

Oregon State Bar
Special Open Meeting of the Board of Governors
January 10, 2014
Minutes

The meeting was called to order by President Tom Kranovich at 9:00 a.m. on January 10, 2014. The meeting adjourned at 10:23 a.m. Members present from the Board of Governors were Jenifer Billman, Jim Chaney, Patrick Ehlers, Hunter Emerick, Ray Heysell, Matt Kehoe, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Caitlin Mitchel-Markley, Travis Prestwich, Josh Ross, Richard Spier, Simon Whang, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hierschbiel, Susan Grabe, Mariann Hyland, Kay Pulju, Dani Edwards, Kateri Walsh, Catherine Petrecca, and Camille Greene. Also present were Ira Zarov, PLF CEO; Marilyn Harbur, ABA HOD Delegate; and Michael Haglund, 2013 OSB President.

1. Call to Order

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

Motion: Ms. Zinser moved, Mr. Spier seconded, and the board voted unanimously to approve the agenda.

2. Welcome and Introductions

Mr. Kranovich welcomed new board members: Mr. Chaney, Mr. Mansfield, Mr. Whang and Ms. Zinser. Mr. Kranovich discussed his three new communication tools: a Facebook® page; a BOG email address (president@osbar.org); and a blog.

The board discussed the best practice for disseminating information among the board and the use of email for this purpose. They concurred the best practice was to send information to the Executive Director or the President for placement on the agenda. This would also address any public meeting implications.

3. Meal Planning – February BOG Meetings in Salem

Ms. Stevens asked the board for feedback on variety and quantity of meals at future board meetings.

4. Request for Discipline System Evaluation

In Mr. Gleason's absence, Ms. Stevens made a request of the board:

- 1.** Ask the Oregon Supreme Court to invite the ABA Center for Professional Responsibility Standing Committee on Discipline to conduct an on-site review of the OSB discipline system. The review would cost \$7000. Two additional memos were handed out.
[Exhibits A & B]

Motion: Ms. Billman moved, Mr. Wilhoite seconded, and the board voted to make the request to the Oregon Supreme Court, as amended by Ms. Zinser to include review of Mr. Gleason's specific recommendations. Ms. Mitchel-Markley, Ms. Kohlhoff and Mr. Ross opposed.

5. Preview of ABA HOD Agenda

Ms. Harbur discussed the ABA HOD resolutions and fielded questions from the board regarding the draft ABA HOD Agenda. Ms. Harbur presented the possible Illinois State Bar resolution opposing ABA EOP 464 re: joint ownership of law firms with non-lawyers. The board took no action.

6. Request for Sponsorship for NLADA Conference

Ms. Petrecca presented an informal written request from Mr. Ed Harnden, Chair of the NLADA Conference Host Committee, who asked the board to contribute to the NLADA Conference scheduled for May 1-3, 2014 at the Portland Art Museum.

Motion: Mr. Wilhoite moved, Mr. Mansfield seconded, and the board voted unanimously to approve a contribution of \$5000 to the NLADA Conference.

7. Response Supreme Court Deferral of RPC 8.4 Amendments

Ms. Stevens presented the Oregon Supreme Court's deferred action on the proposed amendments to RPC 8.4 approved by the HOD on November 1, 2013, and the court's request to the bar to submit a revised proposal. She asked the board to appoint board members to help draft a revised proposal. Ms. Kohlhoff will be involved as LEC liaison, and Ms. Mitchell-Markley volunteered to participate.

Motion: Ms. Zinser moved, Mr. Kehoe seconded, and the board voted unanimously to authorize Mr. Kranovich and Ms. Stevens to appoint suitable members to work with representatives of the OSB LEC.

8. Assignment to Bar Press Broadcasters Council

Mr. Kranovich asked the board for a volunteer to be liaison to the Bar Press Broadcasters Council. Mr. Ehlers volunteered.

9. OSB Participation in the Innovation Workgroup

Mr. Haglund asked the board for formal authority for OSB participation in the Innovation Work Group. This started out as an informal gathering, coordinated by Mike and Judge Aiken, comprised of state and federal judges, law school representatives, and legal services providers. The goal of the group is to assist new lawyers in fulfilling their professional potential and to assist practicing lawyers to adapt to the rapid changes in the legal marketplace. After the second meeting the group decided on action items, including one of which involves the OSB sending out a survey to new admittees regarding employment status. The plan is to follow up with a full-day program offering information and resources identified by the survey as needed and desired by the new lawyers. Mr. Haglund asked the OSB to have a role in coordinating the event.

10. Report on Regulatory Monitoring

As written.



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January 9, 2014

Board of Governors
Oregon State Bar
c/o Tom Kranovich, Pres.
Via e-mail only

Re: OSB Disciplinary Counsel Proposal for Review of Disciplinary Procedure

Greetings:

With the press of year-end business and holiday obligations it seems that there has been little time for those not “in the loop” to review and digest Mr. Gleason’s proposals. Ms. Yee, with whom I have served on the Disciplinary Board for several years, has written a letter of caution generally supporting the thoughts of Greg Hendrix, 2013 SPRB Chair, and I received a copy today.

I hope you will take my views into consideration as well when you decide how to proceed with Mr. Gleason’s recommendations.

I have been involved, off and on, in the disciplinary process since sometime in 1970 – before there was a disciplinary counsel’s office and before there was a disciplinary board. I am currently in my second series of consecutive terms on the DB, having once been a member of the Region 6 panel for several years and currently a member of the Region 4 panel (as well as its past chair). I have served as bar counsel, have served on the Ethics Committee, and have been asked to speak several times at annual DB conferences.

All of that said, I have never served on an LPRC or the SPRB. What I know of those bodies is purely second-hand, and from reading the Bar Rules and publications.

When considering whether a system or process needs change, it is important to understand what that system or process is as an integrated whole. Every process and every system can almost certainly be improved. Every organization such as the Bar (and society itself) changes, whether we like it or not. The trick is to understand the effect of those changes at a particular point in time so that the system may evolve and not be scrapped needlessly or spiral off into unwanted consequences.

A few years ago when I served on the HOD, we heard rather vocal and spirited criticism from a few Oregon lawyers whose principal brief seemed to be that the discipline process was 1) too slow, and 2) discriminated against the solo and small firm practitioner. Frankly, I have heard criticisms of the justice system precisely analogous from parties in civil and criminal litigation; *i.e.*, it takes too long and favors those who can afford the time and money to navigate the system.

Last summer I had the pleasure of hearing Mr. Gleason present a CLE segment on the Oregon disciplinary process and his ideas for alternatives. Much of what he said made sense, but his presentation did not include specific ideas such as reducing volunteer lawyer and public participation.

From the perspective of one who has written a fair number of opinions in discipline cases, I found myself agreeing with him that the past several years has seen an increase in what he calls "overcharging." In fact, I asked Mr. Sapiro at a DB conference whether it was expected by anyone that a DB opinion would address each and every charge alleged in the formal complaint. He told us that the opinion should normally address only the charge bringing the most significant sanction on which the accused is found culpable.

Mr. Gleason also expressed his view that the process should focus more on reformation than on retribution, a sentiment that I likewise share. The strong opposition taken by the Bar, and, indeed, discouragement by the Supreme Court, in diversion and probation as alternatives to traditional formal discipline have left several panels on which I have served with a very unsatisfied feeling that a more just decision was out of our hands.

The lawyer discipline process in Oregon has changed drastically in the past 30 years. It is simply unfair and illogical to look back at the process as it was 30 years ago and suggest that state of affairs is a reason for overhauling the process as it is today.

One central and non-negotiable principle, from my perspective, is that the process of lawyer discipline should meaningfully and centrally involve citizen participants and volunteer practitioners at every stage. Whether this is unique to Oregon I cannot say, but it is something we must cherish and protect. Ours is a calling and a profession. The clients and the system of justice we serve absolutely require that the practice of law be regulated in a partnership with lawyers and the public.

Turning to the system as it has evolved to the present day, we have instituted a more satisfying intake system by setting up the Client Assistance Office where citizen complaints are initially screened and sorted.

A full-time disciplinary counsel with several assistants reviews those matters that are referred for possible disciplinary action, and they are investigated by Bar staff as well as an LPRC, if needed. DC gathers the facts and presents them to the SPRB, functioning as a sort of prosecutor presenting to a grand jury, where a charging decision is made.

Unlike a grand jury, however, once charges are filed the role of the SPRB does not end. SPRB retains significant authority in the final decision as to whether an alternative to trial before a disciplinary panel is appropriate.

DC, with the assistance of Bar Counsel, if appropriate, manages the prosecution of an adversary proceeding before a trial panel composed of both practicing lawyers and a public member.

The trial panel is constrained by deadlines in holding its hearing and filing its opinion. That opinion is appealable to the Oregon Supreme Court by either the Bar or the accused. In short, the lawyer discipline process follows, generally, the model of the justice system.

Like the justice system, the lawyer discipline system is inherently burdened by time. Unlike the justice system, the "grand jury" and the "court" are both composed of volunteers, all of whom have busy, full-time lives in the real world.

Some of the delays inherent in past years have been more or less effectively addressed by evolutionary changes. Stipulations for discipline, built-in deadlines, the addition of a number of full-time assistant disciplinary counsel, and the finality of a disciplinary panel decision unless affirmatively appealed have gobbled great chunks of time from the process.

The simple expedient of disciplinary counsel's new policy of not overcharging is likewise helpful to the process.

Appointment of a presiding discipline judge and centralization of scheduling hearings and other administrative functions in the Bar office would quite probably further reduce the time between complaint and resolution, as well as bring some consistency and uniformity to trial opinions.

Absent from Mr. Gleason's recommendations are other measures, such as mediation (which could shortcut the process in many cases but prolong it in others), and a review of the role of the LPRC. I have been involved in a number of cases where the need for bar counsel was not apparent, and having yet another volunteer lawyer's schedule to work around often adds to the overall delay.

The one suggestion made by Mr. Gleason that I fail to see the rationale for is that of limiting SPRB responsibility. To me, the role of SPRB is a keystone in the public involvement so vital to lawyer discipline in Oregon.

I am personally unpersuaded that the Bar needs to look to the ABA or any other outside consultant to foster effective change to the process to address the current evolution of the profession in Oregon. I am confident that there is sufficient collective wisdom and experience in Oregon to assemble a committee to evaluate the system at its current stage of evolution and recommend course corrections that can be made without compromising the fundamental principle of volunteerism that includes both practitioners and the public.

Thank you for your kind attention to these thoughts.

Sincerely,

A handwritten signature in cursive script, appearing to read 'William G. Blair', written in dark ink.

William G. Blair
OSB No. 69021

C: (See transmittal e-mail)

SCHMIDT & YEE, PC

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January 8, 2014

COURTESY COPY

VIA FIRST CLASS US MAIL and
EMAIL: tom@tkatlaw.com

Tom Kranovich
Kranovich & Lucero LLC
Suite 630
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Lake Oswego, OR 97035

RE: SPRB Memorandum of Concern

Dear Mr. Kranovich:

I am the current State Chair of the 2014 Disciplinary Board. I have been on the Region 4 panel since July 1998 and was the panel chair for Region 4 in 2012 and 2013. I am also a current HOD member, serving as a delegate from 2004-2006 and 2008-2009. I believe it is important for attorneys to be active in Bar committees and I am a firm believer in the disciplinary system.

I am quite concerned as to the proposed changes made by John Gleason, OSB Disciplinary Counsel, as to the State Professional Responsibility Board ("SPRB") in his October 23, 2013 "Memo to SPRB." I would not say that the current Oregon disciplinary system is not flawless, but the proposed changes definitely need a comprehensive review by a committee as noted by Mr. Gleason.

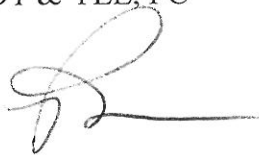
The parties signing hereon join in the Memorandum of Concern prepared by the SPRB and request that the Board of Governors ("BOG") appoint the committee to undertake the review process. Pursuant to the duties of the BOG set forth in ORS 9.080, the BOG would have the authority to establish this committee, if one is to be formed, as opposed to being outsourced or selected solely by the Bar.

It is my understanding this matter is being reviewed on January 10, 2014, by the BOG. I was not aware of that meeting until January 7, 2014, so the time constraint may have prevented other Region chairs and panel members from signing hereon. If I receive notification from other parties interested in signing and joining in this request, I will forward those to you.

Thank you for your consideration.

Very truly yours,

SCHMIDT & YEE, PC



By

PAMELA E. YEE

RESPECTFULLY JOINING:

MARY KIM WOOD, 2013 State Chair

GILBERT FEIBLEMAN, 2011 State Chair

LEAH JOHNSON, Region 5 Member

WILLIAM CROW, 2012 State Chair

KATHY PROCTOR, Region 4 Chair

PEY:jdm

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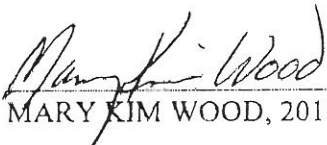
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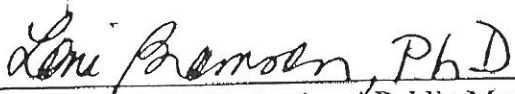
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LONI BRAMSON, Region 4 Public Member

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