

**Oregon State Bar
Special Meeting of the Board of Governors**

January 9, 2015

8:30 a.m.

Oregon State Bar Center

Tigard, Oregon

Open Agenda

- | | | | |
|----|---|--------|--------------------------|
| 1. | Call to Order | | |
| 2. | Swearing In of New BOG Members [Mr. Spier] | Action | |
| 3. | OMLA Presidential Medal of Freedom Nomination | Action | Exhibit
posted 1/8/15 |
| 4. | Legislative Issues for 2015 [Ms. Grabe] | Action | Exhibit
posted 1/8/15 |

Closed Sessions – [CLOSED](#) Agenda

- | | |
|----|---|
| 5. | Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - Reinstatement |
|----|---|

From: [Richard Spier](#)
To: ["Christopher Ling"](#)
Cc: [Sylvia Stevens](#); [Camille Greene](#)
Subject: FW: OSB Support of Nomination of Minoru Yasui for 2015 Presidential Medal of Freedom
Date: Wednesday, January 07, 2015 7:02:18 PM
Attachments: [2015 OMLA Letter to President Obama re Minoru Yasui.pdf](#)

Hi Chris,

Your request would require consideration by the OSB Board of Governors.

In light of the deadline you mention, by copy of this email I am requesting that OSB Executive Director Sylvia Stevens add this matter to the agenda for a special meeting of the BOG that has previously been set for consideration of other matters this Friday, January 9.

Best wishes,

Rich Spier

Richard G. Spier
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From: Chris Ling [mailto:chrisling@cart-law.com]
Sent: Wednesday, January 07, 2015 3:57 PM
To: rspier@spier-mediate.com
Subject: OSB Support of Nomination of Minoru Yasui for 2015 Presidential Medal of Freedom

Rich:

I hope you are doing well. I am a member of the Minoru Yasui Tribute Committee, which is in the midst of preparing to submit a nomination for Minoru "Min" Yasui to receive a posthumous 2015 Presidential Medal of Freedom. As a brief background, Min Yasui was a Nisei (second generation Japanese-American) born and raised in Hood River Oregon, and was the first Japanese-American graduate of the University of Oregon Law School and first Japanese-American member of the Oregon State Bar. He is most famously known as one of the main three (or four) defendants in the WWII cases involving wartime restrictions against Japanese-Americans and Japanese nationals living in the United States. Two other defendants, Gordon Hirabayashi and Fred Korematsu, have previously received Presidential Medals of Freedom, most recently in 2012.

Our objective is to add Min to this hallowed pantheon of civilian awardees, and what distinguishes his circumstances from Hirabayashi and Fred Korematsu is that (a) he was the first to violate these

restrictions; (b) he did so knowing full well the consequences of his actions, as an Oregon attorney, still volunteered to do so, and was in fact incarcerated and put in solitary confinement here in Multnomah County for nine months; and (c) he continued to actively fight for civil rights as an attorney in Colorado, following the war. Peggy Nagae, the chair of this committee, has asked me to contact OSB to see if there would be any support for an endorsement letter on behalf of Min's nomination. I have also secured support from the Oregon Minority Lawyers Association and have drafted an endorsement letter in that capacity. The Oregon Asian Pacific American Bar Association is also supporting this nomination, and will either draft its own letter or sign onto ours.

Would OSB be interested in either drafting its own letter or signing onto OMLA's letter? I have attached a draft copy for your reference. Unfortunately, the nomination deadline is approaching next week, although I believe endorsement letters can be submitted afterward. I am following up with the Minoru Yasui Tribute Committee tonight to see what timeframe OMLA has to submit a letter, but I apologize for the late notice in contacting OSB. I understand that the Colorado Bar Association Bar President will be submitting an endorsement letter as well.

In any event, please let me know your thoughts as to whether OSB would be interested in supporting this cause. I appreciate your time in reading this request.

Christopher S. K. Ling | Attorney
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Chase Morinaka, Co-Chair
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Sujata Patel
Suzanne Trujillo

Honorary Board Members
Ernest Estes
Anastasia Yu Meisner
Hon. Adrienne Nelson

January 7, 2015

President Barack Obama
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

RE: Nomination of Minoru “Min” Yasui for 2015 Presidential Medal of Freedom

Dear Mr. President:

The Oregon Minority Lawyers Association (“OMLA”) and Oregon Asian Pacific American Bar Association (“OAPABA”) are proud to endorse the nomination of Minoru “Min” Yasui for a 2015 Presidential Medal of Freedom. In 1991, OMLA was founded as one of the first Oregon specialty bar organizations to promote the fair and just treatment of all people under law regardless of race or color and to educate the public about legal issues affecting people of color. Similarly, OAPABA was founded in 2009 to support legal services impacting Asian Pacific American communities and to advocate their interests in the community at large. We believe Mr. Yasui’s legal trailblazing in the areas of civil rights, access to justice, and promoting diversity in his community—which is emblematic of the pioneer spirit of the Pacific Northwest where he was born and raised—makes him an excellent candidate to receive one of our nation’s highest civilian honors.

Mr. Yasui can be credited for several important “firsts” in our national history. He became the first Japanese-American graduate of the University of Oregon Law School and the first Japanese-American member admitted to the Oregon State Bar in 1939. However, his most recognized first was his titular role in *Yasui v. United States*, the first of several United States Supreme Court cases challenging discriminatory wartime restrictions targeting Japanese-Americans and Japanese nationals during World War II. On March 28, 1942, Mr. Yasui’s openly and deliberately violated a military curfew that applied only to those of Japanese descent, resulting in his conviction and incarceration (including nine months of solitary confinement) as he appealed his case to the U.S. Supreme Court. His refusal to adhere to the curfew was a principled exercise of civil disobedience, borne out of his unwavering belief in the equal rights enshrined in our Constitution and laws.

Although Mr. Yasui was ultimately unsuccessful in his appeal, his faith in our legal system was unshaken, and his legal career continued to be exemplified by a commitment to fighting for the civil rights for all individuals, regardless of race, nationality, or ethnicity. He eventually moved to Colorado in 1944, where he successfully challenged the denial of his admission into the Colorado State Bar due to his wartime civil disobedience. As a Colorado attorney, he contributed to several U.S. Supreme Court *amicus* briefs filed by the Japanese American Citizens League (“JACL”) in support of those who had been discriminatorily targeted because of their race, nationality, and ethnicity, including defending

the right of Chinese schools and individuals to teach the Chinese language in the then-Territory of Hawai'i (*Stainback v. Mo Hock Ke Lok Po*), to the right of an African-American Ph. D student at the University of Oklahoma to have equal accommodations on campus (*McLaurin v. Oklahoma State Regents for Higher Education et al.*, a precursor to the landmark case of *Brown v. Board of Education*).

Mr. Yasui also brought his pioneering spirit in support of a wide range of diverse organizations outside of the legal profession. In addition to being an active member of JACL, he was a founding member of the Urban League of Denver (1946), the Latin American Research and Service Agency (1964), and Denver Native Americans United (1977). He was also a member and later served as the executive director of Denver's Human Rights Commission, then referred to as the Community Relations Commission. In all regards, Mr. Yasui's tireless spirit and his contributions to civil rights embody the promises of equality inherent in the federal Constitution.

Today, the continued existence of organizations such as OMLA and OAPABA is testament to the enduring legacy of Minoru Yasui and the fundamental values he championed: equality, fairness, and justice. For those reasons, OMLA and OAPABA endorse Minoru Yasui's nomination for a 2015 Presidential Medal of Freedom, without reservation.

On Behalf of the OMLA Board of Directors,

A handwritten signature in black ink, appearing to read "Christopher Ling". The signature is fluid and cursive, with the first name "Chris" and last name "Ling" clearly distinguishable.

Christopher Ling
Co-Chair, Oregon Minority Lawyers Association

And

On Behalf of the OAPABA Board of Directors,

/s/ *pending*

Toan Nguyen
President, Oregon Asian Pacific American Bar Association

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: January 9, 2015
From: Travis Prestwich, Public Affairs Committee Chair
Re: 2015 Legislative Priorities

Issue

Discuss whether the board should reaffirm priorities adopted in **June** of 2014 to increase funding for low income legal services for the 2015 legislative session, specifically, its position in support of legislation that incorporates the *cy pres* doctrine into Oregon law.

Options

- 1) Reaffirm support for low income legal services and *cy pres* legislation that would help fund low income legal services.
- 2) Oppose legislation that would incorporate the *cy pres* doctrine into Oregon law.
- 3) Remain neutral on proposed legislation that would incorporate the *cy pres* doctrine into Oregon law.

Discussion

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services, and by increasing access to justice. Support for legal funding is an issue that comes up at every House of Delegates meeting and typically includes a resolution to do so. While there have been many promises to address the shortage of funding for low income legal services, legal aid offices have either closed or staff have been let go, because there is not money to support them. At its 2014 House of Delegates meeting, the bar once again adopted a resolution in support of legal aid funding as it has historically done in the past.

The bar has pursued numerous creative ways to increase revenue for low income legal services during recent sessions including: successfully doubling the *Pro Hac Vice* fee and changing the statute to allow unclaimed funds in IOLTA accounts to escheat to the bar for legal aid; as well as less successful attempts such as implementing a Centralized Legal Notice System, treating escrow accounts like IOLTA accounts, and creating a tax credit for donations to legal aid.

HB 4143, which was introduced during the 2014 Legislative Session, would have modified the class action process in Oregon and implemented a *cy pres* doctrine in Oregon. The bill would have created the "Legal Aid Supplementary Account" ("Account") within the State Treasury. Any damages stemming from a class action lawsuit, which were not claimed within a specific window of time, or if a court found the payments of damages to be impracticable,

would be treated as residual funds and deposited into the Account. Only the interest from the Account would be distributed to the Legal Services Program.

2015 Legislative Session

At this time it appears the most likely successful scenario in 2015 for increasing legal aid funding is passage of a bill similar to HB 4143. On June 27, 2014 the Board unanimously approved the following OSB legislative priorities for 2015:

- Adequate funding for court services, technology, and facilities;
- Increased funding, including the use of the *cy pres* doctrine, for low income civil legal services;
- Increased funding, for public defense services; and
- Support for the Oregon State Bar’s 2015 Law Improvement Package of legislation.

The Oregon State Bar has not expressed a position on some controversial details of the proposal, such as how proposed legislation would define the class, and whether the bill would apply to any cases that have already been filed. These are policy decisions best left to the legislature. The bar’s interest is in ensuring that any *cy pres* funds that are realized are directed to the best possible use, and to that end the bar actively engaged with legislators on the 2014 legislation, and is prepared to do so again during the 2015 session. Especially since the bar actively supported *cy pres* legislation last session, a retreat now seems inconsistent with our stated mission.

The use of the *cy pres* doctrine in class actions has been successfully applied for almost 40 years. The American Law Institute’s Principles of Law of Aggregate Litigation (“ALI Principles”) states that *cy pres* recipients should have interests that “reasonably approximate those being pursued by the class.”¹ In 2012, a case in the First Circuit listed criteria to be considered to determine if a *cy pres* recipient met these criteria, including:

The purpose of the underlying statutes claimed to have been violated, the nature of the injury to the class members, the characteristics and interests of the class members, the geographical scope of the class, the reason why the settlement funds have gone unclaimed, and the closeness of the fit between the class and the *cy pres* recipient.²

The need for increase funding for legal services has not abated. Parties who are unrepresented by a lawyer increase the burden on an already strained court system. This is especially true in family law where in 75% of cases at least one party does not have a lawyer. About 40% of legal aid’s cases are family law cases and almost all involve domestic violence. Access to legal representation can help keep women and their children safe, keep them in housing, and keep them economically secure.

¹ Principles of the Law of Aggregate Litigation Sec 3.07(c) (2010).

² In re Lupron Mktg. & Sales Practices Litig., 677 F.3d 21, 33 (1st Cir. 2012).

Legislative Priorities for 2015

1. Support Court Funding. Support for adequate funding for Oregon's court.

- **Citizens Campaign for Court Funding.** Continue with efforts to institutionalize the coalition of citizens and business groups that was formed in 2012 to support court funding.
- **eCourt Implementation.** Support the Oregon Judicial Department's effort to fully implement eCourt.
- **Court Facilities.** Continue to work with the legislature and the courts to make critical improvements to Oregon's courthouses.

2. Support legal services for low income Oregonians.

- **Civil Legal Services.**
 - Increase the current level of funding for low income legal services.
- **Indigent Defense.**
 - **Public Defense Services.** Constitutionally and statutorily required representation of financial qualified individuals in Oregon's criminal and juvenile justice systems:
 - Ensure funding sufficient to maintain the current service level.
 - Support fair compensation for publicly funded attorneys in the criminal and juvenile justice systems.
 - Support reduced caseloads for attorneys representing parents and children.

3. Support OSB 2015 Law Improvement Package.

- The bar's 2015 package of law improvement proposals has 17 proposals from 12 bar groups.