

**Oregon State Bar
Special Open Meeting of the Board of Governors
October 25, 2013
Minutes**

The meeting was called to order by President-elect Tom Kranovich at 9:30 a.m. on October 25, 2013. The meeting adjourned at 10:10 a.m. Members present from the Board of Governors were President Michael Haglund, Jenifer Billman, Patrick Ehlers, Hunter Emerick, Ray Heysell, Ethan Knight, Theresa Kohlhoff, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Josh Ross, Richard Spier and David Wade. Maureen O'Connor and Timothy Williams joined during the closed session. Staff present were Sylvia Stevens, Helen Hirschbiel, Amber Hollister, Susan Grabe, Dani Edwards, Dawn Nelson and Camille Greene.

1. Call for Approval of Agenda

Mr. Kranovich asked whether there were any additions to the agenda.

Motion: Ms. Billman moved, Mr. Ehlers seconded, and the board voted unanimously to approve and accept the agenda as presented.

2. Volunteers to Speak in Opposition to HOD Resolutions

Mr. Kranovich asked for volunteers to speak on behalf of the BOG in opposition to specific HOD resolutions and board members responded. **[Exhibit A]**

3. Reconsider BOG position on HOD Delegate Resolution No. 8

Ms. Stevens introduced a request for the board to reconsider its opposition to HOD Delegate Resolution No. 8 (Admission Rule for Military Spouse Attorneys). **[Exhibit B]** She emphasized that the rule included with the delegate's resolution was only a "model rule" and that the resolution itself asks only that the adoption of a similar rule be considered; the rule could take any form that the BOG or BBX desires. It was also noted that a Region 5 delegate has questioned whether a rule should be broad enough to encompass spouses of anyone in federal service to the public.

Motion: Mr. Spier moved, Mr. Wade seconded, and the board voted on changing its position to support HOD Delegate Resolution No. 8. The motion failed, 5-7. Ms. Billman, Mr. Emerick, Mr. Knight, Mr. Spier and Mr. Wade were in favor. Mr. Ehlers, Mr. Heysell, Ms. Kohlhoff, Ms. Matsumonji, Ms. Mitchel-Markley, Mr. Prestwich and Mr. Ross were opposed. Mr. Haglund left the meeting prior to the vote.

Motion: Mr. Ross moved the board change its position to "no position". Mr. Heysell amended the motion to add the BOG further the study the issue. Mr. Ehlers seconded the amended motion, and the board voted unanimously to change its position to "no position" on HOD Delegate Resolution No. 8.

4. BOG Position on HOD Delegate Resolution No. 4

Ms. Stevens reported that Delegate Danny Lang has indicated he will move to have his excluded resolution added to the final HOD agenda, and that in that event the BOG may wish to have a position on it.

Motion: Mr. Wade moved that the board oppose HOD Agenda Item 22 (Enhance Public Safety on Oregon Public Waterways) in the event there is a successful motion to add it to the agenda at the beginning of the HOD meeting. Mr. Ross seconded, and the board voted unanimously to oppose the resolution. .

5. Closed Sessions – see CLOSED Minutes

A. Executive Session (pursuant to ORS 192.660(1)(f) and (h)) - General Counsel

**Oregon State Bar
Board of Governors Meeting
October 25, 2013
Executive Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(f) and (h) to consider exempt records and to consult with counsel. This portion of the meeting is open only to board members, staff, other persons the board may wish to include, and to the media except as provided in ORS 192.660(5) and subject to instruction as to what can be disclosed. Final actions are taken in open session and reflected in the minutes, which are a public record. The minutes will not contain any information that is not required to be included or which would defeat the purpose of the executive session.

A. Other Matters

Washington State Taxes

Ms. Hirschbiel asked the board to determine how to proceed with the second counteroffer presented by the Washington Department of Revenue. **[Exhibit C]**

Motion: Mr. Wade moved, and Mr. Ehlers seconded, to accept the second counteroffer from the Washington Department of Revenue. The motion passed unanimously.

North Carolina State Bar *Amicus* Request

Ms. Hollister asked the board to decide if they will join an amicus curiae brief in support of a petition for certiorari to the United States Supreme Court in the case of *North Carolina Board of Dental Examiners v. Federal Trade Commission*, No. 1201172 (4th Cir.). **[Exhibit D]**

Motion: Mr. Wade moved, and Mr. Heysell seconded, to not support the petition for certiorari. The motion passed. Mr. Williams abstained.

2013 HOD Resolutions

Item	Sponsor	Description	On HOD Agenda?	Presenter	BOG Position?	Presenter of BOG Position
8	BOG	In Memoriam	yes	David Wade	n/a	n/a
9	BOG	D&I Assessment Increase	yes	Ethan Knight & Dave Bartz	support	n/a
10	BOG	Anti-Bias Rule	yes	David Wade	support	n/a
11	BOG	Advertising Rules	yes	Kurt Hansen (LEC Chair)	support	n/a
12	BOG	Misc. RPC Changes	yes	Helen Hirschbiel	support	n/a
13	BOG	Veterans' Day Rememberance	yes	Richard Spier	support	n/a
14	Delegate	Support of Judicial Branch	yes	Danny Lang	support	n/a
15	Delegate	Online Directory Section Listings	yes	John Gear	oppose	Mr. Emerick
16	Delegate	Adeq. Funding for Legal Svcs.	yes	Kathleen Evans, et al.	support	n/a
17	Delegate	Scope of HOD Authority	yes	Danny Lang	oppose	Mr. Wade
18	BOG	Support for Marriage Equality	yes	Patrick Ehlers & Rich spier	support	n/a
19	Delegate	Need for 3 Yrs of Law School	yes	Timothy Farrell	oppose	Mr. Ross
20	Delegate	Centralized Legal Notice System	yes	John Gear	oppose	Mr. Haglund
21	Delegate	Admission Rule for Military Spouse Attorneys	yes	Gabriel Bradley	oppose	Mr. Spier
22	Delegate	Public Safety on Waterways (Flotation Devices)	no	Danny Lang	exclude	Mr. Heysell

Exhibit: HOD Delegate Resolution No. 8

8. Admission Rule for Military Spouse Attorneys (Delegate Resolution No. 8)

Whereas, the Department of Defense has recognized that military spouses face unique licensing and employment challenges as they move frequently in support of the nation's defense; and

Whereas, the American Bar Association House of Delegates and the Conference of Chief Justices have encouraged state bar-admission authorities to enact "admission by endorsement" for military spouses; and

Whereas, this House desires that the burden of licensing requirements should be eased for military spouses to the maximum extent possible while also maintaining rigorous standards for learning, ability, character, and fitness among lawyers admitted to practice in Oregon; and

Whereas, the Military Spouse J.D. Network has promulgated a Model Rule for Admission of Military Spouse Attorneys that allows for admission without examination for military spouses who are members in good standing of another bar and who meet character and fitness requirements; now, therefore, be it

Resolved, The Board of Governors recommend to the Oregon Supreme Court that it adopt a rule allowing admission without examination for attorneys holding an active license to practice law in at least one state, territory, or the District of Columbia for as long as those attorneys are present in Oregon due to a spouse's military service and those attorneys meet the education, character, and fitness requirements for admission.

Presenter: Gabriel Bradley, HOD, Out-of-State

Background

Military members typically move every two or three years. For an attorney married to a military member, the frequent state-to-state moves present a huge obstacle to a legal career. In addition to the normal hassle of moving, military spouse attorneys have to become re-licensed in their new jurisdictions.

In June 2011, the Department of Defense's State Liaison and Educational Opportunity office announced that sixteen states have laws that make licensing easier for professionals (not just attorneys) who move to a new jurisdiction because of their spouses' military service. Oregon was not one of those states.

On February 6, 2012, the ABA House of Delegates adopted a resolution that urged state bar-admission authorities to adopt rules that "accommodate the unique needs of military spouse attorneys who move frequently in support of the nation's defense." This resolution specifically encouraged:

- Admission without examination for military spouses who are present in a state due to their spouses' military service.
- Reviewing bar application procedures to ensure they are not unduly burdensome to military spouses.
- Encouraging mentorship programs for military spouses who are new to a jurisdiction.
- Offering reduced bar application and membership fees to military spouses who are new to a jurisdiction or wish to retain bar jurisdiction after moving out of the jurisdiction.

On July 25, 2012, the Conference of Chief Justices passed a resolution encouraging state bar-admission authorities to "consider the development and implementation of rules permitting admission without examination for attorneys who are dependents of service members of the United States Uniformed Services and who have graduated from ABA accredited law schools and who are already admitted to practice in another state or territory."

Oregon allows for attorney admission by reciprocity with thirty-seven states and the District of Columbia. But some military spouse attorneys will come to Oregon from states that do not have reciprocity with Oregon. Others may be starting out in their careers or may have taken time off and will therefore not meet the time-in-practice requirements of the general reciprocity rule. A more flexible admissions rule for military spouse attorneys would alleviate the burden of frequent moves.

The Military Spouse J.D. Network (www.msjdn.org) is a group of attorneys who are married to military members. They have drafted a Model Rule for Admission of Military Spouse Attorneys. MSJDN reports that rule accommodations for military spouse attorneys have been passed in Arizona, Idaho, Illinois, North Carolina, South Dakota, and Texas. A copy of the Model Rule is attached. **[Exhibit B]**

Exhibit B
DRAFT Model Rule for Admission of Military Spouse Attorneys

Rule __. Admission of Military Spouse Attorneys.

1. Due to the unique mobility requirements of military families who support the defense of our nation, an attorney who is a spouse or a registered domestic partner of a member of the United States Uniformed Services (“service member”), stationed within this jurisdiction, may obtain a license to practice law pursuant to the terms of this rule.
2. An applicant under this rule must:
 - (a) have been admitted to practice law in another U.S. state, territory, or the District of Columbia;
 - (b) hold a J.D. or LL.B. degree from a law school approved by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association at the time the applicant matriculated or graduated;
 - (c) establish that the applicant is currently a member in good standing in all jurisdictions where admitted;
 - (d) establish that the applicant is not currently subject to attorney discipline or the subject of a pending disciplinary matter in any jurisdiction;
 - (e) establish that the applicant possesses the character and fitness to practice law in this jurisdiction;
 - (f) demonstrate presence in this jurisdiction as a spouse of a member of the United States Uniformed Services;
 - (g) certify that the applicant has read and is familiar with this jurisdiction’s Rules of Professional Conduct;
 - (h) pay the prescribed application fee;
 - (i) within [60 days] of being licensed to practice law, complete a course on this jurisdiction’s law, the content and method of delivery of which shall be approved by this jurisdiction’s highest Court; and
 - (j) comply with all other ethical, legal, and continuing legal education obligations generally applicable to attorneys licensed in this jurisdiction.
3. The Court may require such information from an applicant under this rule as is authorized for any applicant for admission to practice law—except any information specifically excluded by this rule—and may make such investigations, conduct such hearings, and otherwise process applications under this rule as if made pursuant to this jurisdiction’s rules governing application for admission without examination. Upon a showing that strict compliance with the provisions of this section would cause the applicant unnecessary hardship, the Court may in its discretion waive or vary the application of such provisions and permit the applicant to furnish other evidence in lieu thereof.
4. If after such investigation as the Court may deem appropriate, it concludes that the applicant possesses the qualifications required of all other applicants for admission to practice law in this jurisdiction, the applicant shall be licensed to practice law and enrolled as a member of the bar of this jurisdiction. The Court shall promptly act upon any application filed under this rule.
5. Except as provided in this rule, attorneys licensed under this rule shall be entitled to all privileges, rights, and benefits and subject to all duties, obligations, and responsibilities of active members of bar of this jurisdiction, and shall be subject to the jurisdiction of the courts and agencies of this jurisdiction with respect to the laws and rules of this jurisdiction governing the conduct and discipline of attorneys, to the same extent as members of the bar of this jurisdiction.
6. The license to practice law under this rule shall terminate in the event that:
 - (a) the service member is no longer a member of the United States Uniformed Services;
 - (b) the military spouse attorney is no longer married to the service member; or
 - (c) the service member receives a permanent transfer outside the jurisdiction, except that if the service member has been assigned to an unaccompanied or remote assignment with no dependents authorized, the military spouse attorney may continue to practice pursuant to the provisions of this rule until the service member is assigned to a location with dependents authorized.

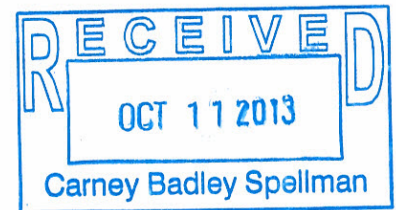
In the event that any of the events listed in this paragraph occur, the attorney licensed under this rule shall notify the Court of the event in writing within thirty (30) days of the date upon which the event occurs. If the event occurs because the service member is deceased or disabled, the attorney shall notify the Court within one hundred eight (180) days of the date upon which the event occurs.

- 7.** Each attorney admitted to practice under this rule shall report to the Court, within thirty (30) days:
 - (a) any change in bar membership status in any jurisdiction of the United States or in any foreign jurisdiction where the attorney has been admitted to the practice of law; or
 - (b) the imposition of any permanent or temporary professional disciplinary sanction by any federal or state court or agency.

- 8.** An attorney's authority to practice under this rule shall be suspended when the attorney is suspended or disbarred in any jurisdiction of the United States, or by any federal court or agency, or by any foreign nation before which the attorney has been admitted to practice.



STATE OF WASHINGTON
DEPARTMENT OF REVENUE



October 10, 2013

SCANNED

George Mastrodonato
Carney Badley Spellman PS
701 5th Avenue Suite 3600
Seattle WA 98104-7010

Re: Oregon State Bar
Registration No. 603 122 675
Docket No. 201106-0053
Determination No. 12-0248

Dear George,

Thank you for your letter dated October 4, 2013, in which you offer “to accept the standard terms of a voluntary disclosure agreement” (VDA), pay taxes assessed¹ by the Department for 2013, and pay taxes for January 1, 2009 forward plus interest.

Under the terms of your offer, the Department would waive taxes for 2005-2008 that the Oregon State Bar (OSB) would have paid had it entered into a VDA in 2009 and paid taxes going forward. Taxpayer would effectively be rewarded for having not entered into an agreement with the Department until 2013.

In recognition of the uniqueness of this situation, and given that the “look back” period for Taxpayers who fail to voluntarily register is 7 years, the Department is prepared to waive taxes for one of those years, 2005, as part of a closing agreement. The Department also remains prepared to waive penalties which would normally be applied if OSB had not come forward voluntarily and the Department had issued an assessment.

The proposed closing agreement would provide that Taxpayer will pay the Department approximately \$56,069 for liability through 2012, retail sales tax and retailing B&O tax for 2013 forward, and B&O tax on apportionable activities if it establishes nexus for such activities under RCW 82.04.067. The closing agreement would not require an admission of past liability, but would include future instructions.

¹ We interpret this to mean taxes which could be assessed.



George Mastrodonato
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Please let us know by October 25, 2013 whether your client finds these terms acceptable.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Geoffrey Margolis". The signature is written in a cursive, slightly slanted style.

H. Geoffrey Margolis

Appeals Division

HGM:bv

cc: Mary Barrett, Director's Designee



NORTH CAROLINA
STATE BAR

Office of the President

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RECEIVED

OCT 04 2013

Oregon State Bar
Executive Director

October 2, 2013

Ms. Sylvia E. Stevens
Oregon State Bar
P.O. Box 231935
Tigard, OR 97281-1935

Re: *North Carolina Board of Dental Examiners v. Federal Trade Commission*, No. 12-1172,
United States Court of Appeals for the Fourth Circuit

Dear Ms. Stevens,

The North Carolina State Bar seeks your help in addressing the recent decision of the United States Court of Appeals for the Fourth Circuit in *North Carolina Board of Dental Examiners v. Federal Trade Commission*. The opinion is enclosed.

The opinion holds that members of the North Carolina Board of Dental Examiners are not entitled to State Action Immunity from liability under the Sherman Antitrust Act. The Fourth Circuit declared that because a controlling number of Board members are licensed dentists elected by their peers, and are therefore “competitors” of those the Board seeks to regulate and those the Board seeks to restrain from engaging in the unauthorized practice of dentistry, the Board’s actions must be actively supervised by another state government official or agency to qualify for antitrust immunity. In the absence of such “active state supervision,” the Fourth Circuit held that members of the Dental Board were not agents of the state but were “private actors,” and potentially liable for treble damages under the federal antitrust laws, when they sought to prevent non-licensed teeth-whiteners operating out of kiosks in shopping malls. The Fourth Circuit reached this decision notwithstanding that the North Carolina legislature created the Dental Board, prescribed the qualifications of and manner of selecting its members, defined the practice of dentistry to include removal of stains from teeth, and assigned to the Dental Board the duty to prevent the unauthorized practice of dentistry.

The North Carolina State Bar is extremely concerned about the effect of this decision because, pursuant to statute, its governing council is comprised primarily of licensed attorneys elected by their peers who are charged with duties to regulate the profession and restrain the unauthorized practice of law. We are concerned that a court applying the Fourth Circuit decision could conclude that individual members of the State Bar Council are personally liable under the Sherman Antitrust Act for performing the very acts the legislature directed them to perform—so that those aggrieved by the actions of the Bar are likely to bring actions seeking such a conclusion. Furthermore, the opinion’s



Ms. Sylvia E. Stevens

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emphasis on the fact that the members of the board are “private actors in the marketplace” suggests that its reasoning might also be applied to boards with appointed members who are practicing professionals. Finally, given the current state of the law, a board will find it difficult or impossible to determine whether any state supervision under which it operates is “active enough” to provide a defense.

We are advised that the Dental Board will file a petition with the United States Supreme Court for writ of certiorari to review the Fourth Circuit decision. We have resolved to file an amicus brief in support of the petition for certiorari and would very much appreciate your participation in that brief. Our counsel indicate that the Supreme Court is much more likely to accept the case for review if a number of state bars whose abilities to perform fundamental duties are imperiled by the Fourth Circuit decision join the amicus brief.

We are enclosing a copy of the amicus brief the North Carolina Attorney General and the North Carolina State Bar filed in support of the Dental Board’s petition for rehearing in the Fourth Circuit. We anticipate that the amicus brief we will file in support of the petition for certiorari will be similar in substance. We will ask the Attorney General to participate again. The amicus brief must be submitted in late November, so time is of the essence.

Thank you very much for your consideration of this urgent request.

Sincerely,

M. Keith Kapp
President

Enclosures

cc: Mr. L. Thomas Lunsford II