

**Oregon State Bar**  
**Meeting of the Board of Governors**  
August 2-3, 2002  
**Open Session Minutes**

The Board meeting was called to order **Friday, August 2, 2002**, at 1:35 p.m. by President Angel Lopez and adjourned at 5:00 p.m. Members of the Board of Governors participating were William Carter, David Hytowitz, Charles Williamson, Nena Cook, Bette Worcester, James Brown, Gerry Gaydos, Jon Hill, Ronald Bryant, Lisa LeSage, John Tyner, Angel Lopez, Frank Hilton (conference phone [1:10 p.m. – 1:30 p.m.]), and Mary McCauley Burrows. Oregon State Bar staff participating was Karen Garst, George Riemer, Jeff Sapiro (conference phone [3:10 p.m. – 5:00 p.m.]), Rod Wegener, Bob Oleson, and Teresa Bowen. Also present were Robert Nunn and Ira Zarov, PLF; Eric Winters [2:00 p.m. – 3:00 p.m.], Oregon's New Lawyers Division; Dennis Karnopp, Chair, Disciplinary Systems Task Force [3:20 p.m. – 5:00 p.m.]; and Mark Blackman, Disciplinary Systems Task Force; Mark Johnson and Marilyn Harbur, OSB ABA Delegates [3:00 p.m. – 3:20 p.m.]; and Loren Paulson.

The Board meeting was reconvened at 9:00 a.m., **Saturday, August 3, 2002**, by President Angel Lopez and adjourned at 12:23 p.m. Members of the Board of Governors participating were Sarah Rinehart, Nena Cook, Charles Williamson, William Carter, Angel Lopez, James Brown, Mary McCauley Burrows, David Hytowitz, Jon Hill, John Tyner, Lisa LeSage, Bette Worcester, Ronald Bryant (conference phone), and Gerry Gaydos (9:45 a.m. – 12:23 p.m.). Oregon State Bar staff participating was Karen Garst, George Riemer, Jeff Sapiro (conference phone), Bob Oleson, Susan Grabe, and Teresa Bowen. Also present were Robert Nunn and Ira Zarov, PLF and Dennis Karnoff, Chair, Disciplinary Systems Task Force.

## **2. Report of Officers**

### **A. Report of the President**

#### **1. Meetings with Chief Justice**

##### **a. June 6, 2002 and July 17, 2002 Meetings**

Mr. Lopez reported on two meetings with the Chief Justice. Issues discussed were seeking an increase in filing fees for legal services from the 2003 Legislature, the proposed ballot measures affecting the judiciary, the recent special sessions of the legislature, and the resulting cuts to the Judicial Department. The Chief Justice indicated that he remains committed to improved legal services for those with lower income.

#### **2. Local Bar Association Meetings**

Discussions with local bar associations included the state budget and its impact on their communities as well as the issue of the lack of legal aid services in outlying areas such as Klamath Falls, Lakeview, and Tillamook. After the meeting with the

local bars, Mr. Lopez and Ms. Garst met with Mr. Matsuda to discuss legal services issues.

3. Open Courthouses

Marion County is working well in its efforts to deal with the current budget constraints. At its open house there was discussion regarding new programs that the court is working on, particularly in dealing with the non-English speaking public.

4. Loan Repayment Assistance Program

Mr. Lopez met with the three law schools and discussed issues concerning new lawyers. On average, new lawyers owe \$60,000 - \$70,000 in student loans when they complete their education. This impacts their choice of practice when they begin their law careers. The law schools are researching ways the Bar, OLF, and others can assist in making it possible for new lawyers to payoff their loans through low interest or no interest loans so they will be more inclined to choose practices from an interest and value perspective rather than from financial need. One of the ideas suggested was when paying bar dues, attorneys could designate a portion of their dues for a "loan forgiveness" program for new attorneys. Ms. LeSage indicated that she had attended a meeting of the OLF and that the OLF seemed interested in participating in a program focused on loan payment relief for new attorneys.

5. Other

Mr. Lopez attended the Professionalism Award dinner sponsored by the Multnomah Bar Association where Mark R. Wada, the recipient of the Professionalism Award, spoke about diversity. Mr. Lopez informed the BOG that he would attend the ABA NCBP meeting in Washington, D.C., August 7-10, 2002.

B. Report of the President-Elect

1. Open Courthouses

Mr. Williamson reported on the Washington County Court open house voicing his concern that the court was not explaining adequately the impact of the cuts that had been made, thus making it difficult to convince legislators to restore the cuts.

2. Update on Multnomah County Courthouse

Mr. Williamson reported on the Multnomah County Commissioners' study from a consultant based in San Francisco, which recommends retrofitting the current courthouse. This would require offices to be moved out of the courthouse for 3-4 years to accomplish the retrofit. There is also an option of obtaining a lot in Portland near the current courthouse and building a new courthouse. This option may prove difficult with the voters who tend to believe retrofitting would be less expensive than building from scratch. There is also a contingent that believes the old courthouse should be preserved as a historical treasure.

3. Miscellaneous

Mr. Williamson will be going to Washington, D.C., in August for the National Conference of Bar Presidents meeting.

C. Report of the Executive Director

1. Retreat Agenda and Materials

Steven Hacker will be the facilitator and will assist in developing the agenda for the BOG retreat in November 2002. He will be meeting September 6, 2002, with the third year class, as well as Mr. Lopez, Mr. Tyner, and Ms. Garst.

2. Miscellaneous

Ms. Garst passed around a Multnomah Bar Association meeting schedule for the board to choose dates of meetings they will be able to attend. Ms. Garst reported on the death of Charlie Davis, former public member of the BOG, and on a dinner for Senator Margaret Carter, who is leaving the Urban League. Dennis Karnopp of the Disciplinary Systems Task Force asked that some of the Northwest tribes' bar members meet with the board and Ms. Garst will work with him to accomplish that end. The additional \$10,000 funding that the bar gave to the Classroom Law Project has borne fruit and it received a three year grant of \$30,000 per year from the Oregon Community Foundation. The bar Design Center produced a brochure for use at the local bar meetings which puts all the topics to be discussed in one document - it seems to be working well.

D. Report of Oregon New Lawyers Division

Skip Winters reported on the proposal that the ONLD have two seats on the board. After a proposal by the ONLD and a discussion with the BOG Policy and Governance Committee, they decided to put the matter off until 2003. The ONLD will continue to participate informally in the BOG meetings in its current capacity. The ONLD's Super Saturday CLE was a success, the ONLD booth at the Oregon State Fair was a success and was greatly appreciated by the public, and the ONLD met with the Washington Young Lawyers to discuss reciprocity.

3. Appearances/Special Issues

A. ABA House of Delegates

Mark Johnson and Marilyn Harbur outlined recent actions taken by the ABA HOD, highlighting the ABA's discussion of judicial independence. Ms. Harbur focused the board's attention on the materials provided in the agenda, and she concluded with information concerning upcoming issues and meetings which include a discussion of the recommendations of the ABA's Commission on Multijurisdictional Practice. Mr. Johnson discussed the current version of the upcoming ABA Agenda and drew attention to Resolution 103 reporting future criminal actions, Resolution 102 regarding referral arrangements with other lawyers and non-lawyers, Resolution 11-2 which expands discrimination restrictions, and Resolution 201 A-J on multijurisdictional practice. One of the recommendations is a change to the ABA Model Rules to allow a UPC "safe harbor" for an attorney in one state who is licensed in another state if the matter is related to a current client and incidental to his authorized practice. Mr. Johnson also discussed *Keller* and how the OSB's ABA representatives have worked within the rules, and what implication the BOG's new rule has on the activities of the OSB's ABA representatives. Mr. Riemer indicated that he believed they were within *Keller*. The ABA is only a voluntary membership organization. Thank yous were extended to the delegates for their hard work and dedication.

**Action:** Mr. Bryant moved, Mr. Hytowitz seconded, and the board unanimously approved the motion stating that the board believes that *Keller* does not apply to the OSB's ABA delegates because they are volunteers to a voluntary organization and the rules set forth by the ABA have no binding effect on Oregon attorneys.

B. Disciplinary System Task Force

Dennis Karnopp, Chair of the DSTF, outlined the majority report recommendations of the DSTF to the board and Mark Blackman presented a minority report regarding the Consumer Assistance Program. The entire report will be available on-line for non-HOD members.

**Action:** Mr. Tyner moved, Ms. Rinehart seconded, to send the entire DSTF report to the HOD with acceptance by the board of all recommendations of the DSTF except #4 (CAP program) and #6 (expungement) which will be considered separately. The board voted unanimously to approve the motion.

**Action:** Mr. Tyner moved and Mr. Carter seconded a motion for the board to take a stand against the expungement recommendation (#6) of the DSTF report.

The board discussed the proposal at length. Issues raised were the history of the bar and the public records law, the Supreme Court opinion requiring the bar to make complaints a public record, the exemption from public records that other professionals enjoy, the danger of raising this issue at the legislature and the need to go to the legislature on issues the board believes strongly in, and the problem with any proposal that destroys records or makes them less accessible to the public. In addition, the board discussed the impact of recommendation #12 (inquiries versus complaints) on this issue.

**Action:** After much discussion Mr. Williamson moved to table the motion. The motion to table failed (yes, 3 [Bryant, Carter, Williamson]; no, 9).

**Action:** Mr. Tyner withdrew his motion.

**Action:** Mr. Tyner moved and Ms. Burrows seconded a motion to label unfounded complaints so they are not derogatory to attorneys and create an archive policy for inquiries, unfounded complaints, and dismissed complaints with no retention after five years. The specifics of this proposal will require further study prior to implementation. The motion passed (yes, 8; no, 5 [LeSage, Carter, Williamson, Brown, Gaydos]). Staff was asked to send a draft of this proposal to the board prior to the next meeting.

The board discussed the majority and minority reports regarding #4, the Consumer Assistance Program. Discussion concerned how much change the board wanted to make in the current process, the potential for the CAP staff under the minority proposal to become a witness in future disciplinary proceeding; what standards (arguable to actual) should be used, the need of an ombudsman to assist clients, and the need to help mend relationships between lawyers and existing clients. The board was polled regarding whether each member preferred the majority report, the minority report or something in-between. Because there was no consensus, the board decided to call a special conference call meeting of the board specifically to deal with this issue the week of August 19-23. Staff was asked to draft alternatives for the board to consider.

4. OSB Committees, Sections, Councils, Divisions and Task Forces
  - A. Client Security Fund
    1. CSF Claims Recommended for Payment
      - a. 01-02 *Lafayette v. Anunsen* (\$50,000)

**Action:** Mr. Hytowitz presented information concerning *Lafayette v. Anunsen*. Mr. Hytowitz moved, Mr. Tyner seconded, and the board unanimously approved the committee recommendation to pay \$50,000 in *Lafayette v. Anunsen*.

B. MCLE Committee

1. Amendments to MCLE Regulations

Ms. Garst presented information regarding the recommendation of the MCLE Committee to amend MCLE regulations regarding out-of-state member compliance, carryover of excess child abuse reporting and diversity credits, and late fees for applications.

**Action:** Mr. Tyner moved, Mr. Gaydos seconded, and the board unanimously approved the purposed rule changes.

2. MCLE Committee Report – Tracking of Credit for Pro Bono Service

Ms. Garst presented information concerning the recommendation of the MCLE Committee requesting tracking credits for pro bono services.

**Action:** Mr. Hytowitz moved, Mr. Williamson seconded, and the board unanimously approved postponing the further consideration of this matter indefinitely.

C. Legal Ethics Committee

1. Proposed DR 2-105 – Referral Fees from Non-lawyer Professionals

Mr. Riemer and Mr. Bryant presented information concerning this rule change.

**Action:** Mr. Bryant moved, Mr. Williamson seconded, and the board unanimously approved the formation of this new disciplinary rule for presentation to the OSB House of Delegates in October 2002.

***DR 2-105 – Compensation from Lonlawyers***

*A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission, or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.*

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

A. Joint Meeting Budget & Finance Committee and Policy & Governance Committee

1. Recommendation on PLF Investment Strategy from Budget & Finance and Policy & Governance Committees

The board heard a presentation from Robert Nunn, a member of the PLF Board of Directors and Ira Zarov, PLF CEO regarding new investment guidelines, which would include investment funds consisting of hedge funds and real estate investments.

**Action:** Mr. Carter moved, Mr. Tyner seconded, and the board approved the adoption of the new investment guidelines proposed for the PLF (yes, 9; no, 3 [Brown, Worcester, Rinehart]).

## B. Budget & Finance Committee

1. Casemaker Proposal

Mr. Hytowitz presented information concerning Casemaker , an online legal research library, which would significantly reduce research costs for bar members. The Casemaker group will have an onsite demonstration and a presentation of its product at the OSB Convention and the HOD meeting. The HOD will vote on the matter October 5, 2002. The board discussed the Budget and Finance Committee's recommendation to join the Casemaker Consortium that provides online legal research and an increase of \$20 for bar dues. Discussion ensued regarding how to present the information to the membership.

**Action:** The board approved the Budget and Finance Committee's recommendation to join the Casemaker Consortium and to give Mr. Wegener and Ms. Garst authority to negotiate the contract for Casemaker should the HOD pass the resolution.

**Action:** Mr. Williamson moved and Mr. Hytowitz seconded the motion to designate the increase as a separate assessment of \$20 to cover members' costs for Casemaker , on-line legal research library. The motion passed (yes, 10; no, 3 [Carter, Gaydos, Brown]).

2. 2003 Budget

There was no additional discussion of the 2003 Budget.

3. Fee Resolution for 2002

**Action:** The board unanimously approved the committee recommendation to accept the \$20 increase as part of the 2003 fee resolution to be submitted to the House of Delegates for approval.

## C. Policy & Governance Committee

1. 2003 Convention in Seaside

**Action:** The board unanimously approved the Policy & Governance Committee's recommendation to keep the 2003 convention in Seaside and the House of Delegates Meeting on Saturday morning.

2. Changes to Standard Section Bylaws to Clarify a Suspended Member's Rights to Participate in Section Activity

The board took no action regarding this matter because of the one meeting notice requirement.

D. Public Affairs Committee

1. General Political/Budget Update

Mr. Tyner presented the Public Affairs Committee update, which reviewed legislative races and the state of the Judicial Department's budget in light of the third special session.

2. House of Delegates Resolutions

(a) BOG Resolution – Ballot Measure #67

**Action:** The board voted [yes, 12; no, 1 [Brown]] to support the recommendations of the committee to present a resolution to the HOD to oppose Ballot Measure #67. This measure would require a "None of the Above" vote for all judicial elections.

(b) BOG Resolution – Election of Appellate Judges by District – Ballot Measure #90

**Action:** The board voted (yes 11, no, 2 [Bryant, LeSage - opposed to amended language only]) to support the recommendation of the committee to present a resolution to the HOD to oppose Ballot Measure #90 that would require election of appellate judges by district and to add a friendly amendment (presented by Mr. Carter) with language indicating the ballot measure is an effort to politicize the judiciary.

3. Report on Law Improvement Program

Mr. Tyner presented information on the law improvement bills pre-session filed.

4. Indigent Defense Funding Resolution for HOD

Mr. Tyner distributed the Public Affairs Committee recommended HOD Resolution for Indigent Defense Funding and presented information about the issue.



**Action:** The board unanimously approved the committee recommendation that it forward the following resolution to the HOD:

*Whereas, attorneys handling Federal court-appointed cases are now compensated at a rate of \$90 per hour with an annual adjustment; and*

*Whereas, the \$40 per hour that was established in 1991 paid to court-appointed attorneys adjusted for inflation would be \$58 per hour today; and*

*Whereas, the Oregon State Bar finds disparity that exists in the levels of compensation between prosecutors and indigent defense providers diminishes the quality of legal representation and discourages lawyers from choosing the practice of indigent services as a professional career choice.*

*It is therefore resolved, that the Oregon State Bar will introduce, sponsor, and support passage of legislation mandating appropriate compensation levels for indigent defense providers and their staff, and an increase to 2/3 of the Federal rate for court-appointed private counsel.*

*It is further resolved, that the Oregon State Bar support the PDSC budget in the 2003 Ways and Means Committee for an appropriation sufficient to fund these goals.*

E. Judicial Selection Committee

1. Judicial Election Questionnaire for Judges

Mr. Bryant presented information concerning the committee's meetings and the background of the Judicial Election Questionnaire for Judges.

**Action:** The board unanimously approved the recommendation of the Judicial Selection Committee for a separate questionnaire specifically designed for judges to be completed by judicial candidates prior to elections.

F. Access to Justice Committee

1. Recommendation from BOG for HOD Resolution in Support of Access to Justice.

**Action:** The board unanimously approved the committee's recommendation for a HOD resolution regarding access to justice including support for increasing court filing fees to support legal services to low-income Oregonians.

2. Status Report to Oregon Judicial Department's Access to Justice Committee on Recommendations from the Gender Fairness Task Force

**Action:** The board unanimously approved the draft response to the Oregon Judicial Department's Access to Justice Committee for All from the board's Access to Justice Committee regarding the next steps to be taken in regard to the recommendations made by the Joint Bar/Bench Gender Fairness Task Force.

G. Awards Committee [Mr. Hytowitz]

1. Membership Service Award

**Action:** The board unanimously approved the Awards Committee recommendation to award Joseph Wetzel a Membership Service Award.

**6. Professional Liability Fund**

A. Audit Results

Mr. Zarov informed the board of a clean audit.

B. Preliminary Report on Assessment

Mr. Zarov provided the board with a preliminary report on the 2002 PLF assessment, which is expected to be more than the 2002 assessment.

C. Proposed Coverage Plan Changes - Publications

The PLF is now publishing any proposed coverage plan changes in the PLF *In Brief* as well as placing them on the PLF Web site.

D. Percentage of Lawyers with Claims

The PLF recently ran a study of how many lawyers who have had coverage with the PLF for five or more years have had claims. The results showed that 57% have had claims.

E. Modification of Board of Director Policy 3.350 - Payment and Late Payment Charges

**Action:** Ms. Burrows moved, Ms. Rinehart seconded, and the board unanimously approved a PLF request for a change to Policy 3.350:

**3.350 Payment Default and Late Payment Charges.**

(A) Late Payment Charges: Attorneys are allowed a 10-day grace period (the default date) from the due date of any assessment or installment. In the event a payment which is due is not received by the default date, the attorney shall be charged an additional late payment charge of \$50 for a default of up to two calendar weeks; if an attorney is in default for more than two calendar weeks, the attorney shall be charged a late payment charge of \$100 per month for each partial

or full calendar month the attorney is in default. Late payment charges shall be considered a part of the assessment, which is due and in default.

7. Consent Agenda

Action: Ms. Rinehart moved, Mr. Hytowitz seconded, and the board unanimously approved the consent agenda that included minor changes to the Legal Services Program's policies; appointments to the Oregon Law Commission, the Uniform Criminal Jury Instructions Committee, and the Legal Ethics Committee as well as accepting the audit report for the bar for 2000 and 2001.

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

None.