

## **Oregon State Bar Meeting of the Board of Governors**

January 25, 2002

### **Work Session**

Barbara Herget, director of the bar's Legal Services Program, discussed the history of the legal services program in Oregon and the bar's involvement. The highlights included the \$1.1 million increase in filing fees in 1997, the first Access to Justice Conference in 1998, the 2000 Legal Needs Study showing only 20% of the needs of low-income Oregonians for legal services are met, and the 2001 provision for pro hac vice fees dedicated to legal services. The bar's Legal Services Committee evaluates all funded legal services providers on a regular basis and helps set priorities for services to clients. The next Access to Justice Conference is March 1-2 in Welches.

Mark Wada of Farleigh, Wada, and Witt presented the results of the Convocation on Diversity held in Portland on November 15, 2001. Mr. Wada thanked the bar for the involvement of BOG member Lisa LeSage and AAP director Stella Manabe in the Convocation. Mr. Wada stated that the focus of the conference was to develop action plans that each participant would commit to in the areas of mentoring, recruitment, etc. Follow-up at sixty and ninety days will occur with individual conference participants. Mr. Wada asked for support of the BOG for the proposed Diversity Section.

### **Open Session Minutes**

January 25, 2002

The Open Session was called to order at 12:34 p.m. by President Angel Lopez and adjourned at 12:55 p.m., January 25, 2002. Board members present were John Tyner, Gerry Gaydos, Angel Lopez, Sarah Rinehart, Lisa LeSage, Jon Hill, Nena Cook, Frank Hilton, Bette Worcester, Mary McCauley Burrows, Bruce Anderson, James Brown, William Carter, and David Hytowitz. Staff present were Karen Garst, George Riemer, Bob Oleson, Susan Grabe, and Teresa Bowen.

The board participated in a work session from 1:00 p.m. to 2:09 p.m. at which time President Angel Lopez reconvened the Open Session and the board meeting was adjourned for the day at 5:56 p.m.  
Board members

present were Angel Lopez, Gerry Gaydos, James Brown, Lisa LeSage, Jon Hill, David Hytowitz, Nena Cook, Frank Hilton, William Carter, Bette Worcester, Mary McCauley Burrows, Charles Williamson, Bruce Anderson, Sarah Rinehart, and John Tyner. Staff present were Karen Garst, George Riemer, Kay Pulju, Bob Oleson, Jeff Sapiro, Susan Grabe, Barbara Herget (work session only) and Teresa Bowen. Also present was Skip Winters, ONLD liaison to the BOG.

## 1. Report of Officers

### A. Report of the President

#### 1. Opening Remarks for 2002

Mr. Lopez welcomed the 2002 BOG and started the new year with an overview of the procedure he hoped to follow in board meetings. He asked that everyone keep their comments issue based and not personal. He also asked that board members bring policy issues to him and Ms. Garst and that staff issues be directed to Ms. Garst. He hoped board members would feel free to contact him at any time and to visit him in Portland if they had the opportunity. He stated that both he and Mr. Williamson will be making visits to local bars. He also indicated that he hoped to obtain the input of the incoming class of board members for 2003 regarding the topics to be discussed at the November board retreat.

#### 2. Meeting with Chief Justice Carson

Mr. Lopez briefly reviewed the topics covered at his and Ms. Garst's monthly meeting with the Chief Justice. The major topics of discussion were the upcoming special session of the legislature and the impact of the state budget shortfall on the Judicial Department and judicial system. Mr. Lopez also met with the Governor's Legal Counsel, Danny Santos.

#### 3. ABA Mid-Year Meeting

Mr. Lopez indicated that he would attend and participate as a presenter on diversity issues at the National Conference of Bar Presidents meeting in Philadelphia in conjunction with the ABA mid-year meeting. He will serve as an alternate Oregon State Bar delegate to the ABA House of Delegates in Philadelphia on February 4 and 5, 2002, in the place of former bar president, Mark Johnson, who is on sabbatical. The ABA is finishing its review of its model ethic rules.

#### 4. Western States Bar Conference

Mr. Lopez indicated that a pool of \$4,000 is available for board members, other than the president and president-elect, who are interested in attending this year's Western States Bar Conference in Las Vegas, Nevada from March 13-16, 2002. Interested board members should contact Teresa Bowen and she will furnish them with the registration and informational materials.

5. House of Delegates Meeting

Mr. Lopez briefly reviewed the action taken by the OSB House of Delegates on January 18, 2002, where it passed the revision to DR 1-102(D) regarding the *Gatti* issue. The Supreme Court will hold a public meeting on January 29, 2002 to review the disciplinary rule change that the House of Delegates approved. The matter of referral fees to non-lawyers (DR 2-105) on the HOD agenda was referred back to the Ethics Committee for further research.

B. Report of the President-Elect

1. Meeting with Members Regarding Town Hall/HOD Format

Mr. Williamson indicated that he had met with Ruth Spetter and Carl Neil regarding their concerns about the House of Delegates as an adequate replacement for the former annual meeting of the membership (town hall meeting). He thanked Ms. Garst for preparing a very helpful packet of material regarding how the bar had reviewed and approved the House of Delegates' governance structure. He has shared that material with Ms. Spetter and Mr. Neil and he anticipates having further discussions with them regarding this issue.

2. Study of New/Remodeled Multnomah County Courthouse

Mr. Williamson briefly mentioned on-going discussions regarding the remodeling or replacement of the Multnomah County Courthouse. If remodeled, the project is anticipated to take three years to complete.

3. Miscellaneous

Mr. Williamson will attend the ABA's Leadership Conference in Chicago and the Western States Bar Conference in Las Vegas.

**Action:** Mr. Williamson discussed the Brennan Center's case regarding federal restrictions on legal services programs and solicited support by asking that a declaration of support be sent to the center. Mr. Williamson moved, Mr. Hytowitz seconded and the board unanimously approved supporting the effort by having Mr. Lopez and Mr. Williamson sign a declaration on behalf of the board.

C. Report of the Executive Director

1. OSB's Staff Performance Appraisal System

Ms. Garst outlined the performance appraisal process used with bar staff that emphasizes measurable standards for each position with annual evaluation and merit-based salary increases.

2. Agenda Timelines

Ms. Garst outlined alternatives for the distribution of the board agenda and the board approved by consensus to have the agenda include one or two sentences about each of the items. This annotated agenda would be sent as soon as it is ready to the entire board as well as with the exhibits a week prior to the meeting.

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

### A. Legal Ethics

#### 1. Proposed Formal Ethics Opinion -Insurance Defense Guidelines

The board briefly discussed this proposed formal ethics opinion, which outlines lawyers obligations under the insurance defense guidelines. A question was asked whether interested organizations such as the Oregon Association of Defense Counsel had seen the proposed opinion and the board was advised that representative groups had seen the opinion and had the opportunity to comment on it.

**Action:** Mr. Carter moved, and Mr. Hytowitz seconded, that the board approve Ethics Opinion 2002-166 for publication as a formal ethics opinion of the Oregon State Bar. The board approved the motion by unanimous vote.

### B. Client Security Fund

#### 1. CSF Claims Recommended for Payment

##### a. *Escotia v. Whitener & Knapp* No. 01-02

Mr. Hytowitz presented the CSF Committee's recommendation that this claim be paid.

**Action:** Mr. Hytowitz moved, and Mr. Anderson seconded, that the board approve the payment of \$3,400 for this claim. The board approved the motion by unanimous vote.

##### b. *Goodridge v. Anusen* No. 00-07

Mr. Hytowitz presented the CSF Committee's recommendation that this claim be paid.

**Action:** Mr. Hytowitz moved, and Mr. Williamson seconded, that the board approve the payment of \$2,308 for this claim. The board approved the motion by unanimous vote.

## 3. BOG Committees, Special Committees, Task Forces and Study Groups

### A. Policy & Governance Committee

1. BOG Policy 11.800 Regarding *Keller*

Mr. Brown presented the committee's recommendation that the proposed amendment of BOG Policy 11.800 be approved by the board. After considerable discussion relating to whether the amendment was more restrictive than required by the *Keller* case, Mr. Williamson moved to postpone the motion until the next meeting of the board and that the Policy and Governance Committee meet with the Public Affairs Committee to discuss the proposal further in the interim. The motion to postpone was approved [yes – 14; no –2 (Mr. Carter and Mr. Anderson); absent – 1 (Mr. Bryant)]

2. MCLE Sponsor Fees for Video Replay

**Action:** Mr. Brown presented and the board approved the Policy & Governance Committee's motion to eliminate MCLE sponsor fees for video replays and charge sponsor fees for live programs only by a unanimous vote. [yes – 14; no – 0; absent - 2 (Mr. Williamson and Mr. Bryant)].

3. MCLE Rule on Business Development and Marketing Activities

**Action:** Mr. Brown presented and the board approved the Policy & Governance Committee's motion to implement a new MCLE regulation 5.400 regarding business development and marketing activities by a vote of 13-yes; 1 – no (Ms. LeSage); and 1 – absent (Mr. Bryant).

**5.400 Business Development and Marketing Activities.** *Activities devoted to enhancing profits or generating revenue through advertising and solicitation of legal business, whether denominated business development, client development, practice development, marketing or otherwise, shall not be accredited. Activities dealing with ethical issues relating to advertising and solicitation under applicable disciplinary rules may be accredited if it appears to the Administrator that the emphasis is on legal ethics rather than on business development or marketing.*

4. MCLE Diversity Rule

The board discussed the standard to use in approving CLE courses under the new Diversity Rule.

**Action:** Mr. Carter moved, Mr. Anderson seconded, and the board unanimously passed regulation 5.500, regarding implementation of the new MCLE rule on diversity credit.

**5.500 Other Aspect of Professional Responsibility.** *In order to be accredited as an activity pertaining to other aspects of professional responsibility under Rule 3.3, an activity shall be primarily devoted to the study of the role of lawyers concerning intercultural communications, gender, social, and cultural diversity,*

*perceptions of justice, access to the justice system, and issues of physical and mental disability as they relate to the practice of law and the legal system.*

5. Formation of a Diversity Section

**Action:** Mr. Brown presented and the board unanimously approved the Policy & Governance Committee's motion to form a diversity section.

6. New Panelists Standards for the Lawyer Referral Service

**Action:** Mr. Brown presented and the board unanimously approved the Policy & Governance Committee's motion to create standards for panelists on the Lawyer Referral Service that include written fee agreements.

7. Active Pro Bono and Active Emeritus Reinstatement Change

**Action:** The board unanimously approved a request to the Supreme Court that it defer application of BR 8.14 (Active Pro Bono and Active Emeritus) for six months to allow members who were formerly under the previous categories to reinstate under the former process.

8. Board Bylaws and Policy Review – Sections

**Action:** The board commented on the work of the Policy & Governance Committee regarding a proposal to combine bylaws and policies into one document and to reduce redundancy and purely administrative policies. The board asked the committee to continue this work and to bring each section when completed to the board for review with the understanding that the board would not approve the changes until the entire process is complete. In the interim, the board will consider bylaw and policy changes as needed and will incorporate them into the final revision.

9. Annual Meeting

**Action:** The board discussed the draft proposal for the 2002 convention and stated its desire that there be quality CLEs, that a local keynote speaker would be appropriate and that the law schools should be involved. ONLD Liaison Skip Winters agreed to assist in securing the participation of members of his division.

B. Public Affairs Committee

1. Report on Status of Special Session

Mr. Tyner reported on the status of the efforts to schedule and hold a special session of the legislature to deal with the substantial shortfall in the revenue side of the state's 2001-2003 budget. Considerable efforts were being made to contact legislative leadership to express concerns about possible cuts in the Judicial Department budget in excess of cuts in other departments of state government.

Bob Oleson and Susan Grabe will be monitoring development for the committee and the bar.

**Action:** Mr. Williamson moved, Mr. Hytowitz seconded, and the board unanimously voted to authorize the President to send a letter to legislative leadership regarding the cuts to the Judicial Department's budget.

2. Interim Activity and "X-Team"

Mr. Tyner, Mr. Oleson, and Ms. Grabe reported on the bar's interim legislative activities and on the bar's on-going efforts to inform lawyers in all parts of the state of legislative developments and to enlist their assistance in talking to their legislators on issues critical to the Judicial Department, the judicial system in general, and the Oregon State Bar.

3. Review Process for Initiated Ballot Measures

Mr. Tyner introduced the Public Affairs Committee's recommendation to have a subcommittee of three Public Affairs Committee members work with staff to review proposed ballot measures. The subcommittee would determine if comments should be submitted to the Secretary of State's Office or if other action should be recommended to the full board.

**Action:** Mr. Tyner moved, Mr. Carter seconded, and the board approved [yes – 14; absent – 2 (Mr. Hilton and Mr. Bryant)] the creation of an initiative subcommittee of the Public Affairs Committee with guidelines for review.

After brief discussion, it was agreed by consensus that staff would provide input to the Public Affairs Committee on several structural questions and that the proposal would be resubmitted to the board for final approval at the April board meeting.

C. Recruitment Committee

The Recruitment Committee discussed a process for the Board of Governors to call HOD members to encourage them to run again. Board members were assigned specific individuals in their region to contact concerning this matter.

D. Access to Justice Committee

Mr. Williamson reported on the upcoming Access to Justice Conference March 1-2 in Welches and encouraged all board members to attend. The interim committee meetings will precede the conference on March 1, 2002.

E. Awards Committee

Mr. Hytowitz stated that April 19 is the deadline for the submission of nominations for OSB annual awards.

F. Budget and Finance Committee

**Action:** The committee motion to add Bette Worcester, John Tyner, and Steve Hutchinson to the subcommittee on the 2002 Economic Survey was unanimously approved by the board.

**4. Professional Liability Fund**

A. General Update

Ira Zarov provided a brief report on the PLF. The fund suffered a 1% loss on investments in 2001. The severity of claims seems to be going down. Expenses for claims, however, are rising due to increasing rates for lawyers who defend members in these cases. Mr. Zarov discussed the very positive impact on claims provided by programs offered by the Oregon Attorney Assistance Program. Mr. Zarov stated that there would be an orientation to the PLF for new PLF and OSB board members on February 7, 2002.

**5. Closed Session Agenda**

The board dealt with various reinstatements and updates on litigation during its closed and executive sessions.

**6. Consent Agenda**

**Action:** Ms. Rinehart moved, Mr. Hytowitz seconded, and the board unanimously approved the consent agenda as presented.

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

None.