

Oregon State Bar
Meeting of the Board of Governors
May 18, 2018
Special Open Session Minutes

President Vanessa Nordyke called the meeting to order at 4:03 p.m. on May 18, 2018. The meeting adjourned at 4:25 p.m. Members present from the Board of Governors were Colin Andries, John Bachofner, Chris Costantino, Eric Foster, John Grant, Rob Gratchner, Guy Greco, Eddie Medina, Tom Peachey, Kathleen Rastetter, Liani Reeves, Julia Rice, Kerry Sharp, and David Wade. Not present were Michael Levelle, Michael Rondeau, Whitney Boise, Per Ramfjord, and Traci Rossi. Staff present were Helen Hierschbiel, Amber Hollister, Susan Grabe, Jonathan Puente, Kay Pulju, and Dani Edwards. Also present was Jennifer Nichols, ONLD Chair.

1. Call to Order/Finalization of Agenda

The board accepted the agenda, as presented, by consensus.

2. Public Affairs Committee: 2019 OSB Law Improvement Package

- A.** Ms. Rastetter presented the Bar's package of 2019 law improvement proposals as approved by the BOG Public Affairs Committee. **[Exhibit A]**

Motion: The board voted unanimously in favor of the Public Affairs Committee motion to accept the standards. The motion passed.

3. Board Development Committee: Appointment Recommendation for State Professional Responsibility Board.

- A.** Mr. Greco presented recommendations to appoint Kelly D. Lemarr and Richard Weill to the State Professional Responsibility Board. **[Exhibit B]**

Motion: The board voted unanimously in favor of accepting the Board Development Committee's recommendations for appointment. The motion passed.

4. Approve Minutes of May 1, 2018 Special BOG Meeting

Motion: Mr. Greco moved, Mr. Bachofner seconded, and minutes from the May 1, 2018 meeting were approved unanimously. The motion passed. **[Exhibit C]**

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: May 18, 2018
Memo Date: May 18, 2018
From: Kathleen Rastetter, Public Affairs Committee Chair
Re: 2019 OSB Law Improvement Program

Action Recommended

Approve the Public Affairs Committee (PAC) recommendation to include twelve proposals submitted as part of the 2019 Oregon State Bar (OSB) Law Improvement Program package for submission to Legislative Counsel's office for bill drafting.

Background

Every long session, the OSB submits proposed legislation as part of the Law Improvement Program to the Oregon State Legislature for passage. On May 2, 2018, the PAC hosted the OSB Legislative Forum. This year six OSB sections, workgroups, and committees submitted twelve proposals for consideration by the Board of Governors (BOG) to be included as part of the 2019 Law Improvement program package.

The OSB's Law Improvement package is intended to include proposed legislation from sections, workgroups, and committees that clarify statutory ambiguities, remove unnecessary procedural requirements, modify unforeseen glitches in previous legislation, or otherwise improve the administration of justice. Policy changes are also included in the bar package of legislation when deemed appropriate. In order for a legislative concept to be considered at the Legislative Forum, it must be approved by a majority of the section executive committee, and we encourage executive committees to be representative of the diverse views on the section. Bar groups are encouraged to be mindful of differing viewpoints in the practice area.

The proposals were reviewed by the PAC and OSB General Counsel to ensure that they meet the criteria established by both the OSB policies and bylaws, and the U.S. Supreme Court case, *Keller v. State of California*, 499 US 1, 111 S.Ct 2228 (1990).¹

What is the Keller Rule?

In 1990, the United States Supreme Court ruled in *Keller v. State Bar of California*, 499 US 1, 111 S.Ct 2228 (1990) that an integrated (mandatory) bar's use of compulsory dues to finance political and ideological activities violates the 1st Amendment rights of dissenting members when such expenditures are not germane to the bar's purpose,

¹ For more information on the Oregon State Bar bylaws and the *Keller* case, please visit http://www.osbar.org/leadership/bog/bog_resources.html.

which the court identified as regulating the legal profession and improving the quality of legal services.

Keller does not prohibit integrated bars from using member dues to advance political or ideological positions that are not germane to the bar's purpose; however, it requires that dissenting members receive a refund of the portion of dues attributable to the non-germane activity.

What are the OSB Public Affairs Legislative Guidelines²?

The OSB's policies and Bylaws limit legislative or policy activities to those reasonably related to any of the following subjects:

1. The regulation and discipline of lawyers;
2. The improvement of the functioning of the courts including issues of judicial independence, fairness, efficacy and efficiency;
3. The availability of legal services to society;
4. The regulation of lawyer trust accounts;
5. The education, ethics, competence, integrity and regulation of the legal profession;
6. The provision of law improvement assistance to elected and appointed government officials;
7. Issues involving the structure and organization of federal, state and local courts in or affecting Oregon;
8. Issues involving the rules of practice, procedure and evidence in federal, state or local courts in or affecting Oregon; and
9. Issues involving the duties and functions of judges and lawyers in federal, state, and local courts in or affecting Oregon.

If the BOG approves a particular proposal for drafting, there are still several opportunities for the board to review the legislative concept before filing. The legislative concepts are not submitted to the legislature until the fall of 2019. Throughout this process, the board will have the ability to ask questions, review the process and proposals, and, if necessary, pull a concept from the package at any point.

Below is the list of legislative proposals from the six bar groups reviewed by the PAC. Legislative concepts that receive approval for drafting will be submitted to Legislative Counsel's office to be drafted. Those bills that receive final BOG approval will be introduced through the Judiciary Committee, and pre-session filed for the 2019 legislative session.

Direct link to proposals: <https://publicaffairs.osbar.org/2019-legislative-concepts/>

² Adopted by the Board of Governors in April 22, 2016 as the OSB Legislative Guidelines incorporating the Conference of Chief Justices Regulatory Objectives.

Legislative Proposals

The PAC recommends that the BOG approve all twelve of these proposals.

1. The PAC recommends approval for the twelve proposals listed below:
 - a. OSB Board of Governors
 - i. Legal Aid Statutory Allocation
 - ii. Agency *pro hac vice* Fees
 - iii. OSB Membership Fees
 - iv. Oregon Department of Revenue Information Sharing
 - v. Electronic Email Address Disclosure
 - b. Business Law Section – Ratification of Defective Corporate Acts
 - c. Debtor/Creditor Section – Lien Information Statements
 - d. Elder Law Section – Heir Liability for Deferred Property Taxes
 - e. Military & Veterans Section
 - i. Housing hotline and Assistance for Servicemembers
 - ii. Court Diversion for Injured Servicemembers
 - f. Nonprofit Section – ORS Chapter 65 Update
 - g. Sustainable Futures Section – Prudent Investor Rule

For each of the proposals listed above, the PAC recommends that the section or committee move forward with its proposal(s) with the expectation that each group will implement the suggestions of the PAC and report back on its progress.

OREGON STATE BAR

Board Development Committee Agenda

Meeting Date: May 18, 2018
Memo Date: May 9, 2018
From: Dawn M. Evans, Disciplinary Counsel
Re: Recommendations for appointments to the State Professional Responsibility Board for two unexpired terms in Region 4 and Region 5

Action Recommended

Make recommendation to Board of Governors to fill one vacancy each in Region 4 and Region 5 on the State Professional Responsibility Board.

Background

State Professional Responsibility Board

Region 4 member: Kelly D. Lemarr

Region 5 member: Richard Weill

Vacancies have occurred as a result of changes in employment that resulted in two members' relocation outside of the Region in which they were serving. Appointments are being sought for the unexpired terms of the departing members. Richard Weill served a one-year term during 2015 and is eligible to serve a second term pursuant to BR 2.3(a). Given his prior service, he will be able to dive right into service without training. Kelly Lemarr is an attorney with St. Andrew Legal Clinic and will bring experience in family law that will assist in analyzing cases in that area of practice, which is a subject matter area that is frequently the subject of complaints. Kelly has prior experience as a member of a Local Professional Responsibility Committee in Multnomah County. They are recommended for appointments to expire on the dates indicated:

Kelly D. Lemarr, term expiring 12/31/20

Richard A. Weill, term expiring 12/31/19

**Oregon State Bar
Meeting of the Board of Governors
May 1, 2018
Open Session Minutes**

President Vanessa Nordyke called the meeting to order at 11:00 a.m. on May 1, 2018. The meeting adjourned at 12:04 p.m. Members present from the Board of Governors were John Bachofner, Whitney Boise, Chris Costantino, Eric Foster, John Grant, Rob Gratchner, Guy Greco, Michael Levelle, Eddie Medina, Tom Peachey, Julia Rice, Michael Rondeau, Traci Rossi, Kerry Sharp, and David Wade. Not present were Colin Andries, Per Ramfjord, Kathleen Rastetter, and Liani Reeves. Staff present were Helen Hirschbiel, Amber Hollister, Kay Pulju, Susan Grabe, Jonathan Puente, Kateri Walsh, and Dani Edwards. Also present were Daniel Crowe and Maxine Bernstein, Oregonian Reporter.

1. Call to Order/Finalization of Agenda

2. Approval of Meeting Minutes.

Motion: Approve minutes from the April 20, 2018, Board of Governors meeting.

Mr. Rondeau moved, Mr. Bachofner seconded. The board approved the minutes unanimously.

Mr. Bachofner noted that the draft minutes from the April 20 board meeting accurately reflected the board's decision to only refund the portion of Mr. Lindsay's member fees that are attributable to the publication of the Specialty Bar Statement on page 43 of the April 2018 Bar Bulletin.

3. Requests for Refund of Bar Dues for Publication of the OSB & Specialty Bar Statements in the April 2018 Bulletin

Ms. Hirschbiel presented information on the responses from members and the public regarding the OSB and Specialty Bar Statements published in the April 2018 Bulletin. Ms. Hirschbiel noted that there were three decisions for the board to consider: the amount indicated the board would discuss the legal analysis of the refund options available during closed session. Additional discussion during the closed session will include the procedure to handle future request for refunds.

At Mr. Bachofner's request, Ms. Hirschbiel provided a summary of the cost scenarios as outlined in the agenda materials. President Nordyke reminded the board of OSB bylaw 12.6 and relating to the bar's requirement to refund only the portion of member fees attributed to the specialty bar statement.

Mr. Crowe inquired as to the board's interest in allowing public comment on this topic. President Nordyke allowed Mr. Crowe to address the board whereby he indicated it was his

understanding that the April 20 BOG decision was to refund bar members their entire membership fee without limitation. Mr. Crowe further indicated he felt it was appropriate for the board to refund the full membership dues to each requesting member to ensure the impact on the bar was as significant as the impact on its members. Mr. Crowe further indicated that if the BOG did not refund member fees in full, the bar would be subject to litigation and possible de-unification on the basis that the organization could no longer effectively self-regulate.

Executive Session (pursuant to ORS 192.660(1)(h)) - General Counsel Report

The Board went into closed session.

The Board went into open session.

Motion: Motion to refund membership fees attributed to the publication of the Specialty Bar Statement on page 43 of the April 2018 Bar Bulletin due to the confusion created by the placement of the Specialty Bar Statement next to the OSB Statement.

Mr. Bachofner moved, Mr. Peachy seconded, and the board voted unanimously to adopt the motion.

Motion: Motion to refund Shawn Lindsay in the amount of \$1.12 plus interest from the date fees were due until the date of the refund.

Mr. Wade moved, Mr. Foster seconded, and the board voted unanimously to adopt the motion.

Ms. Costantino clarified interest is based on the statutory interest. Mr. Bachofner further clarified the refund amount would be rounded up to the nearest cent.

Motion: Motion to direct the CEO, pursuant to OSB Bylaws Section 2.800 to approve future “opt-out” refund requests, in an amount and manner consistent with its decision at today’s meeting. Future partial payments will be adjusted to account for variations in interest accrued and the CEO will report back to the board on the status of requests.

Mr. Grant moved, Mr. Wade seconded, and the board voted unanimously to adopt the motion.