

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 20, 2004  
**Open Session Minutes**

*For ease of future research efforts for the minutes, the minutes are written to reflect information as it appears on the agenda. Items in the minutes were not necessarily considered by the Board in the order in which they appear below.*

The meeting of the Oregon State Bar Board of Governors was called to order Saturday, November 20, 2004, at 1:00 p.m. by President William Carter and adjourned at 5:15 p.m. Current board members present were Williams Carter, Marva Fabien, Linda Eyerman, Phyllis Edmundson, Nena Cook, Albert Menashe, Bette Worcester, Mark Comstock, Frank Hilton, Gerry Gaydos, Jon Hill, Dennis Rawlinson, Ronald Bryant, John Enbom, and Lisa LeSage. New board members present were Carol Skerjanec (1:00 p.m. – 3:15 p.m.), Tim Gerking, and Rick Yugler. Staff present was Karen Garst, George Riemer, Rod Wegener, Susan Grabe, and Teresa Wenzel. Individuals present from the PLF were Ira Zarov (1:00 p.m. – 2:15 p.m.) and Robert Cannon (1:15 p.m. – 2:15 p.m.).

**1. Work Session**

Linda Kruschke, CLE Publications Department Manager, gave the board an overview of the activities of her department, including a snapshot of 2004 revenue and expenses, and the department's publication schedule for 2004 and 2005.

**2. Report of Officers**

**A. Election of New OSB President-Elect**

Following presentations by Mr. Rawlinson and Mr. Comstock, the board elected Mr. Rawlinson as 2005 Oregon State Bar President-Elect.

The results of the voting are as follows:

Dennis Rawlinson, 12 (Fabien, Eyerman, Edmundson, LeSage, Menashe, Worcester, Hilton, Gaydos, Hill, Rawlinson, Bryant, Enbom); and Comstock 3 (Comstock, Carter, Cook)

**B. Report of the President**

**1. Oath of Office for New BOG Members**

Mr. Carter administered the oath of office to Mr. Gerking, Ms. Skerjanec, Ms. Worcester, and Mr. Yugler as incoming members of the Board of Governors, effective January 1, 2005.

2. Meeting with Chief Justice Carson on November 10, 2004

Mr. Carter highlighted the topics discussed with the Chief Justice, including the anticipated deficit for the next biennium, the court's approval of the new Rules of Professional Conduct, and the bar's consideration of the topic of judicial performance evaluations.

3. HOD Meeting Feedback

Mr. Carter indicated he had received a number of favorable comments regarding the 2004 Annual Meeting of the House of Delegates though he also heard from a past president who thought his report should have been in writing and the names of deceased members should not have been individually read.

4. Grants Pass Campaign for Equal Justice Activities with Ms. Garst

Mr. Carter and Ms. Garst met with several lawyers in the Grants Pass area regarding their possible contribution to the Campaign for Equal Justice. The turn out was low, but following their visits approximately \$1,000 was received from Grants Pass lawyers.

5. PLF Meetings

a. Learning the Ropes Seminar

Mr. Carter indicated he was invited to participate in this event and found it very useful for new lawyers.

b. Meeting at Steamboat Inn

Mr. Carter indicated he attended the recent meeting of the PLF Board along with Ms. Garst and Mr. Bryant.

6. National Program to Increase Citizen Participation in Jury Service

The bar has received a request from Chief Justice Carson for it to participate in a program to increase citizen participation in jury service.

C. Report of the President-elect

1. Update on Current Activities

Ms. Cook indicated she participated in an alumni event for Willamette Law School at the annual meeting, made a presentation to the Mary Leonard Society in Salem, attended a further meeting with representatives of the Board of Bar Examiners on Admission Rule 15.05 (possible reciprocity admission

with Utah), and the Oregon New Lawyers Division's new Leadership Institute. She also plans to meet with each new BOG committee chair to plan for 2005 activities.

D. Report of the Executive Director

Ms. Garst mentioned several of her recent activities, including meeting with the Executive Director of the Oregon Board of Medical Examiners. She mentioned the bar would have a table at the upcoming Ebony and Ivory Event on December 4, 2004. She also asked the board for input on the 2006 BOG meeting schedule and asked that board committees cover substantive items at their meetings between BOG meetings and only use their meetings in conjunction with BOG meetings to update committee members on committee activities.

3. Professional Liability Fund

A. General Report

1. CEO Evaluation Process

Mr. Zarov mentioned the evaluation process for his position and thanked board members for their input on his performance to the PLF Board.

2. London Re-insurer Meetings

Mr. Zarov reported on his recent trip to London to talk to the PLF's reinsurers. He reported the meetings went well and the reinsurers continued to be satisfied with the operation of the PLF.

3. Projects for 2005

a. Analysis of Assessment Factors and Alternatives

Mr. Zarov indicated the PLF intended to look at cost controls concerning the operation of the PLF and the issue of rating practitioners for purposes of their assessments.

b. Study of Part-time Attorney Assessment

Mr. Zarov also reported the PLF intended to study the issue of the assessment for part-time lawyers to determine if a better procedure could be established for setting the assessment for them.

c. PLF-type Plan for Oregon Doctors

Mr. Zarov indicated the issue of establishing a PLF-type plan for malpractice coverage for Oregon doctors has arisen again and he is

providing information about the structure and operation of the PLF to interested parties.

4. 2005 Meeting Schedule

The PLF Board's 2005 meeting schedule has been set with four meetings in Lake Oswego, and one meeting each in Bend and Ashland. One of these meetings will be a joint meeting with the Board of Governors.

5. Mr. Zarov extended his thanks to the BOG PLF liaisons.

B. Financial Report

Mr. Zarov indicated the PLF had good returns on investments in November and expenses are at or below expectations for 2004. He noted claims numbers are up and are running at a pace of 920 for the year, though he hopes the final number will be closer to 900.

C. Personal and Practice Management Assistance Program

The Personal and Practice Management Assistance Program has been very busy and the PLF is considering adding a technology expert to this program to help solo practitioners and small firms in addressing technology issues in the practice of law. Mr. Zarov also reported long-time program consultant Carol Wilson is retiring and the PLF is recruiting to fill her position.

D. Approval of 2005 Excess Plan

Mr. Zarov presented the changes to the PLF's 2005 excess plan.

**Action:** Mr. Bryant moved, Ms. LeSage seconded, and the board unanimously passed a motion to approve the PLF's 2005 excess plan.

E. Approval of Changes to PLF Policy Manual

Mr. Zarov presented the proposed changes to the PLF's policy manual.

**Action:** Mr. Rawlinson moved, Mr. Comstock seconded, and the board unanimously passed a motion to approve these changes.

F. PLF Excess Program Rates for 2005

Mr. Zarov presented information concerning the proposed changes to the PLF Excess Program rates.

**Action:** Mr. Enbom moved, Mr. Rawlinson seconded, and the board unanimously approved the 2005 PLF Excess Program rates as recommended.

#### 4. Open Session Agenda

##### A. *Paulson v. Oregon State Bar*

The board was informed that Mr. Paulson had filed an amended complaint adding Ms. Cook and Mr. Rawlinson as defendants. In light of this, Ms. Cook asked Mr. Gaydos to present the issues of defense and indemnification of the individual defendants (Mr. Carter, Ms. LeSage, Ms. Cook, Mr. Rawlinson, Ms. Garst, Mr. Riemer, and Mr. Sapiro) and Mr. Riemer's DR 5-101(A) disclosure and consent request to the board. Mr. Carter, Ms. LeSage, Ms. Cook, Mr. Rawlinson, Ms. Garst, and Mr. Riemer left the room. Mr. Sapiro was not in attendance. Mr. Gaydos explained the issues to the board.

**Action:** Mr. Comstock moved, Mr. Bryant seconded, and the board unanimously approved Mr. Riemer's continued representation of the bar concerning matters involving Mr. Paulson notwithstanding this lawsuit under DR 5-101(A).

**Action:** Mr. Comstock moved, Ms. Edmundson seconded, and the board unanimously approved a motion to defend and indemnify all current defendants (Mr. Carter, Ms. LeSage, Ms. Cook, Mr. Rawlinson, Ms. Garst, Mr. Riemer, and Mr. Sapiro) concerning Mr. Paulson's lawsuit.

#### 5. OSB Committees, Sections, Councils, Divisions and Task Forces

##### A. MCLE Committee

###### 1. MCLE Request for Review - Harry Jones

The board discussed Mr. Jones' requests and the policy behind the elimination of bias MCLE requirement.

**Action:** Ms. LeSage moved, Mr. Comstock seconded, and the board unanimously passed a motion to refer the policy issues involved to the Policy and Governance Committee for further consideration. The questions involve whether substantive law programs should qualify for elimination of bias credit and whether the reading of material without more should qualify for credit.

**Action:** Mr. Comstock moved to table the consideration of Mr. Jones' individual requests until the Policy and Governance Committee had considered the foregoing issues. The motion died for lack of a second.

**Action:** Mr. Hilton moved, Ms. LeSage seconded, and the board unanimously passed a motion to approve Mr. Jones' credit request for attending the EEOC law update and to deny his request for credit for reading the book.

B. Client Security Fund

1. *Wilson v. Cederwall* and *Wilson v. Torres*

Mr. Comstock explained the background of this matter and the CSF Committee's recommendation that Ms. Wilson's request to withdraw the prior approval of these claims be denied.

**Action:** Mr. Comstock moved and Mr. Menashe seconded, that the board reject Ms. Wilson's request in accordance with the recommendation of the committee. Mr. Riemer asked the board to review the results of Ms. Wilson's proposed stipulation for discipline. He felt the board should withdraw the approval of these claims in light of the proposed stipulation. The violations she admitted to did not appear to constitute dishonest conduct within the scope of the CSF rules though he conceded Ms. Wilson did not present a very sympathetic case in light of her non-cooperation with the committee's investigation and her discipline for non-cooperation. After discussion, the board unanimously approved the motion to deny Ms. Wilson's request to withdraw the prior approval of these claims.

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

A. Access to Justice

1. Change to ORS 9.025 and the Bar Bylaws

Ms. LeSage presented the committee's recommendation that the board sponsor a change to the Bar Act to authorize the board to appoint one additional member of the Board of Governors to represent the interests of one or more underrepresented groups of bar members. Ms. LeSage indicated this process has worked very well for the Washington State Bar Association and would address the difficulty underrepresented lawyers have in being elected to the Board of Governors. Mr. Rawlinson, Ms. Cook, Mr. Carter, Mr. Bryant, and Mr. Menashe spoke in opposition to the proposal. Ms. Eyerman spoke in favor of it though she thought it deserved more study in light of the other comments made. Ms. LeSage indicated she was in favor of referring the proposal back to the Access to Justice Committee for further study. She was not convinced the current recruitment of board candidates necessarily addressed all the diversity concerns she had regarding the composition of the board.

**Action:** Ms. Eyerman moved, Mr. Enbom seconded, and the board unanimously passed the motion to refer the proposal back to the Access to Justice Committee for further study.

B. Budget and Finance Committee

1. 2005 OSB Budget

Mr. Hilton thanked Mr. Wagener for his work as CFO of the bar. Mr. Hilton felt Mr. Wagener was doing a fabulous job and was able to answer any and all questions he had in reviewing the proposed 2005 bar budget in a very prompt and thorough manner.

Mr. Hilton indicated the Budget and Finance Committee was moving that the board approve the proposed 2005 bar budget as presented in the agenda. Ms. Garst indicated she had one caveat regarding the proposed budget relating to the proposal to put all bar CLE publications online. If members defer their purchases of hard cover books in anticipation of the proposal being approved in 2005 and implemented in 2006, 2005 CLE publication sales could be less than is presented in the proposed budget.

**Action:** The board unanimously approved the committee motion to adopt the 2005 budget.

2. Annexation of Bar Center to City of Lake Oswego

Mr. Hilton indicated the Budget and Finance Committee was recommending the board decline the City of Lake Oswego's invitation to have the bar property annexed into the city. Mr. Hilton indicated he had checked with law use expert Ed Sullivan and Mr. Sullivan advised there were no particular advantages to the bar accepting this invitation at this time.

**Action:** The board unanimously approved the committee motion to decline the city's invitation for annexation.

C. Executive Session

1. Executive Session Pursuant to ORS 192.660(1)(i)- Executive Director Performance Review

The board met in executive session to discuss the performance of the Executive Director. Staff left the room.

D. Executive Director Evaluation

Ms. LeSage indicated the committee felt Ms. Garst had done a good job in 2004. The committee recommended Ms. Garst receive a 3% salary raise for 2005 and one additional week of paid vacation.

**Action:** The board approved the motion by unanimous vote. Ms. Cook indicated she will meet with Ms. Garst to go over the specifics of her evaluation by the board.

E. Policy and Governance Committee

1. Revised CLE Committee Charge

Ms. Cook reported on the meeting the committee had with Bob Burt of the CLE Committee. Several members of the CLE Committee were not happy with the board's proposed charge for the committee for 2005. The result of the meeting of the Policy and Governance Committee with Mr. Burt was Ms. Cook, Ms. Gaydos, and Mr. Yugler will attend the next CLE Committee meeting on December 4, 2004, to continue to discuss the committee's charge for 2005.

F. Public Affairs Committee

1. General Political Update

Mr. Gaydos directed the board to the written report provided in the agenda.

2. Joint Recommendation from Public Affairs Committee and Special Committee on Board Relations

Mr. Gaydos presented the committee's recommendation that the board approve presenting the proposed amendment to ORS 9.050 to the legislature. The proposal would allow the board, upon a two-third's vote of the entire board, to initiate a recall vote by the members of a board member's region. The committee did not recommend any change in the petition signature requirement in the statute for member initiated recall votes. Ms. Eyerman opposed the proposal on the grounds it could be perceived to be retaliatory in light of Mr. Paulson's lawsuit and presenting such a measure to the legislature could be risky. Mr. Bryant expressed similar concerns. Mr. Carter and Mr. Rawlinson indicated this was a policy question different from that addressed in Bar Bylaw 18.6. Mr. Hill asked Ms. Grabe how the legislature might react to this proposal and she felt there was always risk in making legislative proposals, but the board needed to do what it felt was appropriate to address the policy issue involved. Ms. Garst indicated this was solely a policy issue and the bar could handle the legislative process if the board felt the proposal was good policy. Mr. Riemer indicated the proposal provided the board with a mechanism to address disruptive and inappropriate conduct and reminded the board of Mr. Gaydos' prior observation that the board was in the best position to decide if a recall vote should be initiated based on the conduct of a board member in connection with the member's work on the board. Mr. Comstock indicated he supported the proposal and felt the legislature, when advised of the facts, would very likely be supportive of the board's efforts. Mr. Bryant indicated that if the board waited to submit this issue to the legislature, it would not likely be addressed until 2007.

**Action:** The board approved submitting the proposal to the legislature (yes, 13; no, 2 [Eyerman, LeSage]).

G. Special Committee on Board Relations

Mr. Rawlinson reviewed the committee's report to the board dated November 20, 2004.

Item 1: Proposed Amendment of ORS 9.050

The board had just approved the proposed amendment to ORS 9.050 so nothing further needed to be done on this issue. Mr. Rawlinson indicated the committee wanted the board to be aware of the option to propose an amendment of this statute to change the percentage of members needed to initiate a recall petition, but the committee was not recommending the board pursue such an amendment.

Items 2 and 3: Proposed Amendment of Bar Bylaw 18.6 and proposed BR 2.4(d)(3)

Mr. Rawlinson indicated the Policy and Governance Committee was recommending Bar Bylaw 18.6 be amended to delete reference to the Disciplinary Board. The special committee concurred in that recommendation.

**Action:** Mr. Rawlinson moved, Mr. Hill seconded, and the board unanimously passed a motion to waive the one meeting notice requirement so the board could vote on the proposed amendment of Bar Bylaw 18.6 at this meeting.

**Action:** Mr. Rawlinson moved, Mr. Bryant seconded, and the board unanimously passed the motion to amend Bar Bylaw 18.6 as recommended by the Policy and Governance Committee to delete reference to the Disciplinary Board because the Supreme Court appointed Disciplinary Board members, not the Board of Governors.

Mr. Rawlinson indicated the special committee was offering a proposed amendment of BR 2.4(d) so the Disciplinary Board was covered by the same type of rule set forth in Bar Bylaw 18.6 for the Board of Governors, the State Professional Responsibility Board, and Local Professional Responsibility Committees. Mr. Bryant indicated the board should recommend this proposed rule of procedure to the Supreme Court as the same suspension rule should apply to the Disciplinary Board as the board has determined applies to the other listed boards and committees.

**Action:** Mr. Bryant moved and Mr. Rawlinson seconded to approve the committee's proposed BR 2.4(d)(3) for presentation to the Supreme Court. Ms. Eyerman indicated she was opposed to this rule for the same reasons she had opposed Bar Bylaw 18.6. She felt accused lawyers are presumed innocent and should not be subject to suspension for service on the listed boards based on the SPRB's approval of formal disciplinary charges against them. The board approved the motion (yes, 14; no, 1 [Eyerman]).

## Items 4, 5 and 6: Replacements for Suspended Board Members

Mr. Rawlinson indicated there were at least three options on this topic: (1) do nothing further; (2) consider having the board appoint a temporary replacement; or (3) consider having an election to select a temporary replacement. Mr. Rawlinson indicated the special committee had asked Mr. Riemer for his opinion whether a suspension under Bar Bylaw 18.6 effected a vacancy in a board member's position under ORS 9.040(5). Mr. Riemer's opinion was that a suspension under the Bar Bylaw did not effect a vacancy in the position. The special committee accepted Mr. Riemer's opinion. Mr. Bryant indicated he agreed a vacancy did not occur, but he thought an election was not appropriate. He thought the board should appoint someone as a temporary replacement at the earliest possible time. The temporary replacement would only serve until the disciplinary proceeding against the suspended member is resolved. Ms. Cook indicated the board had just received the special committee's report and the board needed time to consider these options. The board by consensus agreed to refer this issue to the Policy and Governance Committee for further consideration with the request it bring its recommendations back to the board at its January 2005 meeting.

The committee's report included the recommendation the committee sunset at this time and Ms. Cook indicated her acceptance of that request. The Policy and Governance Committee will take up any remaining issues.

### H. Committee on the Judiciary

Mr. Bryant indicated the committee had considered two issues at its meeting earlier in the day. First, a vacancy exists on the Court of Appeals and the committee is gearing up to interview the applicants and make recommendations to the full board on the list of candidates to submit to the Governor.

**Action:** Mr. Bryant presented a committee motion to approve tweaks in the recently approved process to delete reference to health as a criteria (per the Governor's request), make another minor change in wording, and to add language to indicate the committee recommends a list of candidates to the full board and the board recommends a list of candidates to the Governor. The board unanimously approved the committee's recommendations. Following is the new language approved by the board:

*C. Upon completion of the due diligence review, the committee will recommend a list of candidates suitable for consideration by the Governor to the Board of Governors based on the statutory requirements of ORS 2.020 for the Supreme Court, ORS 2.540 for the Court of Appeals, and ORS 305.455 for the Oregon Tax Court, as well as information obtained in the review process, and as screened using, at a minimum, the following criteria: Integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public*

*service. The board will then determine the final list of candidates to submit to the Governor.*

**Action:** Mr. Bryant moved, Ms. LeSage seconded, and the board unanimously passed a motion to endorse changing language in Bar Bylaw 2.703(a) and 2.703(b) as recommended by the committee. Following is the new language for Bar Bylaw 2.703(a) and 2.703(b):

*(a) If any appellate selection process has been concluded within three months preceding the announcement of a new appellate vacancy, the board has the option of not conducting a separate process, by re-submitting the previous list of suitable for consideration by the Governor candidates to the Governor without notification to members.*

*(b) A lawyer who seeks appointment to the same position within two years of first having received a suitable for consideration by the Governor status will not be required to submit another application or to be re-interviewed.*

Staff officially will be presenting these changes to the board for approval in January 2005, along with other changes to Bar Bylaw 2.703.

Mr. Bryant indicated the committee had also discussed the development of a proposal that the board appoint a task force on judicial performance evaluations. The chair of the Judicial Administration Committee, Tom Kranovich, had met with the committee to express the interest of the Judicial Administration Committee in working with the board on this project. Mr. Bryant indicated Mr. Hill will be taking over chairmanship of the committee in January and the committee will be scheduling a meeting with the Judicial Administration Committee to continue to discuss this topic in February or March. Mr. Hill indicated this would be a long-term project, likely taking several years to study and develop a judicial performance evaluation process suitable for Oregon.

#### I. BBX/BOG Study Group on Reciprocity Admission

**Action:** Mr. Hilton moved, Mr. Bryant seconded, and the board unanimously passed a motion to approve the addition of Utah to Admission Rule 15.05 on reciprocity admission. It is hoped the proposal, which has been approved by the Board of Bar Examiners also, can be submitted to the Supreme Court in time for the court to consider having the amended rule go into effect on January 1, 2005.

## 7. Consent Agenda

Mr. Bryant asked that the appointments to the CLE Committee be removed from the consent agenda.

**Action:** Mr. Gaydos moved, Mr. Menashe seconded, and the board unanimously passed a motion to approve the consent agenda, without the CLE Committee appointments.

**Action:** Mr. Bryant moved, Mr. Hill seconded, and the board unanimously passed a motion to remove Buck Humphreys from the CLE Committee and to approve Kathleen Cushing as 2005 committee chair.

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

Mr. Rawlinson indicated the Annual Meeting Committee has considered the board's informal input on the location of the annual meeting in 2005 and the committee recommended the contract with the Seaside Civic and Convention Center for 2005 be canceled. The committee also recommended the Annual Meeting Committee be sunset and the Member Services Committee consider the annual meeting as a topic further. The board by consensus accepted the recommendations of the committee.