

Oregon State Bar
Meeting of the Board of Governors
June 26, 2015
Open Session Minutes

The meeting was called to order by President Richard Spier at 1:40 p.m. on June 26, 2015. The meeting adjourned at 4:25 p.m. Members present from the Board of Governors were James Chaney, Guy Greco, R. Ray Heysell, Theresa Kohlhoff, John Mansfield, Audrey Matsumonji, Vanessa Nordyke, Ramon A. Pagan, Travis Prestwich, Per Ramfjord, Kathleen Rastetter, Joshua Ross, Kerry Sharp, Charles Wilhoite, Timothy Williams and Elisabeth Zinser. Staff present were Sylvia Stevens, Helen Hirschbiel, Rod Wegener, Susan Grabe, Mariann Hyland, Judith Baker, Dani Edwards, Terry Wright and Camille Greene. Also present was Carol Bernick, PLF CEO; Tim Martinez, PLF BOD; Karen Clevering, ONLD Chair.

1. Selection of New Executive Director

Motion: Mr. Heysell moved, Mr. Mansfield seconded, and the board voted unanimously to select Helen Hirschbiel as the new Executive Director.

Motion: Mr. Ramfjord moved, seconded by Mr. Greco, to set the new Executive Director's salary and \$185K with other compensation and benefits the same as the current ED's.

Motion: Mr. Wilhoite moved, seconded by Mr. Chaney that the Executive Director be employed "at will".

During the ensuing discussion, it was clear that the BOG supported a reasonable severance payment in the event of termination without cause. Mr. Mansfield, seconded by Ms. Nordyke suggested that the President and Executive Director present a recommendation at the September meeting. Mr. Wilhoite withdrew his motion.

2. Report of Officers & Executive Staff

A. Report of the President

As written. Mr. Spier thanked Mr. Prestwich for his leadership during the 2015 legislative session by presenting a framed duplicate original of the *cy pres* bill signed by the Governor.

B. Report of the President-elect

No report.

C. Report of the Executive Director

As written. Ms. Stevens also updated the board on the 2014 Program Evaluations, inquired if there was any desire for follow-up to last Fall's board orientation, discussed repurposing the members' room to a nursing room at the Bar Center, encouraged BOG members to read at least the first half of *The Relevant Lawyer* about changes happening in the profession, and reminded BOG members of the September 1, 2015 deadline for President-elect candidate statements.

D. Director of Regulatory Services

As written.

E. Director of Diversity & Inclusion

Ms. Hyland reported that she has hired Chris Ling as the new D&I Coordinator, the Diversity storywall will be online soon, and OLIO will be held in Hood River August 7-9 with many local law firms providing financial support. Ms. Matsumonji encouraged BOG members to attend.

F. MBA Liaison Reports

Mr. Ross reported on the May 13, 2015 MBA board meeting.

G. Oregon New Lawyers Division Report

In addition to the written report, Ms. Clevering reported on the ONLD's middle-school art and essay contests, socials, CLEs, the Spring Meeting in Tampa, FL, and working with OLIO.

3. Professional Liability Fund

Mr. Martinez updated the board on the PLF's financial status and the expectation that the board will not be seeking an increase in the annual assessment. Ms. Bernick reported that claims are down from the previous year, but the severity of claims has increased. She presented the PLF's Excess Committee report and the underwriting that will be done to make rates more competitive with the commercial market. Ms. Bernick also reported that the PLF has achieved its desired "net position" and will be evaluating whether it continues to be the correct amount.

4. OSB Committees, Sections and Councils

A. Client Security Fund Committee

Claim 2015-11 GERBER(Huntington)

Ms. Stevens asked the board to consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim, as presented in her memo. **[Exhibit A]**

Motion: Mr. Matsumonji moved, Mr. Mansfield seconded, and the board voted unanimously to uphold the committee's denial of the claim. Ms. Nordyke abstained.

Claim 2015-14 WEBB(Godier)

Ms. Stevens asked the board to review the CSF Committee's recommendation to award \$45,000 to Mr. Godier, as explained in her memo. **[Exhibit B]**

Motion: Mr. Williams moved, Mr. Pagan seconded, and the board voted unanimously to award the client \$45,000.

B. Legal Services Program Committee

Ms. Baker reported that the LSC is beginning its periodic evaluation of Oregon's Legal Aid programs, with particular attention to whether each program is effectively serving the statewide model and goals to meet the best interests of the clients. Ms. Grabe added that there will be a 20% reduction in money from the federal level to the state level for legal services.

5. BOG Committees, Special Committees, Task Forces and Study Groups

A. Board Development Committee

Ms. Matsumonji asked the board to vote on the recommended appointments for the Commission on Judicial Fitness and Disability, the Council on Court Procedures, the OSB HOD, and the ABA Young Lawyer HOD.

- Motion:** The board voted unanimously to approve the committee motion to appoint Judy Parker to the Commission on Judicial Fitness and Disability board. **[Exhibit C]**
- Motion:** The board voted unanimously to approve the committee motion to appoint Troy Bundy, Kenneth Crowley, and Derek Snelling to their first term on the Council on Court Procedures and reappoint Jay Beattie and Robert Keating to their second terms on the Council. **[Exhibit D]**
- Motion:** The board voted unanimously to approve the committee motion to appoint the following to the House of Delegates: **Region 2-** Megan E. Salsbury, 134745; **Region 3-** Justin Rosas, 076412; and Daniel Lang, 790078; **Region 4-** Jaimie Fender, 120832; Dylan S. R. Potter, 104855; and Simeon D. Rapoport, 874194; and **Region 6-** Callen Sterling, 124663. **[Exhibit E]**
- Motion:** The board voted unanimously to approve the committee motion to appoint Jovita T. Wang to the ABA House of Delegates. **[Exhibit F]**
- B.** Budget and Finance Committee
- Ms. Kohlhoff gave a general committee update.
- C.** Governance and Strategic Planning Committee
- Mr. Heysell asked the board to create the position of Immediate Past President as a non-voting *ex officio* member of the BOG as set forth in **[Exhibit G]**.
- Motion:** The board voted unanimously to approve the committee motion.
- Mr. Heysell asked the board to recommend that the Supreme Court amend Bar Rule of Procedure 8.6 to eliminate the requirement to pay inactive fees for the years of suspension or resignation. He explained that there is no compelling reason to continue the current requirement and eliminating it will simplify the configuration required to automate the reinstatement process with the new organization management software.
- Motion:** The board voted unanimously to approve the committee motion to recommend the Supreme Court amend Bar Rule of Procedure 8.6.
- Mr. Heysell asked the board to consider the proposed revisions to the bar's unlawful practice of law investigation and enforcement procedures (OSB Bylaw Article 20) in light of the Supreme Court's recent decision in *North Carolina State Board of Dental Examiners v Federal Trade Commission*, 135 SCt 1101 (2015). **[Exhibit H]**
- Motion:** Mr. Greco moved, Mr. Prestwich seconded, and the board voted unanimously to waive the one meeting notice required for bylaw amendments.
- Motion:** The board voted unanimously to approve the committee motion to amend OSB Bylaw Article 20.
- D.** Public Affairs Committee
- Mr. Prestwich and Ms. Grabe updated the board on the latest legislative activity and the status of the bar's law improvement proposals. There was considerable discussion regarding support of Senate Bill 822 and the recording of grand jury proceedings. No motion was presented. The board also discussed the best way to show appreciation for lawyer-legislators and others who played a role in helping the OSB achieve its objectives during the session.
- E.** Task Force on International Trade in Legal Services
- Ms. Hirschbiel presented the Oregon State Bar International Trade in Legal Services Task Force report on their review of regulations relating to the practice of law in Oregon to determine

whether any “unnecessary barriers to trade” exist in contravention of free trade agreements to which the United States is a party. Ms. Hirschbiel asked the board to approve the recommendations in the final report. **[Exhibit I]**

Motion: Ms. Zinser moved, Ms. Rastetter seconded, and the board voted unanimously to send the House Counsel Rules to the Board of Bar Examiners for review and comment.

Motion: Mr. Greco moved, Mr. Ramfjord seconded, and the board voted unanimously to direct the Legal Ethics Committee to formulate a formal ethics opinion on RPPC 8.5.

6. Other Action Items

Mr. Mansfield proposed that the OSB be a Silver Sponsor of the District of Oregon Conference at the \$1000 level, as outlined in **[Exhibit J]**. In the discussion that followed, it was suggested that the annual budget include some amount for this kind of sponsorship that is distinct from the budget for bar and community dinners and events.

Motion: Mr. Mansfield moved, Ms. Nordyke seconded, and the board voted unanimously to approve the sponsorship at the Silver level.

Ms. Edwards presented various appointments to the board for approval. **[Exhibit K]**

Motion: Mr. Wilhoite moved, Ms. Rastetter seconded, and the board voted unanimously to approve the appointments.

Ms. Wright, OSB Legal Opportunities Coordinator, gave a quick summary of her work to date; she anticipates having a report for the BOG in September that will include some recommendations from the recent “Stakeholders Meeting.”

7. Consent Agenda

Motion: The board voted unanimously to approve the consent agenda of past meeting minutes and the request of the Sole and Small Firm Practitioners to change its name to the Solo and Small Firm Section.

8. Closed Session (Executive Session pursuant to ORS 192.660(1)(f) and (h)) General Counsel/UPL Report – see CLOSED Minutes

Motion: Mr. Greco moved, Mr. Mansfield seconded, and the board voted unanimously to approve Mr. McCulloch’s ULTA claim. Mr. Ross abstained.

Motion: Ms. Ramfjord moved, Mr. Pagan seconded, and the board voted unanimously to approve Mr. Davis’s ULTA claim.

9. Good of the Order (Non-action comments, information and notice of need for possible future board action)

Mr. Spier asked the BOG to consider whether to offer a stipend to the OSB president, since helping to offset the lost income might make it more feasible for younger and solo lawyers to serve. After discussion, the GSP was asked to bring a proposal to the September meeting.

**Oregon State Bar
Board of Governors Meeting
June 26, 2015
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. Pending or Threatened Non-Disciplinary Litigation

Ms. Hirschbiel informed the board of non-action items.

B. Other Action Items

Ms. Hirschbiel asked the board to consider approval of Ross McCulloch's ULTA claim for the return of \$30,070.42.

Motion: Mr. Wilhoite moved, Mr. Chaney seconded, and the board voted unanimously to approve Mr. McCulloch's ULTA claim. Mr. Ross abstained.

Ms. Hirschbiel asked the board to consider approval of Derick Davis's ULTA claim for the return of \$6,650.24.

Motion: Ms. Nordyke moved, Ms. Matsumonji seconded, and the board voted unanimously to approve Mr. Davis's ULTA claim.

**Oregon State Bar
Board of Governors Meeting
June 26, 2015
Special Closed Session Minutes**

Discussion of items on this agenda is in executive session pursuant to ORS 192.660(2)(a). 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. Consideration of Executive Director Candidates

Mr. Spier asked the board to consider the two final candidates for Executive Director. All board members presented their views.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2015
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 2015-11 GERBER (Huntington)—Request for BOG Review

Action Recommended

Consider the request of the Claimant that the BOG reverse the CSF Committee's denial of his claim.

Discussion

Claimant Huntington retained Susan Gerber in October 2013 to pursue post-conviction relief from his criminal conviction. Huntington's mother gave Gerber \$5,000 as an "earned on receipt" fixed fee for Gerber's services and \$2,000 for the services of an investigator.

Huntington signed Gerber's fee agreement¹ on October 15, 2013. On November 15, Huntington filed a *pro se* petition for post-conviction relief, accompanied by his Affidavit of Indigency. On the same day, Gerber filed a notice of representation; the court then issued a limited judgment noting that Gerber was retained counsel and giving judgment to the state for the filing fee of \$252.

Shortly after she was retained by Huntington, Gerber left the Rader firm. Staff has confirmed that the firm disbursed to Gerber an amount equal to the unearned fees on her pending cases; in the newer cases, the entire amount of the prepaid fee was distributed to Gerber.

The state moved for an extension of time to respond to the *pro se* petition so that it could respond to the amended petition that would be filed by Gerber. When Gerber failed to timely file the amended petition, the court dismissed the *pro se* petition on January 29, 2014. On February 3, Gerber moved to vacate the dismissal, arguing that the local court rules allowed her 180 days to file her amended petition. The court granted the motion and Gerber filed an amended petition in early March.

The state moved to dismiss on April 2, 2014. Gerber did not respond, and on May 1, the court again dismissed the petition. The court also wrote to the bar expressing "grave concerns" about Gerber's performance. Huntington had no further contact with Gerber. She has not accounted for nor returned any of the money paid on Huntington's behalf.

¹ The agreement was with the firm of Rader, Stoddard and Perez, where Gerber was employed at the time.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2015
From: Sylvia E. Stevens, Executive Director
Re: CSF Claim No. 2015-14 WEBB (Godier)

Action Recommended

Review the CSF Committee's recommendation to award \$45,000 to the Godier.

Discussion

Godier hired West Linn attorney Sandy Webb in November 2014 to represent him in a medical malpractice claim on a contingent fee basis. Godier and Webb agreed that, in addition to reimbursement of expenses, Webb would receive 33% of any pre-trial settlement, or 40% of a trial award.

In December 2014, Webb negotiated a settlement with one of the defendants for \$100,000. She deposited the settlement funds into her trust account and immediately transferred \$6,000 to Godier. Approximately 10 days later, Webb sent Godier a check for \$46,000 as the balance of his share of the settlement proceeds, but it bounced.

Based on emails between Godier and Webb about the bounced check, it appears Webb calculated Godier's share as follows:

Settlement	100,000
Webb's fees & costs	<u>(48,000)</u>
Godier's share	52,000
Initial distribution	<u>(6,000)</u>
Balance	46,000

Webb never provided Godier with a breakdown of the costs.¹ When the first \$46,000 check bounced, Webb told Godier she had inadvertently paid trial fees from trust rather than her business account, leaving it \$675 short. She promised to cover the shortfall in her trust account and send another check; that one too was returned NSF.² By the end of January, Webb was no longer communicating with Godier.

¹ Webb's 33% fee was \$33,333, indicating she collected \$14,457 in unidentified costs.

² Trust account records obtained by DCO reflect that on the same day that she deposited Godier's settlement proceeds, she withdrew a total of \$94,550. Five days later she wrote a check for \$6,000 (first payment to Godier). Two other checks were also written within a few days totaling \$8,000. We have no information as to what they were for. The net result is that Webb sent the \$46,000 check when she had only a little more than \$1200 in the account.

In response to Godier's continuing demands for his funds, Webb's husband sent Godier \$1000. Godier states he is unsure of what he is really owed, but has not offered any evidence that the costs claimed by Webb were not legitimate.

There are currently four matters pending against Webb in DCO. In addition to a complaint based on this CSF matter, there are three trust account overdraft matters.

The CSF Committee found this claim eligible for an award of \$45,000. The Committee also voted to waive the requirement that Godier obtain a judgment against Webb on the ground that Godier is of limited means and a judgment against Webb is likely uncollectible at this time. It is not uncommon in these situations for OSB staff to pursue a civil judgment; two members of the CSF Committee also volunteered to do it for the Bar. Note, too, that if Webb is disciplined in connection with her handling of Godier's funds (as is fully expected), reimbursement of the CSF will be a condition of reinstatement.

OREGON STATE BAR

Board of Governors

Meeting Date: June 26, 2015
Memo Date: June 26, 2015
From: Audrey Matsumonji, Board Development Committee Chair
Re: Commission on Judicial Fitness and Disability Board Appointment

Action Recommended

Approve the committee's recommendation to appoint Judy Parker to the Commission on Judicial Fitness and Disability board.

Background

The Commission on Judicial Fitness and Disability reviews complaints about Oregon state judges and justices of the peace and investigates when the alleged conduct might violate the state's Code of Judicial Conduct or Article VII (amended), Section 8 of the state constitution. The Commission also investigates complaints referred by the Chief Justice that a judge has a disability which significantly interferes with the judge's job performance.

As provided in ORS 1.410 the OSB Board of Governors appoints three members to the Commission board for four-year terms. The Commission board also includes three public members appointed by the Governor and confirmed by the Senate and three judges appointed by the Supreme Court.

During the June meeting, the Board Development Committee evaluated a request from Susan Isaacs, Executive Director of the Commission, to appoint one new member. After reviewing a list of volunteer candidates and a lengthy discussion regarding the Commission's needs, the committee unanimously voted to recommend the appointment of Judy Parker.

OREGON STATE BAR

Board of Governors

Meeting Date: June 26, 2015
Memo Date: June 26, 2015
From: Audrey Matsumonji, Board Development Committee Chair
Re: Council on Court Procedures Appointments

Action Recommended

Approve the committee's recommendation to appoint Troy Bundy, Kenneth Crowley, and Derek Snelling to their first term on the Council on Court Procedures and reappoint Jay Beattie and Robert Keating to their second terms on the Council.

Background

The Council on Court Procedures was created by the Legislature to review the Oregon laws relating to civil procedure and coordinate and study proposals concerning the Oregon laws relating to civil procedure advanced by the membership. Pursuant to ORS 1.730(1)(d) the Board of Governors appoints 12 attorney members to serve on the Council.

The time-honored practice is to have a balance between members who represent plaintiffs and half who represent defendants. Furthermore, the statute indicates the lawyer members shall be broadly representative of the trial bar and the regions of the state. Taking these requirements into consideration, after a lengthy discussion of the volunteer candidates, the committee recommends the reappointment of Jay Beattie and Robert Keating, two defense practitioners. The committee further recommends the appointment of Troy Bundy and Kenneth Crowley, both defense practitioners, and Derek Snelling, a plaintiff's attorney. Although these five appointments are defense-heavy, they ensure a practice balance when factoring in the other seven continuing council members.

OREGON STATE BAR

Board of Governors

Meeting Date: June 26, 2015
Memo Date: June 26, 2015
From: Audrey Matsumonji, Board Development Committee Chair
Re: OSB House of Delegates Appointments

Action Recommended

Approve the committee's recommendation to appoint seven members to the OSB House of Delegates.

Background

The Board of Governors are responsible for appointing members to the House of Delegates when vacancies occur. The following regions have vacant positions due to resignations or lack candidate interest from the April HOD election. The Board Development Committee recommends the following appointments.

Region 2- Megan E. Salsbury, 134745

Region 3- Justin Rosas, 076412; and Daniel Lang, 790078

Region 4- Jaimie Fender, 120832; Dylan S. R. Potter, 104855; and Simeon D. Rapoport, 874194

Region 6- Callen Sterling, 124663

OREGON STATE BAR

Board of Governors

Meeting Date: June 26, 2015
Memo Date: June 26, 2015
From: Audrey Matsumonji, Board Development Committee Chair
Re: ABA House of Delegates Appointment

Action Recommended

Approve the committee's appointment recommendation for Oregon's Young Lawyer Representative to the ABA House of Delegates.

Background

Based on ABA rules, Oregon has four elected delegate seats on the House of Delegates. If a state is entitled to four or more seats on the HOD one of the seats must be designated for a lawyer less than 35 years of age at the beginning of the term.

Andrew Schpak is the current Young Lawyer Delegate, but he will resign at the conclusion of the 2015 Annual Meeting this August. The remaining one year term must be filled by appointment.

After a thorough review of the six qualified candidates who expressed an interest, the committee selected Jovita T. Wang to recommend for appointment.

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 27, 2015
From: Ray Heysell, Chair, Governance and Strategic Planning Committee
Re: Creation of the Position of Immediate Past President

Action Recommended

Create the position of Immediate Past President as a non-voting *ex officio* member of the BOG as set forth below.

Discussion

Immediate Past President

The GSP Committee unanimously supports the establishment of an informal position of Immediate Past President (IPP). Many organizations have such a position, with the objective of retaining the experience of the past president for the benefit of the next years' board.

There is no provision for this position in the Bar Act,¹ which designates the officers as "president, president-elect and two vice presidents."² The proposal as approved by the Committee is to make the IPP an informal position, to be occupied as agreed between the IPP and the BOG from year to year. The duties of the IPP would also be as agreed between the IPP and the BOG.

The most logical place to incorporate the new position is in the bylaws dealing with officers:

Section 2.2 Officers

Subsection 2.200 Duties

(a) President

The President presides at all meetings of the Board and has the authority to exercise the Board's power between board meetings and to take appropriate action whenever the

¹ 9.060 Officers; election; vacancies. A president, president-elect and two vice presidents shall be elected by the governors each year immediately following the annual election of governors and before the newly elected governors have qualified. The president, president-elect and vice presidents shall be elected from among the attorney board members. All officers shall continue in office until their successors are elected and qualify. Vacancies in any of the offices shall be filled by the board by appointment for the remainder of the term. All officers shall take office as provided by the bar bylaws.

² The Committee will recall a discussion earlier this year regarding the disconnect between the statute and the bylaws, the former having not been amended when the BOG eliminated the position of vice-president. Moreover, under the historical practice that the vice-presidents were the senior class members not chosen as president or president-elect, we occasionally have three, not two. In January 2015, the Committee recommended seeking a change in the Bar Act in 2017 and in the meantime just ignoring the inconsistency with current practice.

President finds that a board meeting is not necessary or cannot reasonably be convened. However, the President's action must be consistent with any actions taken or policies previously adopted by the Board or by the membership. The President must report any such action at the next board meeting. The President performs such other duties as the Board directs.

(b) President-Elect

The President-elect performs the duties of the President in the absence, inability or refusal of the President to perform those duties. The President-elect performs other duties as the Board directs.

(c) Immediate Past President

The Immediate Past President is a non-voting ex officio member of the Board. The duties of the Immediate Past President will be as agreed between the Immediate Past President and the Board from time to time. Expenses of the Immediate Past President will be reimbursed as approved by the BOG.

Article 20 Unlawful Practice of Law

Section 20.1 Definitions

For the purpose of ~~these Rules of Procedure~~ this Article, the following definitions apply:

(A) "Administrator" means the Bar employee assigned to provide administrative support to the Committee and Bar Counsel.

(B) "Committee" means the Unlawful Practice of Law Committee of the Oregon State Bar.

(BC) "Unlawful practice of law" means: (1) the practice of law, as defined by the Oregon Supreme Court, in Oregon by a persons who areis not an active members of the Oregon State Bar and areis not otherwise authorized by statute-law to practice law in Oregon; or (2) holding oneself out, in any manner, as authorized to practice law in Oregon when not authorized to practice law in Oregon. -do so. It is unlawful for a person who is not an active member of the Bar to engage in the practice of law within the State of Oregon, whether or not for compensation or in connection with any other activity, unless specifically authorized by law or rule. The practice of law includes, but is not limited to, any of the following: Holding oneself out, in any manner, as an attorney or lawyer authorized to practice law in the State of Oregon; appearing, personally or otherwise, on behalf of another in any judicial or administrative proceeding or providing advice or service to another on any matter involving the application of legal principles to rights, duties, obligations or liabilities.

(C) "Documents" includes, but is not limited to, contracts, deeds, mortgages, satisfactions, leases, options, certificates of assumed business name, articles of incorporation and other corporate documents, bulk sales affidavits, wills, trusts, notes and pleadings and other papers incident to legal actions and special proceedings.

(D) "Investigator" means a member of the Unlawful Practice of Law Committee assigned to investigate a complaint of unlawful practice of law.

(E) "Agency" means any federal, state or local agency having an interest in or responsibility for the investigation of ~~acts or conduct that concern or are~~ related to ~~acts or conduct that may represent~~ the unlawful practice of law.

(F) "Accused" means the person or persons who are the subject of a complaint to the ~~e~~Committee.

(G) "Complaint" means the matter, ~~thing~~ or occurrence that ~~represents a file opened by causes~~ the Committee to open a file for the investigation of ~~anthe~~ accused's ~~person or any person or activity associated with one or more accused persons under the allegations~~ alleged unlawful practice of law. ~~contained in a file or any activity related thereto.~~

Section 20.2 Unlawful Practice of Law Committee

The Board may appoint as many members as it deems necessary to carry out the Committee's functions. At least two members of the Committee must be members of

the general public and no more than one-quarter of Committee members may be lawyers engaged in the private practice of law.

Section 20.32 Investigative Authority Practices Subject to Investigation

Pursuant to ORS 9.164, the Committee shall investigate complaints of the unlawful practice of law. The Committee may decline to investigate allegations of unlawful practice of law when: the allegations of unlawful practice of law are not made to the Committee in writing; the administrator determines the allegations do not involve the unlawful practice of law, or; the allegations of unlawful practice of law consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services. The following conduct by persons who are not members of the Bar is subject to investigation by the Committee, pursuant to ORS 9.164:

- (A) Use of stationery or other written material describing the person as a lawyer.
- (B) Appearance on behalf of another in court or administrative proceedings without statutory authority.
- (C) Correspondence on behalf of another when the correspondence is a jurisdictional prerequisite for legal action or customarily precedes legal action, such as demand letters.
- (D) Negotiation on behalf of another for the settlement of pending or possible legal actions.
- (E) Drafting or selecting documents for another or giving advice to another in regard thereto when informed or trained discretion must be exercised in selecting or drafting a document to meet the needs of another.
- (F) Any exercise of an intelligent choice or informed discretion in advising another of his or her legal rights or duties.
- (G) Representing to the public that the person is authorized to practice law.
- (H) Use of printed or electronic materials, advertisements or other solicitations describing services that can reasonably be construed as legal services.
- (I) Any other action for another that requires legal skill or judgment.

Section 20.3 Practices Not Subject to Investigation

The Committee may decline to investigate allegations of unlawful practice of law in the following instances: When the allegations of unlawful practice of law are not made to the Committee in writing or when the allegations of unlawful practice of law consist only of printed or electronic materials, advertisements or other solicitations describing services that cannot reasonably be construed as legal services.

Section 20.4 Practices Subject To Prosecution

The Committee may request the Board to authorize a suit, pursuant to ORS 9.166, to enjoin unlawful practice of law when after investigation by the Committee, it appears that: There is at least one person, identified by the Committee, who has been injured by a person unlawfully practicing law, who has received legal services from a person who is

~~not a member of the Bar or who has personal knowledge of facts constituting the unlawful practice of law or the unlawful practice of law is an ongoing activity; or an accused in any other respect has violated ORS 9.160. The Committee may, at its discretion, for good cause, decline to request authorization from the Board to enjoin the unlawful practice of law pursuant to ORS 9.166 in favor of other resolutions provided in these rules.~~

~~Section 20.5 Practices Not Subject to Prosecution~~

~~The Committee may, at its discretion, decline to request authorization to enjoin unlawful practice of law pursuant to ORS 9.166 when, after investigation by the committee, it appears that: The unlawful practice of law is not an ongoing activity; the investigator has been unable to obtain sufficient evidence to substantiate the allegation of unlawful practice of law or the investigator has been unable to obtain sufficient evidence to support a suit for injunction pursuant to ORS 9.166. The investigator may, after authorization by vote of a majority of the Committee, conclude an investigation by negotiating an agreement with an accused wherein the accused agrees to discontinue the unlawful practice of law. The agreement will be subject to and not become effective until approval by the Board.~~

Section 20.46 Other Investigators

The ~~Committee may recommend that the Administrator may~~ hiring a person who is not a member of the Committee to perform further investigation when the Committee determines it is necessary in order to complete the investigation. ~~on consideration of the following factors: The number of persons who have been injured by a person unlawfully practicing law or who have received legal services from a person who is not a member of the Bar; the probable nature and extent of damages to the persons receiving legal services from a person who is not a member of the Bar; the need for additional facts and witnesses to substantiate the allegation of unlawful practice of law for the purpose of a suit for injunction pursuant to ORS 9.166 and the recommendation of the investigator and the Committee's inability to compel discovery whenever it appears that members of the Committee are unable to conduct an appropriate investigation.~~

Section 20.57 Processing Unlawful Practice of Law Complaints

Subsection 20.7500 Investigation

On receiving a complaint of unlawful practice of law ~~meeting the requirements of Section 20.2 of the Bar's Bylaws, the committee chairperson the administrator~~ will ~~assign~~ give the complaint a case number and assign it to a committee member for investigation. ~~The committee member will review the documentation accompanying the complaint and will contact the complainant, affected parties and witnesses.~~ The committee member may only~~not~~ employ ~~any~~ methods in his or her investigation that ~~do not~~ comply with the Rules of Professional Conduct. ~~Within 60 days after receiving a complaint of unlawful practice of law, Upon completion of the investigation, the~~

investigator will submit a written report to the Committee with an analysis of the relevant facts and law and a recommendation for disposition. ~~The chairperson of the Committee may grant extensions of time to submit a report of investigation as the chairperson deems reasonable.~~

Subsection 20.7501 Dispositions

~~Upon receipt and review of the investigator's report, the Committee may either continue the matter for further investigation and revisions to the report or make one of the following dispositions:~~
~~Actions to be taken at the discretion of the Committee:~~

(a) ~~Closure.~~ ~~Dismissal without prejudice.~~

This disposition is appropriate when ~~the Committee has insufficient evidence to prove that~~ the accused ~~did not commit~~engaged in the unlawful practice of law. ~~The Committee may reopen a closed matter if it receives additional information or evidence of the unlawful practice of law by the accused.~~

(b) ~~Notice.~~ Informational Letter.

This disposition is appropriate when ~~the Committee has~~ insufficient evidence ~~facts exist~~ to prove ~~establish~~ that the accused ~~has committed~~engaged in the unlawful practice of law, ~~but the~~ and believes that the accused would benefit from receiving additional information about what the Court has determined constitutes the unlawful practice of law. The letter will notify the accused that the investigation is concluded, and state that the accused may wish to seek legal advice about whether any specific practice constitutes the unlawful practice of law. ~~accused's activities are such that the Committee believes it appropriate to notify the accused of the provisions of ORS 9.160~~

~~(c) Cautionary Letter.~~

~~This disposition is appropriate when the Committee asserts that the accused is engaged in activities involving the unlawful practice of law, but either (1) the practice is neither ongoing nor likely to recur, or (2) the Committee determines that the matter is inappropriate for prosecution.~~

~~(d) Resolution by agreement.~~

~~This disposition is appropriate when the Committee asserts that the accused committed the unlawful practice of law, but is willing to enter into an agreement to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the Board of Governors.~~

~~(ce)~~ Referral to Board of Governors for prosecution initiation of proceedings under ORS 9.166.

~~This disposition~~ (1) Filing suit for civil injunctive relief is appropriate when a) the Committee has clear and convincing evidence to prove establish ~~asserts~~ that the accused ~~committed~~ engaged in the unlawful practice of law, b) the practice is ongoing or likely to recur, and c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(2) Filing suit for contempt relief is appropriate when a) a court has entered an injunction against the accused b) the Committee has clear and convincing evidence to ~~prove~~ establish that the accused continues to engage in the unlawful practice of law and c) a member of the public has been harmed or is likely to be harmed as a result of the accused's unlawful practice of law.

(3) The Committee may decline to request authorization from the Board to initiate proceedings allowed under to ORS 9.166 in favor of other resolutions provided in these rules. ~~the accused is unwilling to enter an agreement to discontinue the unlawful practice of law; or, for any other reason, the Committee concludes that prosecution under ORS 9.166 is warranted.~~

~~(f) Appointment of Outside Investigator or Referral to~~ or Cooperation with Other Agency or Bar Department.

This disposition is appropriate when the Committee determines that another agency or department is better positioned to investigate or address the complaint, including but not limited to when:

(1) The allegations involve activity prohibited by law, ordinance or statute within the jurisdiction of ~~another a~~ federal, state or local agency;

(2) The accused is or has been the subject of an investigation, action, injunction or review by a federal, state or local agency;

(3) An agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation;

(4) The agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused, or;

(5) The complaint concerns conduct by a lawyer or bar applicant, or implicates the rules of professional conduct. ~~is unable to obtain sufficient information to make an informed recommendation or when the Committee otherwise elects to refer the matter to another investigator or agency.~~

~~(g) Referral to Bar Counsel~~

~~When a complaint of unlawful practice of law involves an accused against whom the Board has already authorized prosecution, the Committee may refer the matter directly to bar counsel without obtaining prior authorization from the Board. Bar counsel may ask the Committee to conduct an investigation into the new complaint and has discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.~~

~~Subsection 20.702 Actions of Unlawful Practice of Law Committee~~

~~The Committee will consider reports of investigations at its first meeting after submission of a report. On a vote of a majority of members, a quorum being present, the Committee must: Adopt the report as written or modify the report or continue the~~

~~matter for further investigation and revisions to the report. The committee chairperson must document in writing the Committee's final findings and disposition of each complaint. The chairperson or his or her delegate, must, in writing, inform the complainant and the accused of dismissals without prejudice. A cautionary letter authorized by the Committee gives notice to the accused that the Committee has evidence that the accused is engaged in activities that the Committee maintains involve the unlawful practice of law. The cautionary letter may provide information on the limits of the law and may demand that the accused cease activities that the Committee asserts constitute the unlawful practice of law. On a vote of a majority of members of the Committee, a quorum being present, a complaint of unlawful practice of law must be referred to the Board for authorization to file an action under ORS 9.166.~~

Subsection 20.6703 Board of Governors Bar Counsel

Subsection 20.600 Role of Bar Counsel

~~On~~After authorization by the Board to pursue an action under ORS 9.166, the ~~Bar administrator~~ may ~~obtain~~retain counsel to ~~prosecute~~represent the Bar in the action and will report periodically to the Committee and Board on the status of the litigation. To the extent necessary, the Committee and administrator will assist bar counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.

Subsection 20.601 Settlement Authority

After authorization by the Board to pursue an action under ORS 9.166, ~~C~~counsel for the administrator ~~Bar~~ may negotiate a settlement of the unlawful practice litigation before or after the filing of a circuit court complaint by way of agreement with the accused to discontinue the unlawful practice of law. The agreement is subject to and does not become effective until approved by the ~~Board~~Committee. ~~To the extent necessary, the Committee will assist counsel with preparing and continuing investigation of matters approved for action under ORS 9.166.~~

Subsection 20.602 Referral to Bar Counsel

When a new complaint of unlawful practice of law involves an accused against whom the Board has already authorized suit, the administrator refer the matter directly to bar counsel without obtaining prior authorization from the Committee or the Board. The administrator and Bar counsel may ask the Committee to conduct an investigation into the new complaint and ~~has~~have discretion to determine whether to include the facts alleged in the new complaint in the prosecution against the accused.

Subsection 20.7704 Prevention and Public Outreach and Education

~~The unlawful practice of law statutes cannot be adequately enforced by investigation and prosecution alone. Prevention of unlawful practice of law is also a focus of committee activity. Thus, in addition to the disposition options outlined above, t~~

Subsection 20.700 Public Outreach

The Committee may engage in public outreach ~~and education to prevent and to~~ educate the public about the potential harm caused by the unlawful practice of law. The Committee may cooperate in its education efforts with federal, state and local agencies tasked with preventing consumer fraud. ~~Also, when the Committee becomes aware of a person or entity engaged in activities likely to involve the unlawful practice of law based on the Committee's experience, the Committee may send a letter to the person or entity regarding the limits of the law on the provision of legal services.~~

Subsection 20.701 Informal Advisory Opinions

The Committee may ~~also, in its discretion,~~ write informal advisory opinions on questions relating to what activities may constitute the practice of law. Opinions must be approved by the Board before publication. The published ~~Such~~ opinions are not binding, but are intended only to provide general guidance to lawyers and members of the public about activities that ~~may be of concern to or investigated by the Committee~~ Oregon Supreme Court precedent and Oregon law indicate may constitute the unlawful practice of law. ~~All such opinions must be approved by a majority vote of the Committee and submitted to the Board of Governors for final approval prior to publication.~~

Subsection 20.~~8705~~ Records

When the investigation of a complaint is concluded, the investigator must deliver all records and documents created or obtained in the investigation to the Bar. Records will be kept in accordance with the Bar's record retention policy.

~~Subsection 20.706 Other Agencies~~

~~The Committee may refer to, cooperate with or consult other agencies whether federal, state or local having an interest in the subject matter of any complaint before the Committee or having information or resources that would benefit the Committee's investigation. Referral to, joint prosecution with or requests for information or investigation are appropriate under circumstances that include, but are not limited to the following:~~

~~(a) When the allegations concerning a claim of unlawful practice of law would also support or form a part of an activity prohibited by law, ordinance or statute; whether civil or criminal and recognized as a responsibility of the applicable federal, state or local agency.~~

~~(b) When the person accused of the unlawful practice of law or a person acting with the accused, is or has been the subject of an investigation, action, injunction or other similar review by a federal, state or local agency and the matter complained of relates directly or indirectly to the matter, person or activity reviewed or investigated.~~

~~(c) Whenever an agency, on review of the allegations before the Committee as to an accused, indicates a desire to pursue further investigation alone or in combination with the Bar.~~

~~(d) Whenever the agency has or is likely to have, information regarding the complaint, the accused or parties acting with the accused.~~

EXECUTIVE SUMMARY

The Oregon State Bar International Trade in Legal Services Task Force (“ITLS Task Force”) was tasked with reviewing regulations relating to the practice of law in Oregon to determine whether any “unnecessary barriers to trade” exist in contravention of free trade agreements to which the United States is a party.

The ITLS Task Force concludes as follows:

1. The current Admission Rule for House Counsel arguably stands as an unnecessary barrier to trade. It severely restricts the ability of foreign-licensed lawyers from being admitted to practice as house counsel in Oregon without any apparent consumer protection reasons.
2. Oregon RPC 8.5 determines when the Oregon RPCs should apply, as opposed to the rules of another jurisdiction, when the conduct at issue involves lawyers, clients or legal matters from multiple jurisdictions. Its application in the context of assessing conflicts of interests is particularly complicated and problematic in transnational practice.
3. The foreign legal consultant rule appears to be under-utilized, but the reasons are unclear. More information on this issue is needed.

The ITLS Task Force recommends:

1. Amend Oregon Supreme Court Admission Rule for House Counsel. Rules relating to admission may be formulated by either the Board of Governors or the Board of Bar Examiners, but ultimately must be adopted by the Oregon Supreme Court. See ORS 9.542. Prior to proposing this amendment, the Board may want to solicit comments from the membership, the Board of Bar Examiners, the Professional Liability Fund and any other stakeholders identified by the Board.
2. Direct the Legal Ethics Committee to formulate a formal ethics opinion that provides guidance in interpreting RPC 8.5, specifically, to make it clear that for conflict of interest purposes, when determining the “predominant effect” of transactional work under ABA Model Rule 8.5(b)(2), a lawyer can reasonably take into account an agreement entered into with the client’s “informed consent.”
3. Collect and monitor information about utilization of the foreign legal consultant rule and the barriers that exist to its utilization.

Memo Re: Request for OSB Sponsorship of District of Oregon Conference 2015

For June 2015 BOG Meeting, Ashland

Presented by John Mansfield, D. Or. Ninth Circuit Representative

Background:

The US District Court for the District of Oregon is hosting its bi-annual District Conference on October 2, 2015 at OMSI. As a Ninth Circuit representative for the District, I am helping to organize this conference, entitled: "Navigating Complex Problems in Oregon & Beyond."

The District Conference is a statewide event with topics of interest to a wide variety of OSB members, as seen in the overview and tentative agenda attached to this memo. The majority of the speakers at the conference are from Oregon, but there is significant national presence as well. The 2013 Conference had an active twitter feed that was picked up worldwide. The 2013 Conference had approximately 300 attendees, and we expect the same turnout this year.

Proposed Action:

I propose that the OSB be a silver sponsor of the District Conference, at the \$1000 level. A chart setting out the various sponsorship levels and benefits for each level is attached.

Such a sponsorship is appropriate for the OSB, and will benefit the OSB and its members. The conference is a premiere statewide event, put on by the District Court for all members of the OSB, including practitioners and judges. Although the annual tradition of OSB Conferences was discontinued before I joined the OSB, I am told that this District Conference is the closest thing to a statewide meeting of Oregon lawyers that we now have. It is an excellent opportunity for the OSB to show its connection to its membership, and its interest in the topics that will be discussed during the Conference.

I will be happy to answer any questions BOG or staff members have at our Ashland open session.

ATTACHMENT: OVERVIEW AND AGENDA

1. Conference Theme:

“Navigating Complex Problems in Oregon & Beyond”

2. Keynote Speaker: Garret Epps

3. Topics/Speakers:

a. **Understanding Our Hardwiring** (110 min. Presentation)

- **Kimberly Papillon**—TheBetterMind.com (expert on implications of neuroscience, psychology and implicit association in medical, legal and judicial decision-making)

b. **Drought in the American West** (20 min. Pop Talk)

- **Adele Amos**—University of Oregon

c. **Things Are A Changin’: What you need to know about where the law and legal profession are headed** (10-12 min. Pop Talks)

- **Lucy Bassli**—Microsoft (“The Role of In-House Counsel in Transforming the Delivery of Legal Services”)
- **Dan Lear**—AVVO (How Consumers Are Using the Internet to Find Legal Services)
- **Judy Perry Martinez**—ABA Commission on Future of Legal Services

d. **Rollout of New Reentry Technology** (20-30 min. Pop Talk)

- **Law By Design / Startline**

e. **Current Issues in Sports Litigation** (55 min. Panel)

Building off the exciting sports moment that Oregon is having with the successes of U of O, the Blazers, and the rise of professional soccer for both men and women, we are presenting a panel about timely sports issues.

- **Ben Laurites**—GM. Trailblazers (moderator)
- **John Casey**—KILL Gates (concussion litigation)
- **Maureen Weston**—Pepperdine Prof. (*O’Bannon* and student athlete likeness, IP issues)
- **Carol Pratt**—KILL Gates (Title IX)
- **Paul Loving**—The Consul Group (Branding issues)
- **Matt Levin**—Markowitz

f. **Law in the New Economy** (Pop Talks—no more than 30 min total)

Adapting to a world of crowd-sourced and virtual services.

- Curb--Bethany
- Umber--Chris
- Virtual Currency—Kristen
- Car-2-Go—Bethany
- Airing, etc.—Gosia, Reilly

h. **Judicial Game Show**

- A panel to get to know the judges better and address some substantive practice issues in a lighthearted, entertaining way.

4. **Potential Agenda**

8:00-8:30	Registration
8:30-8:35	Welcome by J. Aiken
8:35-9:10	Our Changing Profession pop talks
9:10-9:40	Re-Entry App Rollout
9:40-10:10	Addiction Topic
10:10-10:20	BREAK
10:20-10:40	Drought in the American West
10:40-11:30	Law & the New Economy / Crim Law Topic (maybe do break-out sessions)
11:30-12:00	Garret Epps
12:00-1:00	LUNCH
1:00-1:55	Sports Law Panel
1:55-3:00	Kimberly Papillon
3:00-3:10	BREAK
3:10-4:00	Kimberly Papillon
4:00-4:55	Judicial Game Show

4:55-5:00 Closing Remarks by J. Aiken

5:00-6:30 Cocktail Reception

2015 District Conference For the U.S. District Court of Oregon

Thursday, October 1, 2015

5:00 to 6:30 p.m.

Speakers and Honored Guests Reception

Mark O. Hatfield U.S. Courthouse

Friday, October 2, 2015

9:00 a.m. to 5:00 p.m.

Navigating Complex Problems in Oregon & Beyond

OMSI – Oregon Museum of Science and Industry

SPONSORSHIP OPPORTUNITY

You are invited to join the Oregon Federal Bar Association (FBA) in sponsoring this wonderful event.

	Cuisine Sponsor \$2000 (limit 1)	Beverage Sponsor \$2000 (limit 1)	Gold Sponsor \$1500	Silver Sponsor \$1000	Bronze Sponsor \$500
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OREGON STATE BAR

Board of Governors Agenda

Meeting Date: June 26, 2015
Memo Date: June 12, 2015
From: Danielle Edwards, Director of Member Services
Re: Appointments to committees and boards

Action Recommended

The following bar groups have vacant seats. Consider appointments to these groups as requested by the committee officers and staff liaisons.

Background

Advisory Committee on Diversity and Inclusion

One member resigned from the ACDI and the officers and staff recommend the appointment of **Yazmin Wadia** (141244). Ms. Wadia was an OLIO student and offers the perspective of a newly licensed practitioner to the committee.

Recommendation: Yazmin Wadia, member, term expires 12/31/2017

Judicial Advisory Committee

The committee has three vacant seats but wishes to only recommend one candidate for appointment at this time. **Phillip Aaron Spicerkuhn** (106750) has agreed to serve if appointed and brings geographic diversity to the committee based on his practice in Hermiston.

Recommendation: Phillip Aaron Spicerkuhn, member, term expires 12/31/2016

Disciplinary Board

Due to a resignation, one additional non-lawyer member is needed on the region 5 board. Staff recommends the appointment of **Janet L. Fiel**. The experience Ms. Fiel brings as a certified mediator and prior community service make her a qualified candidate to serve on the board.

Recommendation: Janet L. Fiel, public member, term expires 12/31/2017