ORS 9.625. [1967 c.546 §2]

**9.620** [Repealed by 1953 c.609 §2]

**9.625 Plan to relieve client losses.** The board of governors may adopt a plan to relieve or mitigate pecuniary losses to the clients of active members caused by dishonest conduct of those members in their practice of law. The plan may provide for establishing, administering and dissolving a separate fund and for payments from that fund to reimburse losses and costs and expenses of administering the fund. The insurance laws of the state shall not apply to this fund. [1967 c.546 §3; 1975 c.641 §10]

**9.630** [Repealed by 1953 c.609 §2]

**9.635 Sources of client security fund.** A client security fund may include:

(1) Transfers by the board of governors from other funds of the state bar;

(2) Voluntary contributions and payments by members under ORS 9.645;

(3) Claims recovered under ORS 9.665; and

(4) Income from investments of the fund.

[1967 c.546 §4]

**9.640** [Repealed by 1953 c.609 §2]

**9.645 Annual payment by state bar members.** To establish and maintain a client security fund, the board of governors may re-

quire an annual payment of not to exceed \$15 by each active member of the state bar. The payment authorized by this section shall be due at the same time, and enforced in the same manner, as payment of the annual membership fee. [1967 c.546 §5; 1975 c.641 §11; 1979 c.314 §1; 1983 c.122 §1]

**9.650** [Repealed by 1953 c.609 §2]

**9.655 Investigation of claim of loss; subpoena.** (1) Upon the filing of a claim, verified under oath, by a client claiming a pecuniary loss under ORS 9.625, the board or its designated representative shall determine if the person named in the claim as the attorney whose dishonest conduct caused the loss:

(a) Maintained an office in the State of Oregon at the time of the transaction out of which the claim arose; and

(b) Has been found guilty of a crime arising out of the claimed dishonest conduct which caused the loss; or

(c) Has been the object of a judgment or decree entered in any proceeding arising out of the claimed dishonest conduct which caused the loss and, if the object of a judgment for money entered in favor of the claimant, has failed to pay the judgment, and execution issued on the judgment has been returned uncollected or that issuance of execution would be a useless act.

(2) After complying with subsection (1) of this section, if the board or representative requires additional information to determine the claim, the board or the representative may compel by subpoena the person named in the claim as the attorney whose dishonest conduct caused the loss, or any other person having knowledge of the matter, to appear for the purpose of giving testimony, and may compel by subpoena the production of records and documents pertinent to the claim. The subpoena shall have the same force and effect as in a civil action in the circuit court, and may be enforced by order of the circuit court for the county in which the person was served. [1967 c.546 §6; 1975 c.641 §12; 1979 c.383 §1]

**9.660** [Repealed by 1953 c.609 §2]

**9.665 Authority for reimbursement of client; subrogation for amount paid.** Reimbursement from the client security fund is discretionary; however, the board shall not authorize payment unless the conditions of ORS 9.655 (1)(a) or (b) have been found to exist. The state bar is subrogated, in the amount that a client's claim is reimbursed from the client security fund, to all rights and remedies of that client against the attorney whose dishonest

conduct caused the loss, or against his estate.

[1967 c.546 §7]

**9.670** [Repealed by 1953 c.609 §2]

**9.680** [Repealed by 1953 c.609 §2]

**9.690** [Repealed by 1953 c.609 §2]

### SEARCH OR SEIZURE OF LAWYER FILES OR PREMISES

**9.695 Status of files or work premises of lawyer; inadmissibility of evidence subject to search or seizure.** (1) Notwithstanding ORS 133.535, the files, papers, effects or work premises of a lawyer relating to the provision of legal service by the lawyer shall not be subject to search or seizure by any law enforcement officer, either by search warrant or otherwise.

(2) The provisions of subsection (1) of this section do not apply where there is probable cause to believe that the lawyer has committed, is committing or is about to commit a crime.

(3) As used in this section, "lawyer" means a member of the Oregon State Bar or a person licensed to practice law in any court of this state or any court of record of the United States or of any state, territory or other jurisdiction of the United States.

(4) Evidence or the fruits thereof obtained in violation of this section shall be inadmissible in any criminal or civil action or proceeding, except for an action or suit brought for violation of this section or the rights protected thereby. [1981 c.908 §1]

**9.700** [Repealed by 1953 c.609 §2]

### ASSUMING PRACTICE OF NONPERFORMING ATTORNEY

**9.705 Definitions for ORS 9.705 to 9.755.** As used in ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755:

(1) "Affected attorney" means a member or former member of the Oregon State Bar whose law practice is placed within the jurisdiction of the court or as to whom a petition has been filed to place such law practice within the jurisdiction of the court.

(2) "Law practice" means a practice conducted by an individual, a partnership or a professional corporation. [1979 c.252 §2]

**9.710 Jurisdiction of circuit court when attorney fails to devote adequate attention to practice or interest of clients.** The circuit court of the county in which an attorney engaged in the practice of law in this state maintains or has maintained a principal office shall have jurisdiction as provided in ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 whenever such attorney:

(1) Without good reason has ceased to devote or is incapable of devoting time and attention, personally or through another attorney, to the law practice of the attorney; or

(2) For any reason has ceased to devote or is incapable of devoting the time and attention, personally or through another attorney, to the law practice of the attorney which is necessary to protect the interests of the clients of the attorney. [1979 c.252 §3]

**9.715 Effect of failure to respond to inquiry from Oregon State Bar.** If the affected attorney fails to respond adequately to inquiries sent by registered mail from the bar to the last-known address of that attorney regarding the alleged failure of the affected attorney to serve and protect adequately the interests of that client of the attorney, either personally or through another attorney, the board of governors may petition the court to take jurisdiction over the law practice of an affected attorney as provided in ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755. Notice of the filing of the petition, and a copy thereof, shall be served upon the affected attorney, or if appropriate, upon the heirs of the affected attorney, personal representatives or conservators together with notice of time and place for hearing upon said petition. Service may be made by personal or substituted service as provided by law for service of a summons, or in the alternative, may be made by certified or registered mail, return receipt requested, addressed to the affected attorney at the latest address shown on the official membership records of the Oregon State Bar or to the personal representative or conservator of the affected attorney at the latest address shown in the probate proceeding. The court may prescribe additional alternative methods of service as it deems necessary to protect the interest of the affected attorney. Hearing upon said petition shall be held not sooner than five days, nor more than 15 days, after the filing of the petition. [1979 c.252 §4]

**9.720 Court assuming law practice; hearing.** If after notice and an opportunity to be heard the court finds that it has jurisdiction

and finds that the assumption of such jurisdiction is necessary in order to protect the interest of the clients of the affected attorney or to protect the public interest, the court may, by appropriate order, immediately take jurisdiction over the law practice of the affected attorney, including all legal files, clients' trust funds, clients' property and all books, records, funds and property used in the law practice of the affected attorney. [1979 c.252 §5]

**9.725 Appointment of custodians of law practice; duties of custodian and court.** (1) If the court assumes jurisdiction under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755, it shall appoint one or more attorneys who are members in good standing of the Oregon State Bar to act as custodian of the law practice of the affected attorney. Immediately upon appointment, such custodian shall take possession and control of all property comprising the law practice of the affected attorney. The court may order any custodian appointed under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 to do one or more of the following:

(a) Examine the files and records of the law practice and obtain information as to any pending matters which may require attention;

(b) Notify persons and entities who appear to be clients of the affected attorney that the court has assumed jurisdiction and inform such persons that it may be in their best interest to obtain other legal counsel;

(c) Apply for extensions of time pending employment of other counsel by the client;

(d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained;

(e) Give notice to appropriate persons and entities who may be affected, other than clients, that the court has assumed jurisdiction;

(f) Arrange for the surrender or delivery of clients' papers or property; and

(g) Do such other acts as the court may direct to carry out the purposes of ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755.

(2) The court shall have jurisdiction over the files, records and property of the affected attorney for the purposes of ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755, and may make all orders necessary or appropriate to protect the interest of the affected attorney, the clients of

the affected attorney and the public. [1979 c.252 §6]

**9.730 Restriction of custodian's practice.** An attorney appointed as custodian under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755, and any professional corporation, partner, associate or person sharing office with such custodian shall be prohibited from accepting employment by any client of the affected attorney as to any legal matter pending at the time of the custodian's appointment, provided, however, that any act done by such custodian pursuant to order of the court under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 shall not be deemed acceptance of employment. [1979 c. 252 §9]

**9.735 Compensation for custodian; lien status of compensation order.** The court shall award reasonable compensation and expenses to any attorney who acts as custodian under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755. The court's order shall be in the form of a judgment for the amount of such award against the affected attorney or the estate of the affected attorney. Said judgment shall be a lien upon all nontrust funds, office furnishings, supplies, equipment, library and other personal property used in the law practice of the affected attorney retroactive to the date of filing of the petition for jurisdiction under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755. Said judgment lien shall be subordinate to nonpossessory liens and security interest created prior to its taking effect, and may be foreclosed as provided in ORS chapter 87. [1979 c.252 §11]

**9.740 Court orders appealable; stay.** Jurisdictional and final orders of the circuit court pursuant to ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 are appealable but may not be stayed except as ordered by the circuit court or any appellate court. [1979 c.252 §7]

**9.745 Statutes of limitation suspended.** Any applicable statute of limitations or time limit for the filing set by statute or rule of court as it relates to the affected attorney's clients shall be suspended automatically by the filing of a petition for jurisdiction under ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 for a period of 120 days following the date of filing of such petition. [1979 c.252 §8]

**9.750 Applicability of lawyer-client privilege to examination of files and records.** Persons examining the files and records of the law practice of the affected attorney pursuant to ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 shall observe the lawyer-client privilege and shall make disclosure only to the extent necessary to carry out the purposes of ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755. Such disclosure is a disclosure which is reasonably necessary for the accomplishment of the purpose for which the affected attorney was consulted. The appointment of such custodian shall not affect the lawyer-client privilege which privilege shall apply to communications by or to the custodian to the same extent as it would have applied to communications by or to the affected attorney. [1979 c.252 §10]

**9.755 Final report of custodian; petition for compensation; court approval.** Whenever the purposes of ORS 9.005, 9.040, 9.050, 9.090, 9.180, 9.200, 9.210, 9.260, 9.270, 9.550, 9.560 and 9.705 to 9.755 have been accomplished with respect to the law practice of an affected attorney, the custodian attorney shall file with the court a final report and accounting of all funds and property coming into the custody of that attorney. A copy thereof and a copy of the petition of custodian attorney for compensation and expenses shall be mailed to all persons upon whom service was made pursuant to ORS 9.715. Upon approval by the court an order shall be entered approving the final report and accounting, fixing the amount of compensation and expenses to be allowed to the custodian attorney, and discharging the custodian attorney from further duties. [1979 c.252 §12]

## LAW LIBRARIES

**9.760 Supreme Court Library; copying services; fees.** The Supreme Court Library shall be under the control of the Supreme Court. The court shall make all rules for the government, use and services of the library. The court may authorize the library to provide photographic or other copies of any of its materials, and to make reasonable charges for such copies or services at rates approved by the court. All sums collected shall be remitted monthly or oftener to the State Treasurer. [Amended by 1959 c.655 §1]

**9.770 Librarian and assistants; compensation; bond; applicability of public employees' retirement and unemploy-**

**ment compensation laws.** (1) The Supreme Court shall appoint the Librarian of the Supreme Court Library and such assistants as it deems necessary and shall fix the compensation of the librarian and assistants. The librarian shall give an undertaking to the state in the sum of \$1,000, with one or more sufficient sureties, to be approved by a majority of the judges of the Supreme Court, to the effect that he will faithfully and impartially perform the duties of his office and safely keep and account for the public property committed to his custody.

(2) The Librarian of the Supreme Court Library shall not be considered an "employee" as the term is defined in the public employees' retirement laws and as such term is defined in the unemployment compensation laws. However, the Librarian of the Supreme Court Library may, at his option, for the purpose of becoming a member of the Public Employees' Retirement System, be considered an "employee" as the term is defined in the public employees' retirement laws. Such option may be exercised only at the end of the librarian's first six months of service. The option, once exercised by written notification directed to the Public Employees' Retirement Board, may not be revoked subsequently, except as may otherwise be provided by law. [Amended by 1959 c.655 §2]

**9.780 Exchange of legal books and publications.** The Librarian of the Supreme Court Library may send, free of charge, one copy of the codes, session laws and Supreme Court reports of this state as the same may be published, to each state and foreign country that exchanges, free of charge, its codes, session laws and Supreme Court reports with this state. All legal books and publications received in exchange by the state shall be turned over to the Supreme Court Library.

**9.790 Secretary of State furnishing librarian with copies for exchange.** The Secretary of State shall, upon requisition of the Supreme Court, supply the Librarian of the Supreme Court Library with a sufficient number of copies of the codes, session laws and Supreme Court reports of this state, as the same may be published, to enable the librarian to carry out the provisions of ORS 9.780.

**9.800 Sale of surplus codes and session laws.** The Librarian of the Supreme Court Library may sell, at prices to be fixed by him with the approval of the Supreme Court, the unused sets of Oregon codes and session laws in the custody of the librarian which are not needed by him for the purpose of exchanging for the

codes and session laws of other states and for other books.

**9.810 Terms of sale; disposition of proceeds.** The sales described in ORS 9.800 shall be for cash, and the proceeds shall be turned over by the librarian to the State Treasurer and become a part of the General Fund.

**9.820 Law libraries in Multnomah County.** In all counties containing more than 400,000 inhabitants, according to the latest federal decennial census, the county court or board of county commissioners may contract with any law library association or corporation owning and maintaining a law library in the county at or convenient to the courthouse, for the use of the library by the judges of the circuit and county courts, county commissioners, district attorney and all members of the bar, and shall, if the association permits the use of its library by all members of the bar without charge, pay therefor all library fees collected pursuant to ORS 21.350 (1) to the library association or corporation for the use of the library. [Amended by 1963 c.519 §1; 1965 c.619 §3]

**9.830 Disposition of library fees in Multnomah County.** Fees collected pursuant to ORS 21.350 (1) shall be paid, in the manner determined by the State Court Administrator, to the appropriate officer of the county within the first 25 days of the month following the month in which collected, for payment to the library association or corporation contracted with pursuant to ORS 9.820. [Amended by 1965 c.619 §4; 1981 s.s. c.3 §78; 1983 c.763 §36]

**9.840 Law libraries in counties other than Multnomah County.** The county court of any county containing not more than 400,000 inhabitants, according to the latest federal decennial census, may, after a resolution duly passed by the bar association of the county therefor has been filed with the county clerk, pass a resolution at a regular meeting of the county court, declaring that the county maintains and operates a law library as described in ORS 21.350 (2), or that the county proposes,

after the passing of the resolution by the county court, to establish, maintain and operate such a library, and reciting that the county has a population of not more than 400,000, according to the latest federal decennial census. Such resolution shall be authorization and direction to the clerk of a court to collect the fees prescribed in ORS 21.350 (1). Fees so collected shall be paid, in the manner determined by the State Court Administrator, to the appropriate officer of the county within the first 25 days of the month following the month in which collected. [Amended by 1963 c.519 §2; 1965 c.619 §5; 1981 s.s. c.3 §79; 1983 c.763 §37]

**9.850 Disposition of library fees in counties other than Multnomah County.** In all counties containing not more than 400,000 inhabitants, according to the latest federal decennial census, the county court may use such part of the law library fees collected pursuant to ORS 21.350 (1) as it deems desirable for the purpose of acquiring, maintaining or operating a law library at the county seat of the county, at such place as it may direct; but no part of the moneys received from such law library fees shall be used for any purpose other than acquiring, maintaining or operating such law library. [Amended by 1963 c.519 §3; 1965 c.619 §6]

## PENALTIES

**9.990 Penalties.** (1) Any person who violates ORS 9.160 shall be fined not more than \$500 or imprisoned in the county jail for a period not to exceed six months, or both.

(2) Any person who violates any of the provisions of ORS 9.500 or 9.520 shall be fined not more than \$1,000.

(3) Any person violating any of the provisions of ORS 9.505 shall, upon conviction, be fined not more than \$1,000 or imprisoned in the county jail for a period not to exceed one year, or both. [Subsection (3) enacted as 1961 c.561 §4]

