

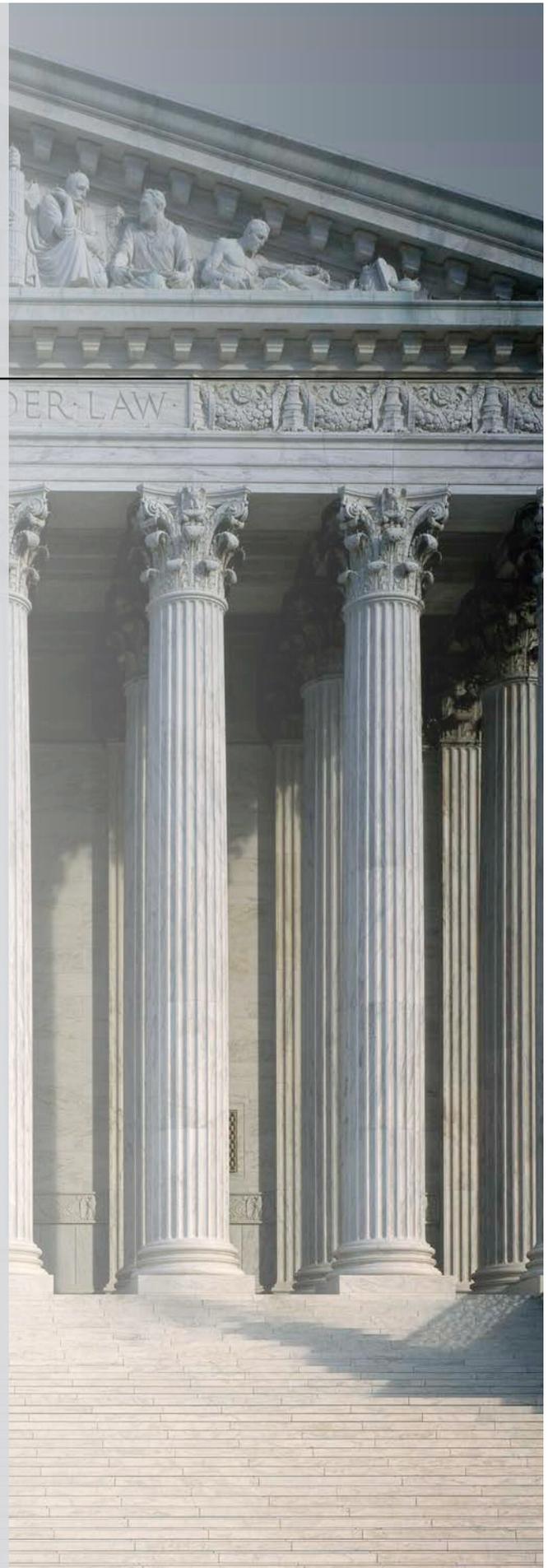


Mandatory State Bar Associations

# Managing Keller

The following information regarding mandatory bars and how they manage Keller related activities was compiled by State Bar of Michigan between February 2014 and May 2014. This was a significant research initiative to support the Michigan Supreme Court Task Force on the Role of the State Bar of Michigan. As information was gathered, executive directors from several state bars expressed an interest in receiving this compilation of material. We are pleased to share this information with those who find it useful. Please note that the State Bar of Michigan does not update this compilation as policies and statutes change in various states. Users are encouraged to check with the state bars directly to learn of any relevant changes.

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# The State Bar's legislative-lobbying scorecard



The State Bar of Montana had a good batting average when it came to lobbying for or against bills in the 2011 Legislature. As the list below shows, three out of four bills the Bar actively supported became law (the fourth was passed by the Legislature but vetoed by the governor). Of the 13 bills the Bar actively opposed, only one was passed into law.

## Bills supported by State Bar

- **HB 306** eliminating the requirement for a notary public to keep and maintain a journal. **BILL VETOED BY GOVERNOR AND DIED.**
- **SB 21**, authorizing a district court to dismiss a civil action for lack of prosecution after a period of time. **BECAME LAW.**
- **SB 41**, allowing a city to establish a city court of record; providing that appeals from a city court of record are on the record and not de novo. **BECAME LAW.**
- **SB 238** would increase the jurisdictional limit for justice, city, and small-claims courts. **BECAME LAW.**

## Bills opposed by State Bar

- **HB 245** would have cut the number of Supreme Court justices from seven justices to five. **BILL DIED.**
- **HB 281** would have revised the statutes relating to guardians ad litem. **BILL DIED.**
- **HB 332** would have restored the right of a "fully informed jury," allowing a jury to judge both the facts of a civil or criminal case and the applicable law. **BILL DIED.**
- **HB 371** would have revised statutes on the practice of law. **BILL DIED.**
- **HB 455** would have amended the Montana Administrative

## **Lobbying reimbursement for members**

The U.S. Supreme Court ruled that unified bar associations, in which membership and dues are mandatory, must refund a portion of those dues when the association lobbies on a legislative bill in a stance with which a member doesn't agree. The State Bar of Montana had \$10,685 in lobbying expenses this year. Divided by 3,524 active members, the refund amount for each of the bills listed in the accompanying article is 20 cents. To receive a refund, list the bill on which you disagreed with the State Bar's position and send the list to: **Lobbying Refund, State Bar of Montana, PO Box 577, Helena MT 59624.**

Procedure Act to allow non-attorney representation before agencies. **BILL DIED.**

- **HB 521** to set up a referendum to provide for partisan election of Supreme Court justices and district court judges. Missed deadline for transmittal to Senate. **BILL DIED.**
- **HB 557** would have allowed political parties to support and oppose judicial candidates. **BILL DIED.**
- **SB 268** would set up a referendum to require election of Supreme Court justices from districts. **BECAME LAW.**
- **SB 322** would have set up a referendum to establish the venue for lawsuits against the Legislature that challenge the constitutionality of a statute. **BILL DIED.**
- **SB 323** would set up a referendum to allow two-thirds of the Legislature to override court decisions that invalidate a statute. **BILL DIED.**
- **SB 378** required mail notice before filing a instrument affecting title to or possession of real property. **BILL DIED.**

## **Court budget gets some line-items back**

The Judicial Branch received funding in several key areas from the Legislature, said a report from the Court Administrator's Office:

Major proposals that were funded:

- New judges and support staff: \$955,253.
  - Court Help Program: \$591,445
  - Associate water court judge & support staff (3.5 FTE): \$424,286
- Before the legislative session, the Judicial Branch was statutorily required

to submit a plan to reduce its base budget by 5 percent (i.e., \$1.7 million each year). This plan was adopted by the Branch's budget subcommittee. The Branch later succeeded in getting some of these reductions restored, including:

- Drug court funding: \$495,898.
- Family evaluator programs in Judicial Districts 11 and 13: \$177,256.
- 6.6 FTE (currently filled): \$690,854

Remaining 5 percent plan reductions

that were not restored include:

- 6.0 FTE eliminated (currently vacant): \$454,464
  - 2 percent vacancy savings: \$806,102
  - Operating expenses: \$583,112
- Other reductions to the Judicial Branch budget included:
- Selected IT and other contracts: \$141,338
  - Other (rent, workers' compensation, out-of-state travel): \$107,030
- Total reductions for next biennium are approximately \$2 million, the Court report said.

# POLICIES OF THE BOARD OF TRUSTEES

## CHAPTER 1 ORGANIZATION

### 1 - 101 MEETINGS OF THE BOARD OF TRUSTEES

The Board of Trustees shall meet on the second Friday of December and April, and the third Friday of June of each year and at the annual meeting.

### 1 - 102 MOTIONS AND SECONDS

The names of persons making motions and providing seconds to motions shall not be recorded in meeting minutes of the Board of Trustees.

### 1 - 104 TRUSTEE JOB DESCRIPTION

The duties of each Trustee of the State Bar of Montana are as follows:

1. To attend each Board of Trustee meeting.
2. To attend the annual meeting of the State Bar of Montana.
3. To actively participate on all committees of which he or she is a member.
4. To regularly attend the meetings of local bar associations within his or her area and to make such reports about State Bar activities at such meetings as are appropriate.
5. To report back to the Board of Trustees at least annually concerning local bar activities in his or her area.
6. To actively encourage and sponsor formation of local bar associations within his or her area.
7. In connection with any committee or section to which a Trustee has been appointed as a liaison member, each Trustee shall:
  - a. as a voting member of the committee or section, encourage the committee or section to attain its assigned objectives;
  - b. attend meetings of the committee or section;
  - c. report on the committee or section activities at quarterly meetings of the Board of Trustees;
  - d. serve as the author of his/her committee or section's portion of the annual report of the State Bar for publication in *The Montana Lawyer*. Such report shall be in a form to be coordinated with the Executive Director. Trustee liaisons are to be appointed by the President on the basis of interest, diversity and experience.
8. To accomplish such other purposes as may from time to time be appropriate.

### 1-105 ANNUAL MEETING POLICY

1. **Site Selection.** The Board of Trustees shall choose the site of the annual meeting at the April Board of Trustees meeting two years prior thereto. This time may be extended by the Trustees.

2. **Annual Meeting Committee.** The president shall appoint an annual meeting committee.

The annual meeting committee shall have the primary responsibility for the annual business meeting, committee meetings and insuring that traditional protocol is observed.

3. **Policy.** It is the policy of the State Bar of Montana that its annual meeting is an important and significant event and that all members of this organization should be encouraged to attend. It shall be the objective of this committee to organize and plan the best possible convention under the existing circumstances. Well-known entertainers and speakers should be featured. Sufficient CLE programs should be available as would permit a member to satisfy all or a substantial part of his or her annual CLE requirements.

### 1 - 107 SUPREME COURT JUSTICES - ANNUAL MEETING

Supreme Court Justices and their spouses shall be admitted to annual meeting activities free of charge.

### 1 - 108 RULES FOR SUBMISSION OF RESOLUTIONS TO ANNUAL MEETING

1. There is hereby established a standing committee of the Association to be known as "The Resolutions Committee." The committee shall consist of seven members. Members shall be appointed and replaced according to the rules applicable to standing committees generally.

2. Every action of the membership of the Association provided for in Article VII, Section 4, of the by-laws (to-wit, modifications or rescission of any action or decision of the Board of Trustees and instructions to the Board of Trustees) and any other action of the members for the purpose of declaring policy of the Association or otherwise, shall be taken by the adoption of a resolution to be voted on by the members as further provided in the by-laws.

3. Except for good cause shown to the Resolutions Committee, and except for resolutions proposed by the Board of Trustees, every resolution which any person desires to present to the membership for adoption shall be submitted to the executive director of the Association at least 45 days in advance of the annual meeting. The executive director shall deliver copies of the proposed resolution to the members of the Resolutions Committee, who shall examine the resolution as provided in paragraph 5(b) and (c).

4. Every resolution which the Board of Trustees or any person desires to present to the membership for adoption shall first be prepared in typewritten form and at least 100 copies thereof shall be deposited with the executive director of the Association not less than 48 hours before the commencement of the membership meeting. The person presenting the resolution must provide at their own cost the required copies. The executive director shall forthwith deliver a copy of each resolution to the members of the Resolutions Committee and to the Trustees, or at least so many thereof as can readily be located. The remainder of said copies shall promptly be placed in a conspicuous place so that members of the Association may receive copies for examination and study before the meeting.

5. Within 20 hours of the membership meeting the Resolutions Committee shall meet and shall consider each resolution deposited with the executive director for consideration by the membership. The meeting of the Resolutions Committee shall be announced to the membership by whatever method is likely to make known the fact of such meeting. Any member of the Association shall have the right to attend the meeting of the Resolutions Committee. At such meeting the Resolutions Committee shall:

a. Hear explanations and comments from any member of the Association respecting such resolution, but the Committee shall have the right to limit the time available to any member for such purpose.

b. Examine the proposed resolution for scurrilous or defamatory material and ensure that any proposed resolution is consistent with the Constitution of the State Bar (Article III) and/or the By-laws of the State Bar of Montana, unless the purpose of the resolution is to amend the same, and then either eliminate such material, or if such material cannot be eliminated without destroying the purpose of the resolution, then suppressing said resolution from presentation at the time of the meeting.

c. Make minor changes in grammar, spelling or form,

without changing the meaning of the resolution.

d. Endorse on the copy of the resolution to be retained in the minutes of the Association a recommendation that the resolution pass, not pass, be modified, or that it be transmitted without recommendation. At the membership meeting any member of the Committee may express his personal views in a discussion of the resolution, but the Resolution Committee shall not, as such, endeavor to state arguments for or against any particular resolution.

6. Any resolution presented to the membership meeting under the foregoing procedure may be amended from the floor.

7. No resolution shall be presented to the membership unless it has been first presented to the Committee at the time and in the numbers herein above, required, but the requirements hereof shall not apply to any resolution for amendment or repeal of the by-laws as provided in Article XV thereof.

## 1 - 109 RESOLUTIONS PUBLISHED

A summary of all resolutions prepared as of that date (45 days in advance of annual meeting) shall be posted on the State Bar's website and shall be published in the last issue of *The Montana Lawyer* before the annual meeting of the State Bar.

## 1 - 110 PUBLICATIONS

Lawyer aids, handbooks and other reference materials issued by the State Bar of Montana shall be prepared, reviewed, and published in accordance with the following:

1. The State Bar staff will: 1) determine the need for periodic updates of State Bar publications and 2) keep abreast of current publication developments and time-tables.

2. Every two years the State Bar staff will report to the Board of Trustees on plans for State Bar publications.

3. Each publication will be approved in outline form by the Board of Trustees.

4. In the interest of cost and timeliness of updates, publications will ordinarily be authored and updated by faculty of the School of Law at the University of Montana, with the assistance of student researchers and under the guidance of committees of practicing attorneys in the respective subject matter. Faculty authors will be reimbursed a maximum royalty of ten per cent of the gross sales of the publication.

5. The State Bar staff will determine the format and cover for each publication with the objective of uniformity.

## 1 - 112 STATE BAR INVESTIGATION/PROSECUTION COMMISSION GUIDELINES

It is the policy of the State Bar of Montana to assist the Montana Supreme Court's Commission on Practice however possible in the discharge of its duties relating to attorney discipline. To that end, the State Bar of Montana commits its assistance to the Commission on Practice in its function of investigating allegations of attorney ethical violations referred to it by the Commission on Practice and to prosecute such allegations where warranted by that Commission. This assistance shall be provided on behalf of the State Bar of Montana by an Investigation/Prosecution Commission which shall observe the following guidelines:

1. There shall be as many investigation/prosecution commissioners as shall be warranted by the need of the Commission on Practice. Initially there shall be one such commissioner appointed for each of the following regions:

SBM Areas	Regions
A & B	1
C & F	2
D & E	3
G & H	4

2. As needed, the Commission on Practice shall contact a

commissioner with a description of the need for an investigator or prosecutor to be appointed to perform such duties as the same are described by the Supreme Court rules governing the Commission on Practice.

3. Upon receiving such contact, the respective commissioner shall identify and solicit the cooperation of some member of the State Bar to perform such investigation or prosecution function. Usually such State Bar member shall reside within that commissioner's region.

4. The commissioner shall notify the secretary of the Commission on Practice of the State Bar member who has agreed to provide such service. The Commission on Practice shall retain the right to request that another State Bar member be proposed to handle such investigation or prosecution.

5. The persons chosen as commissioner shall be appointed by the president of the State Bar of Montana with the consent of the Commission on Practice. They shall serve indefinite terms.

6. Each commissioner shall maintain a list of prospective investigators and prosecutors so as to be able to respond quickly to requests for names by the Commission on Practice. That list shall be furnished to each commissioner's successor.

7. Each commissioner shall submit his telephone expenses incurred in this process to the secretary of the Commission on Practice on a quarterly basis. All expenses incurred by investigators/prosecutor shall be paid according to the then existing rules of the Supreme Court.

8. After an investigator/prosecutor has been appointed, the commissioner shall be available to answer questions on procedure as needed but shall not otherwise be involved in either the investigation or prosecution unless so requested by the Commission on Practice.

## 1 - 113 PROCEDURES FOR REFERENDA

1. Unless the Board of Trustees considers that a different timetable is warranted, ballots for referenda will be mailed, returned and counted according to the same schedule as ballots for the election of officers and trustees, except that non-resident as well as resident active members will be eligible to vote.

2. Referenda proposed by the members through the petition process prescribed in Article XIII (3) shall be presented in writing to the Executive Committee no later than May 1. The Executive Committee will review the proposed referenda for consistency with the State Bar Constitution and by-laws.

## 1 - 114 MONTANA LAWYER PUBLICATION POLICY

The *Montana Lawyer* welcomes contributed news and feature articles and letters to the editor that meet these guidelines:

1. letters longer than 250 words require prior approval of the editor;
2. the *Montana Lawyer* will make every effort to print all letters submitted by members of the State Bar of Montana;
3. articles accepted for publication will be edited as necessary for style and length, and the editor will confer with the author before content changes are made.

## 1 - 115 COMMITTEE CHAIRS - LIMIT ON TERMS

Members may not chair standing committees for more than five consecutive years.

## 1 - 116 LAY REPRESENTATION ON COMMITTEES

The President shall actively recruit and select lay members to serve on appropriate committees of the Association.

## 1 - 117 SECTION BY-LAWS AND ASSOCIATE MEMBERS

Sections may propose amendments to their by-laws to permit associate status for persons who are not members of the State Bar, provided such associate members may not vote in section elections or hold section offices. The Board of Trustees may establish conditions for associate membership in sections, and sections shall be required to secure the Board's approval for any amendments to their by-laws.

## 1 - 118 REPRESENTATION FOR OUT-OF-STATE MEMBERS

The Immediate Past President is the representative of out-of-state members and those members are encouraged to contact the Immediate Past President with any suggestions concerning the policies or management of the Association.

## CHAPTER II INTERNAL ADMINISTRATION

### 2 - 101 DUTIES OF THE EXECUTIVE DIRECTOR

The executive director shall perform those duties enumerated in the job description approved by the Board of Trustees on June 1, 1983.

### 2 - 102 EXECUTIVE DIRECTOR - TRAVEL

The executive director shall consult in advance with the president concerning future travel plans. If the two disagree about the proposed travel, the matter shall be resolved by the executive committee on call of the president.

### 2 - 103 STATE BAR MOTOR VEHICLE

1. The Executive Director shall have custody and control of the State Bar motor vehicle. He or she shall be responsible for regular maintenance in compliance with the lease agreement. All repairs, maintenance and service for the vehicle shall be recorded, accounted for and cost noted.

2. The vehicle shall be used only for State Bar business, including staff errands and travel.

3. Drivers shall possess a valid Montana driver's license.

4. Drivers shall comply with all laws, rules and regulations regarding the operation of motor vehicles.

5. Drivers and all passengers in the vehicle must wear their seat belts at all times.

6. Drivers are responsible for all traffic violations.

7. Drivers shall immediately report all accidents to the Executive Director and shall cooperate with the State Bar insurers.

The Executive Director reserves the right to deny use of the vehicle to individual drivers for violation of these rules.

### 2 - 104 BUDGET MONITORING/AMENDMENTS

1. Committees, sections, boards and commissions recognized by the State Bar and/or Supreme Court shall not incur expenses in excess of amounts budgeted by the Board of Trustees. The Secretary-Treasurer shall monitor State Bar spending and, in writing, inform the chairman of the applicable committee, section, board, or commission if it appears that the committee, section, board, or commission will spend in excess of the amount authorized by the Board of Trustees.

2. Amendments to the State Bar's approved operating budget shall be presented on forms provided by the Secretary-Treasurer and approved or disapproved by the Board of Trustees. Budget amendments shall be limited to proposed changes in policy, and shall not be presented for ministerial matters. In the case of non-policy spending changes, the Executive Director need only secure the approval of the Executive Committee.

3. Except in extraordinary cases when approved by the Executive Committee, State Bar sections may not spend general fund monies for out-of-state travel.

### 2 - 106 RECOGNIZED CMTE/SECTION/BOARD EXPENSES

#### Committee & Section Meetings & In or Out-Of-State Travel

- Highway mileage at prevailing State Bar rate or coach airfare.
- Actual lodging expense when necessary.
- Meal allowances are established on a bi-annual basis by the Board of Trustees.
- Highway mileage will be calculated according to the Montana Highway Map. Transportation to and from the airport, or additional mileage to and from home will not be approved for reimbursement.
- Other miscellaneous expenses such as parking, car rental, copying charges, etc. will be approved at the discretion of the Executive Director.
- Proper documentation must accompany all requests for travel expense reimbursement.
- Committee and section members will be reimbursed actual mileage expenses only for attending committee or section meetings at the Annual Meeting.

#### CLE Seminars

#### Speakers & Moderators at One Day Seminars:

- One Night's Lodging.
- Three Meals.
- Highway mileage at prevailing State Bar rate, or coach airfare.

#### Speakers & Moderators at Two Day Seminars:

- Two Nights Lodging.
- Six Meals.
- Highway mileage at prevailing State Bar rate, or coach airfare.

#### Annual Meeting:

- No reimbursement for CLE Institute Members.
- Moderators will be given a free full registration.
- Montana speakers will be given a free full registration, but no other reimbursement will be made.
- Out-of-state speakers will be given a free full registration, and travel expenses (highway mileage or coach airfare), but no other reimbursement will be made, except in extraordinary cases when approved by the Executive Director and the Chair of the CLE Institute.

#### Speakers' Dinner

- If a dinner is held for the speakers, reimbursement will be made only for the moderator(s) and speakers. Expenses will not be reimbursed for spouses.

### 2 - 107 SECTION FUND BALANCES

Any unexpended balance in a section's account arising out of section (non-general fund) income will be carried-forward into the succeeding fiscal year for credit to the section. The income account of any section operating with a deficit at the close of a fiscal year will be reduced in the succeeding year in an amount equal to the deficit. The balance of any section's income account will be transferred to the general fund at the close of the fiscal year if there is no expense activity in the account. For purposes of this policy, an expense activity must be pursuant to a budget request submitted by the section to the Board of Trustees.

### 2 - 108 EXPENDITURE OF SECTION/GENERAL FUND MONEYS

In the case of sections which are authorized to spend general fund moneys, in addition to dues or other income available to them, the non-general fund moneys shall first be expended;

general fund moneys may not be expended until the Section's non-general fund moneys are first spent.

## 2 - 109 TRAVEL EXPENSES FOR OFFICERS

Officers of the State Bar of Montana may be provided with a travel budget to be utilized during their tenure in office. Such funds shall be utilized subject to the following guidelines:

1. All such travel funds, subject to budget allowances, shall be utilized by the officer exclusively for Bar related travel at the discretion of the officer concerned, subject only to any specific directives provided by the Board of Trustees.

2. The officer concerned shall be entitled to reimbursement in full for all Bar related travel, to include travel, transportation, lodging, meals, and incidental expenses, pursuant to Section 2-106.

3. The officer concerned may request an advance for such travel expenses anticipated; however, any portion of such advance not utilized shall be returned to the Bar.

4. The officer concerned may have the Bar pay for such expenses directly.

5. In no event shall the total payments or reimbursements for such officer exceed the amount budgeted unless a budget change is approved by the Board.

6. It is acknowledged that the presence of the spouse at many of the conferences and Bar related activities is highly desirable and appropriate. The policy of the Bar is to encourage such attendance is hereby stated. However, the Bar shall not reimburse or pay for additional expenses incurred by the officer in connection with such travel and attendance of the spouse, and no portion of the budgeted travel allowance of officer shall be used therefor.

7. It is acknowledged that funds budgeted may be insufficient to cover all Bar related costs for the officer concerned. Accordingly, the officer concerned may either limit his travel or personally pay for amounts in excess of the funds budgeted.

## 2 - 113 CHARITABLE DONATIONS

The State Bar shall not make charitable donations to any group without further action of the full Board of Trustees.

## 2 - 114 DUES

Postmarks on envelopes will be the determining factor in membership suspensions.

## 2 - 117 MAILING LABELS

The State Bar of Montana reserves the right to decline to sell mailing labels to anyone and reserves the right to review all materials being mailed through use of such labels. State Bar letterhead may not be used in connection with the marketing of products or services endorsed by the Association. Labels may not be sold for political purposes and may be sold to commercial vendors only if the product or service is law-related, in good taste, and does not conflict with the purposes of the State Bar of Montana. Labels may be sold for judicial campaigns. Decisions concerning the sale of labels will be made by the executive director. Appeals concerning decisions of the executive director may be made to the Executive Committee.

## 2 - 118 LAW REVIEW

The Montana Law Review shall be sent to active members of the State Bar only.

## 2 - 121 INVESTMENT POLICY

1. Funds of the State Bar shall be invested by the Executive Director, with the approval of the Secretary-Treasurer, at the highest rate attainable, consistent with the established Investment Policy Statement approved by the Board of Trustees.

2. The Financial Advisor will meet annually with the Board of Trustees to review the Investment Policy Statement to confirm the investment guidelines for the Reserve Accounts are being followed. The investment policy will be reviewed at least once every three years and more often should the Board of Trustees deem it appropriate.

## 2 - 126 ETHICS OPINIONS

Ethics opinions issued by the Committee on Ethics are advisory only and are not subject to the approval of the Board of Trustees. Ethics opinions of the committee shall be published in *The Montana Lawyer*.

## 2 - 128 REFUND POLICY

If cancellation is made seven (7) days or more before the date of a seminar, a 75% refund will be made. If cancellation is made less than seven days before the seminar, a 50% refund will be made. No refund will be granted if cancellation is made on or after the date of the seminar. Upon cancellation, materials will be provided subject to availability after the seminar. Substitutes of attendees is acceptable. Cancellations may be made in writing or by calling the State Bar.

## 2 - 130 OUT-OF-STATE CLE

All out-of-state continuing legal education produced by the State Bar of Montana must be self-sufficient.

## 2 - 131 LAW STUDENTS/FACULTY

Law students and faculty members shall be allowed to attend continuing legal education seminars at no charge and shall pay a nominal fee for manuals.

## 2 - 132 JUDGES - CLE SEMINARS

Full-time Judge shall mean an elected or appointed member of the Montana Judicial system who devotes his or her full-time professional activity to his or her position as a judge. The Montana judicial system includes Supreme Court justices, district court judges, water court judge, workers' compensation judges, justices of the peace, city judges, municipal judges, federal administrative law judges residing in Montana, and tribal, federal trial, appellate, bankruptcy judges residing in Montana. Such judges shall be allowed to attend continuing legal education seminars free of charge.

## 2 - 133 CLE INSTITUTE OBJECTIVES

The objective of the Continuing Legal Education Institute is to provide quality legal education that is responsive to the needs of the members of the State Bar of Montana.

In that regard:

1. The Continuing Legal Education Institute will attempt to focus on reoccurring bread and butter topics, as well as specialized topics, that appeal to a significant number of Montana practitioners. (Examples of specialized topics include: water law, Indian law, natural resources, and tax law.)

2. The Continuing Legal Education Institute will attempt to be neither a revenue generator nor a loss producer for the State Bar of Montana in any fiscal year. In that regard, the Continuing Legal Education Institute will attempt to avoid substantial losses in its operations based upon currently applied methods of accounting. Further, in no event is the Continuing Legal Education Institute expected to produce revenue for other State Bar activities.

## 2 - 134 CLE INSTITUTE OVERSIGHT

In recognition that it has the expertise and proven procedures in place, the CLE Institute will be responsible for all State Bar CLE offerings, including coordination of all CLE seminars at the Annual Meeting.

## 2 - 135 SEMINAR FEE SPLITTING

When a Section of the State Bar of Montana clears a seminar through the CLE Institute, adheres to the Institute's policies concerning selection and reimbursement of speakers, assumes primary responsibility for obtaining the speakers and setting the seminar schedule for a full day seminar (five hours or more), the State Bar will make its CLE Coordinator available to assist with the seminar (i.e., publishing the seminar flyer, printing the outline, handling registration). The State Bar will have the publication rights to all seminar books arising out of jointly sponsored seminars. All Sections of the State Bar will be entitled to request general fund financial assistance from the Board of Trustees in the event of negative experience with this policy or due to other unanticipated events.

The net profit or loss will then be split as follows:

- For each jointly sponsored seminar the net profit or loss will be split 50/50 (not including overhead such as rent, postage, etc.) between the Bar and the Section. If there is a profit in excess of \$3,000, the split will be 60 percent to the Section and 40 percent to the State Bar on all profit in excess of \$3,000.
- The Bankruptcy Section has been granted a grandfather clause. For a jointly sponsored seminar with that Section, the net profit or loss will be split 50/50 (not including overhead such as rent, postage, etc.) between the Section and the Bar. The 50/50 split will be in effect up to \$1,000. Any profits above \$1,000 would go to the Section. Any losses in excess of \$1,000 would be borne by the Section. If the Bankruptcy Section jointly sponsors more than one seminar in a calendar year, they will abide by the arrangements stated in the immediately preceding paragraph for each additional seminar.

## 2 - 138 RESERVE POLICY

It is the policy of the Board of Trustees that the State Bar of Montana shall endeavor to maintain a general fund cash reserve sufficient to operate the Association for a three month period of time.

## 2 - 140 ALCOHOL AT CLE SEMINARS

It is the policy of the State Bar of Montana that alcoholic beverages will not be served at State Bar Continuing Legal Education Seminars during the seminar.

## 2 - 141 POLICY FOR ENDORSEMENTS

Members of the State Bar of Montana are urged to make an independent analysis and judgment about any products or services which are the subject of State Bar endorsement agreements.

Upon request of a vendor the State Bar will consider an endorsement of a product or service upon review of the following:

1. The appropriateness of the product or service to the particular membership of the State Bar.
2. The benefit to the members of the State Bar of Montana from such an endorsement, with the key focus being the best interest of the members.
3. The consideration of whether the product or service has been endorsed by other bar organizations.
4. The extent and manner in which the name and any trademarks of the State Bar of Montana are proposed to be used and whether prior approval of use by the State Bar of Montana will be available or required.
5. Whether any State Bar committees or sections with a particular interest have recommended the endorsement.
6. Whether the endorsement proposed is to be an exclusive or non-exclusive endorsement.
7. Any burden placed upon the State Bar staff to assist in

promotions or marketing activities.

8. The nature of the relationship created between the State Bar and the vendor.

9. The particular terms and conditions of the endorsement, including length of time, ability to terminate, ability to renew, requirement of confidentiality, ability to assign, indemnity provisions, remedies for breach and the choice of law and forum of resolution.

Upon request of a vendor, the Executive Director of the State Bar will investigate the product or service using the above criteria and report to the Executive Committee. Endorsements and continuation of endorsements recommended by the Executive Committee are subject to approval by the Board of Trustees.

Endorsements approved by the State Bar shall be reviewed by the Executive Committee at least every three years for the purpose of recommending to the Board of Trustees whether it is in the best interest of the members of the State Bar to continue the endorsement. Any recommended continuation or discontinuation of an endorsement is subject to approval by the Board of Trustees.

## 2-143 E-MAIL PROTOCOL

1. Purpose of this protocol: It is recognized that there are occasions when entities and staff of the State Bar are pressed for time in attempting to produce, copy and send materials to the Board of Trustees one week prior to regular Board meetings. In such instances, and in the interest of fully informing the Board before it takes action, e-mail messages--containing or attaching proposals to the Board--are encouraged as an expeditious means of providing timely information to Board members.

2. Content of messages/confidentiality: E-mail messages should be written with the understanding that their content may be seen by unintended parties. E-mail is not private. Consequently, e-mail should not be used to send confidential information.

3. E-mail is no substitute for the agenda and meeting: E-mail only serves to facilitate the Board's decision-making process. Unless special arrangements are made, actions of the Board will only be taken at regularly scheduled meetings.

4. At a member's request, the member's e-mail address shall not be provided to others.

## CHAPTER III THE JUDICIARY, PUBLIC AND EXTERNAL ENTITIES

### 3-105 EQUAL RIGHTS AMENDMENT

The State Bar of Montana endorses the concept of equal equality for all citizens. The proposed 27th Amendment to the United States Constitution provides that "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex." The State of Montana ratified the 27th Amendment to the United States Constitution in 1974. The State Bar of Montana endorses the ratification of the 27th Amendment to the United States Constitution, known as the Equal Rights Amendment, and opposes any attempt to rescind the ratification of the Amendment by the State of Montana.

### 3-106 PRO BONO SUPPORTED

The State Bar of Montana encourages all members of the State Bar to participate in a pro bono referral program established by the Montana Legal Services Association or a local bar association in order to preserve the concept of Montana Legal Services and to assist in providing legal services for those unable to pay.

### 3 - 107 LOBBYING PROCESS

One of the purposes of the State Bar expressed in Article III of its Constitution, is to "provide a forum for the discussion of and effective action concerning subjects pertaining to the practice of

law, the science of jurisprudence and law reform, and relations to the bar to the public....". In order to meet these objectives the Bar may take positions on these issues and may promote those positions by legislative lobbying, filing amicus briefs, and other activities.

The State Bar recognizes that it is an organization of individuals with diverse interests, backgrounds and philosophies. Consequently, there may be disagreement among the membership with almost any position that is adopted. The Bar also recognizes it is governed by elected representatives who are entrusted with the power and responsibility to manage and direct the affairs of the organization.

Recognizing these facts, the Bar should neither forego taking positions on issues because some members may disagree, nor should it overlook the opinions and beliefs of dissenting members. Members who disagree with positions taken by the Bar can, when appropriate, seek a pro rate refund of dues as provided in the By-Laws. In addition, the right of those members to express their views in *The Montana Lawyer*, and to attempt to change or implement a policy through elections and through the referendum and annual meeting resolution procedures provided in the By-Laws is expressly recognized.

The State Bar may adopt a position on an issue and may take action to further that position, including the expenditure of funds, in any of the following ways:

1. By referendum of the membership on the issue adopted as provided in the By-Laws and Policies of the Bar;
2. By resolution of the membership at the annual meeting, as provided in the By-Laws and Policies of the Bar;
3. By a resolution adopted by 2/3 vote of the full membership of the Board of Trustees;
4. By a resolution adopted by a 2/3 vote of the full membership of the Executive Committee of the Board of Trustees when an issue arises in such a way that it is impractical to have consideration by the full Board. All such decisions will be reported to the full Board at its next meeting.
5. If a position is adopted by referendum or resolution, the Board of Trustees may by majority vote determine what, if any, further action the Bar should take with regard to that position.
6. Notice of any position adopted by the Bar shall be given in the next issue of *The Montana Lawyer*.

Whichever decision-making procedure is followed, the State Bar may take a position on issues that arise from the following areas:

1. Issues relating to the regulation and discipline of attorneys;
2. Issues relating to the functioning of the courts, and to judicial efficiency and efficacy;
3. Issues relating to the availability of legal services;
4. Issues relating to attorney client trust accounts;
5. Issues relating to the education, ethics, integrity and regulation of the legal profession;
6. Issues relating to law reform, adoption of uniform laws and statutory improvement.

If an issue(s) falls outside of the preceding list, the State Bar may take a position if:

1. The issue is of great public interest;
2. Lawyers are especially suited to evaluate and explain the issue to the public, and;
3. The subject matter affects the rights of those likely to come into contact with the legal system.

The Bar should avoid, to the extent possible, those issues which carry the potential for deep philosophical or emotional division among the membership. The Bar will not take a position in, nor make a contribution of any kind to, any campaign for political office, but may do so with regard to initiatives and referenda.

### 3 - 108 LOBBYING BY SECTIONS

Sections may propose legislation, appear at or submit written testimony to legislative committee hearings, or engage in any other activity to support or oppose legislation under the conditions provided in this section.

1. A section may propose legislation that relates to the purposes of the section as reflected in the section's bylaws.

2.1 If a section wishes to propose legislation, it must, no later than fourteen days prior to the Board of Trustees' December meeting preceding the next legislative session, submit to the Executive Director a request for approval. The request must include a detailed description of the objective of the legislation to be proposed and a final draft of the bill as it will be submitted to the legislative drafting process. The Executive Director will place the request on the agenda of the December Trustees' meeting. At the meeting, a representative of the Section must appear and explain the proposal. The Section may secure the introduction of the bill only if the Board of Trustees votes to approve the request.

2.2 The Section must inform the Executive Director of all committee hearings on the bill and any significant amendments the Section proposes to offer or support.

2.3 The Section must comply with any directions it receives from the Executive Committee with regard to the Section's activities related to the bill.

3. A Section must inform the Executive Director of its intention to testify or lobby in favor of or against any legislation. The Section must comply with any directions it receives from the Executive Committee related to the Section's activities regarding the bill.

4. In all legislative contacts, the Section must clearly explain that it is acting on behalf of the Section and not the State Bar as a whole, unless otherwise authorized by the Executive Committee in advance.

5. No membership dues funds will be spent on these activities, but a Section may spend its own dues as provided in the By-Laws.

6. The proposed legislation must first be presented to all Section members for a vote of approval by a majority vote of the members of the Section voting. Notice of the content of the proposed legislation must be mailed or emailed to all members of the Section at least two (2) weeks before the vote. The approval vote may occur at a Section meeting or by mail ballot or by e-mail ballot, provided that if a vote at a Section meeting occurs, then all Section members not attending the meeting shall be afforded the opportunity to vote via mail or e-mail ballot. The outcome of the vote must be presented to the Executive Director in conjunction with the request for approval as set forth in Paragraph 2.1.

7. Nothing in this policy is intended to prohibit members of the State Bar from sponsoring or supporting particular legislation, but to restrict the suggestion or implication that the State Bar of Montana or any other one of its sections or committees sponsor or support particular legislation.

### 3 - 109 OBJECTIONS TO USE OF DUES

(a) Use of Dues. The purposes of the State Bar of Montana are set out in Article III of its Constitution, the Preamble of the By-Laws of the State Bar of Montana, the 1974 Order unifying the State Bar in *In re President of the Montana Bar Association*, 163 Mont 523 518 P.2d 32 (1974) and the Order granting a dues increase in *In re the Petition of the State Bar of Montana for a Dues Increase*, 2001 MT 108 [need cite]. The State Bar of Montana may not engage in political or ideological activities involving the expenditure of compulsory membership dues unless the Board of Directors or the Executive Committee determines that the activity is reasonably related to the the Bar's stated purposes.

(b) Publication of Expenditures and Activities. The State Bar shall publish annually a statement setting out the total amount of any expenditures that it has made for political or ideological purposes. In addition, the Bar shall publish notice of any adoption of a legislative position, whether in support or in opposition, in the next feasible issue of the Montana Lawyer after the meeting at which the position was adopted.

(c) Objections. An active member of the State Bar of Montana may, within forty-five 45 days of the date of publication, file with the Executive Director a written objection to a particular position or political or ideological expenditure, or the failure of the Bar to properly classify a particular expenditure as political or ideological. Failure to object within this time period shall constitute a waiver of any right to object to the particular issue or expenditure.

(1) After a written objection has been received, the Executive Director shall promptly determine the pro rata amount to the objecting member's dues at issue and such amount shall be placed in an escrow pending determination of the merits of the objection.

(2) Up the deadline for receipt of written objections, the Board of Trustees shall have forty-five (45) days in which to decide whether to give a pro rata refund to an objecting member or to refer the action to arbitration.

(d) Arbitrator. Any objections to a legislative position or a political or ideological expenditure of the State Bar may be referred by the Board of Directors to an arbitrator, who shall be mutually selected by the State Bar of Montana and objecting member(s). If the parties are unable to agree on an arbitrator, the First Judicial District Court of the State of Montana shall appoint the arbitrator.

(e) Procedures for Arbitration. Upon a decision by the Board of Trustees that the matter shall be referred to arbitration, the State Bar shall promptly prepare a written response to the objection and serve a copy on the objecting member(s). Such response and objection shall be forwarded to the arbitrator as soon as the arbitrator is selected. The arbitrator shall thereafter hold a hearing and decide whether the legislative matters or expenditures at issue are constitutionally appropriate for funding from mandatory State Bar dues.

(1) The arbitrator's jurisdiction shall be limited to determining whether the legislative matter or expenditure at issue was within those acceptable activities for which compulsory dues may be used under applicable constitutional law; and if so, the amount of the pro rata rebate to the objecting member(s).

(2) The proceedings shall be informal in nature and shall not be governed by the rules of evidence. The decision of the arbitrator shall be binding as to the objecting member(s) and the State Bar. If the arbitrator concludes that the expenditure at issue is inappropriately funded from mandatory dues, the arbitrator shall order a refund of the pro rata amount of dues to the objecting member(s). The arbitrator's award may be confirmed, vacated, modified, corrected, stayed or appealed pursuant to MCA section 27-5-311, et seq.

(3) The arbitrator shall render a final written report to the objecting member(s) and the Board of Trustees within forty-five (45) days of the selection of the arbitrator.

(4) In the event the arbitrator orders a refund, the State Bar shall provide the refund within thirty (30) days of the date of the arbitration report, together with interest calculated at the statutory rate from the date on which the objecting member(s) dues payment was received.

(f) Cost of Arbitration. The arbitrator's fee and expenses shall be borne by the State Bar unless the arbitrator finds that the objection lacked merit, in which case the objecting member shall bear the entire cost of the arbitration, including the arbitrator's fee and expenses. Each party shall bear their own attorney's fees

and expenses incurred in preparing for the arbitration or appeal.

### 3 - 110 USE OF ORGANIZATION NAME AND LOGO

(a) Purpose and Objective. The State Bar of Montana's name, logo, and other marks (collectively "the marks") are valuable property of the State Bar of Montana, protectable under state and federal law. In order to avoid inadvertent or purposeful misuse of the marks by external persons or entities, the Board of Trustees adopts the following policy.

(b) Impermissible Uses. Except upon the express, written permission or license of the State Bar of Montana, no person or entity may use the marks for commercial purposes. Such commercial purposes include without limitation: use to indicate endorsement by the State Bar of Montana of products or services,

(c) Permissible Uses. The following uses of the marks is automatically permitted (and an implied license given) in the following limited circumstances:

(1) by members of the State Bar of Montana (including firms or associations of members) to indicate membership 1 affiliation with the State Bar of Montana without indication or the appearance of endorsement by the State Bar of Montana of the member's products or services;

(2) by persons or entities for non-commercial purposes (i.e. for information or comment) to provide a webpage link or other contact information of the State Bar of Montana;

(3) by ABA-accredited educational institutions and educators therein for purposes of instruction; and

(4) by organizations currently approved by the Board of Trustees under 2-141.

(d) Protection of the Marks. The State Bar of Montana, through its Executive Committee, shall take reasonable measures to protect the State Bar of Montana's interests in the marks, including but not limited to:

(1) seeking trademark registration under state or federal law;

(2) requesting all users of the marks to use a trademark disclaimer (superscript "TM" for trademark, "SM" for service mark or "®" for a federally-registered mark) where appropriate to indicate the State Bar of Montana's claim of trademark rights in the marks, and as a condition of the use of the marks (whether expressed or implied);

(3) requesting unauthorized users of the marks to cease and desist such use.

### 3-111 SOCIAL NETWORKING POLICY FOR STATE BAR OF MONTANA ENTITIES

(a) Administering the social networking site

Each State Bar Entity desiring a social network presence will designate a representative to serve as its administrator. Site administration, including set up, content development and management, and administration of these policies, is the responsibility of the sponsoring Entity, which shall appoint an individual to administer the social network site ("Site Administrator"). The Site Administrator will provide the State Bar staff liaison with administrative access to the social network in the event emergency assistance is needed. Entities are responsible -- in conjunction with their respective Site Administrators and all those individuals participating in a social network established under this policy -- for complying with these guidelines.

(b) Guidelines for social networking

In sum, be professional, respectful, and discreet in your online dialog. Represent the State Bar and your profession well. Exercise good judgment. State Bar members who fail to do so, or who fail to comply with these guidelines, may not only forfeit the right to participate in social networking activities sponsored by the State Bar, but may also be subject to penalties and discipline for failing to adhere to applicable Rules of Professional Conduct,

as well as civil or criminal liability and penalties, as warranted.

1. Be responsible. You are personally responsible for the material you post. All statements must be true and not misleading. Carefully consider content; what you publish will be widely accessible for some time and, in some cases, indefinitely. Protect your privacy and the privacy of others, and adhere to all statutory prescriptions and Professional Rules of Conduct governing the privacy of individuals and confidential information of your clients.

2. Be upfront, identify yourself. Your honesty - or dishonesty - will be quickly noticed in the social networking environment. Use your real name, and, if relevant, your role or interest in the topic discussed. When appropriate, make it clear you are speaking for yourself and not on the State Bar's behalf.

3. Be civil, respectful. It's okay to disagree with others, but do not use defamatory, abusive, threatening, offensive, or obscene language or post illegal material.

4. Be quick to correct an error. If you make a mistake, admit it. Quickly provide the correct information. If appropriate, modify an earlier post to make it clear that you have corrected an error.

5. Keep it relevant, add value. Write about what you know. Information can add value if it contributes to the legal community's knowledge or skills, improves the legal system or public understanding of the legal system, or builds a sense of community.

6. Follow copyright and fair use laws. Always give people proper credit for their work. Make sure you have the right to use material with attribution before publishing. It's a good practice to link to others' work rather than reproducing it on your site. When in doubt, as to the proprietary nature of material, don't use it. Recognize the potential professional and legal consequences of any failure to follow applicable laws governing the use of others' material.

7. Protect proprietary and client information. Do not discuss or misuse proprietary or confidential information, and follow all professional and ethical rules governing the disclosure of information shared with you by clients. When in doubt, leave it out.

8. Refrain from endorsements of political candidates. The activities of the State Bar are defined by Montana Supreme Court rules, and those rules apply to social networking activity. As a membership organization, the State Bar needs to avoid even the appearance that it directly or indirectly endorses or financially supports candidates for political office.

9. Comply with Montana rules governing lawyer advertising. Comply with all restrictions governing legal advertising when posting content to any social network, including one being administered by an Entity.

10. Do not violate antitrust laws. Antitrust laws prohibit postings that encourage or facilitate agreements between State Bar members concerning the following, as they pertain to legal services: prices, discounts, or terms or conditions of sale; salaries; profits, profit margins or cost data; market shares, sales territories, or markets; allocation of customers or suppliers; or any other term or condition related to competition.

11. Abide by the social network's rules. By joining a particular social network, you agree to abide by that community's terms of use, so review those terms carefully.

(c) Using the State Bar's name and/or logo

State Bar entities may incorporate the State Bar's name and/or logo into their social networking identity with prior approval from the State Bar. To create consistency and community on the Web, the State Bar has established standard logo templates, disclaimers, and naming conventions. The Site Administrator for an Entity must work with assigned staff liaison from the State Bar to coordinate approval, the development of the social network graphic, and other site requirements.

(d) Enforcing this policy

The State Bar does not actively monitor these sites for inappropriate postings. If an inappropriate posting is brought to the attention of the State Bar, however, the State Bar will take appropriate action to enforce this policy.

*Amended September 16, 2010*

