

Oregon State Bar
Meeting of the Board of Governors
January 31-February 1, 2003
Open Session Minutes

The Board meeting was called to order Friday, January 31, 2003, at 11:05 a.m. by President Charles Williamson and adjourned at 12:00 p.m.; reconvened at 1:47 p.m. and adjourned at 5:15 p.m. Members of the Board of Governors participating were Ronald Bryant, Bette Worcester, Frank Hilton, William Carter, Mary McCauley Burrows, Lauren Paulson, David Hytowitz, Charles Williamson, Gerry Gaydos, Lisa LeSage, James Brown, Mark Comstock, John Enbom, Nena Cook and Jon Hill. Staff participating was Karen Garst, George Riemer, Susan Grabe, Bob Oleson, Rod Wegener, Ira Zarov (PLF), Jeff Sapiro and Teresa Bowen. Also present were Mark Johnson, ABA; Marilyn Harbur, ABA; Adrienne Nelson, ABA; Marilyn Cover, Classroom Law Project and Andrew Smith, ONLD.

The Board meeting was called to order Saturday, February 1, 2003, at 9:00 a.m. by President Charles Williamson and adjourned at 1:50 p.m. Members of the Board of Governors participating were Frank Hilton, Ronald Bryant, William Carter, Gerry Gaydos, Charles Williamson, Lisa LeSage, Bette Worcester, Lauren Paulson, Mark Comstock, John Enbom, David Hytowitz, Jon Hill, James Brown, Nena Cook and Mary McCauley Burrows. Staff participating was Karen Garst, George Riemer, Judith Baker, Jeff Sapiro, Susan Grabe, Ira Zarov (PLF) and Teresa Bowen. Also present were Robert Nunn (PLF liaison), Nancy Cooper, Rules Committee and Michael Keeney, Legal Aid Services.

1. Strategic Planning/Work Session

A. The Board discussed follow-up suggestions for the ideas and plans generated at its November, 2002, strategic planning session. The following actions were taken.

1. Value of Membership:

a. Existing Programs

- (1) Mr. Carter will take the lead and work with Mr. Zarov and the other PLF liaisons to discuss ways of improving service to members.

Action: Mr. Hytowitz moved and Mr. Comstock seconded a motion to begin the Consumer Assistance Program now without waiting for Supreme Court approval of moving intake out of Disciplinary Counsel's Office. The motion passed unanimously.

- b. Improved Convention
 - (1) The Policy and Governance Committee is currently the oversight committee for the convention. Plans have been made for the 2003 and 2004 conventions and the Board was comfortable with the Policy and Governance Committee continuing to play this role.
- c. Ethics CLEs
 - (1) The Board approved a suggestion for a special program timed with the release of the *Disciplinary Board Reporter* targeted to identified problem areas. A piece on how the discipline process works should be a part of the seminar.
- d. Group Purchasing
 - (1) The board's Budget and Finance Committee will take the lead on investigating products and services related to the practice of law. It will also look at the decision to allow the Business Law Section to contract with Clay Tablet. CLE projects, including low-revenue projects such as "straight to video," should be explored. The Board, at a future date, should look at the "break-even" policy to see if it makes sense in today's market. The issues involving CLEs should go under the "Bar Works" portion of the strategic plan.
- e. Increase Membership Participation
 - (1) The Recruitment Committee will look at data and devise plans for increasing member involvement in the Bar.
- f. Broader Recognition of Individuals and Accomplishments
 - (1) The ideas outlined in the materials will be assigned to the Awards Committee. The Public Member Selection Committee will also look at public relations regarding public member participation.
- g. Speed Up Discipline Process
 - (1) This will be examined in April when the 2002 program measures are reviewed.

2. Access to Justice – Law for All

- a. The board's Access to Justice Committee will look at all the suggestions raised and bring back a draft plan to the board's June meeting. The committee will integrate the suggestions into its existing plans for increasing access.

3. The Bar Works

- a. This was clarified as the third component of the strategic planning retreat. The minutes of the retreat will be changed to reflect that. It focuses on assuring bar operations and services to members, as well as relations with the Board, are effective and efficient. Board members discussed the BOG liaison system and how to reach out to sections and committees. Is there a change needed to the system? How do we plan breakthroughs versus business as usual? How do we know what members need and do we have the resources to provide the services they need? Mr. Gaydos, Mr. Paulson, Mr. Hilton (Chair), Mr. Brown and Ms. LeSage agreed to work with staff to structure a presentation on member outreach for the next board meeting.

2. **Department Presentation – Finance and Operations**

- A. Rod Wegener, OSB Chief Financial Officer, gave a presentation on the services for which he is responsible: Accounting, Information Systems, Design Center, Distribution Center, and Facilities. In addition, he staffs the board's Budget and Finance Committee. Each of the bar's programs relies on this department. Including all restricted funds, the bar's budget is \$13.6 million. 2003 billings included 14,830 members at an increase of 2.4% over 2002. For the first time, starting January 24, 2003, dues payments can be made from the website. The Distribution Center handles one million pieces of mail each year; 41% of it comes from sections. Information Systems, overseeing the bar's computer technology, aims for effective, not cutting-edge, technology. The Design Center does electronic design (brochures, newsletters, etc.) both for external customers such as sections and for the bar's other programs. The bar's facilities were recently remodeled and should hold the Bar in good stead for the next several years. All bar programs are assessed an Indirect Cost Allocation including their share of services from Finance and Operations in order to show the true cost of each bar program.

3. HOD Recommendations on Discipline System

A. Proposal #1 – Review by Ethics Committee

1. The HOD resolution asked the BOG to review the Code of Professional Responsibility to make it simpler and less vague. The BOG appointed the “Rules Committee” in August, 2001, to review the recommendations of the ABA Ethics 2000 Commission regarding the ABA Model Rules of Professional Conduct and identify those that might enhance the Oregon Code of Professional Responsibility. The Rules Committee spent more than a year conducting a comprehensive review and comparison of the Oregon Code and the ABA Model Rules. During that process, the BOG also instructed the Rules Committee to consider the HOD directive to study ways to make the disciplinary rules simpler and clearer.

The Board discussed at length whether this process would satisfy the recommendation of the HOD. They were concerned about a move to the ABA Model Rules because the Chief Justice had mentioned in a meeting he was not enamored with the ABA Rules. In addition, a concern was raised regarding the applicability of Oregon case law should the Bar move to the ABA Model Rules.

Action: Mr. Paulson moved to have the BOG publish and widely circulate as Plan A, the existing OSB Code, and as Plan B, the work of the Rules Committee; to hold hearings and solicit input in hearings throughout the state; and to ask the HOD and bar members for suggestions on the issues raised in the HOD resolution. Mr. Enbom seconded the motion.

Action: Mr. Bryant moved to table the motion to Saturday morning when a representative of the Rules Committee would be present. Mr. Hill seconded. The motion passed unanimously.

Action: Saturday morning Mr. Enbom moved and Mr. Carter seconded to bring the previous motion off the table. The motion then failed unanimously.

Saturday morning Nancy Cooper appeared on behalf of the Rules Committee. She explained the process undertaken by the Rules Committee as follows:

At its first meeting, the Rules Committee discussed the similarities and differences between the Oregon Code and the Model Rules and identified a variety of arguments for and against retaining Oregon’s Code format. To avoid the perception of a bias in favor of the Model Rules, the Committee approached its assignment initially with the philosophy of making change only where a compelling reason was found. Because several of Oregon’s disciplinary rules have been adopted from the Model Rules over the years, there were many areas in which the two sets of rules are substantively the

same. The Committee looked at each disciplinary rule in turn, comparing it to the analogous Model Rule, if any, and determining whether a modification of the Oregon rule was warranted. The Committee then examined the Model Rules that have no counterpart in the Oregon Code and identified those which it believed should be incorporated into Oregon's rules. The resulting draft was an amalgam of Oregon Code and Model Rules provisions that was awkward and cumbersome in several areas where Model Rule provisions could not be incorporated neatly.

The Rules Committee then returned to its earlier discussion of the relative merits of the Oregon Code and the Model Rules. After considerable debate and analysis, the Committee concluded Oregon's lawyers would be better served by adopting a version of the Model Rules that retained certain aspects of the Oregon Code that were unique or deemed to be the better rule. This conclusion was based on the recognition Oregon is one of only a steadily diminishing handful of jurisdictions that adheres to the Code format and both of our reciprocity partners, Washington and Idaho, follow the Model Rules. In addition, the Rules Committee concluded the desire of the membership for simpler and clearer rules would be facilitated by adoption of the same rules that are followed by the majority of jurisdictions, thereby increasing the body of available interpretive guidance.

The Committee then undertook a second review, this time looking at each Model Rule and comparing it with the analogous Oregon Code provision. While being careful not to slavishly follow the Model Rules, the Committee also was careful not to depart from them lightly. The Committee was guided by a desire to achieve uniformity as much as possible, but also to retain certain aspects of the Oregon rules that reflect unique Oregon values. In many cases, the language of an Oregon rule was incorporated fully into or in place of a Model Rule. The result is a proposed "Oregon Rules of Professional Conduct" that follows the Model Rules format and structure and contains many of the Model Rules provisions, but is tailored in several places to retain aspects deemed important to Oregon. The Rules Committee is not recommending adoption of the official Comment to the Model Rules at this time, but believes it should be a recognized interpretive guide.

The Board then discussed the concern that the Oregon Supreme Court should be brought into the process early.

Action: Mr. Bryant moved and Mr. Hytowitz seconded a motion to send the report of the Rules Committee to the Supreme Court and have members of the BOG and the Rules Committee meet with the Supreme Court. The motion included sending the report simultaneously to the HOD. The cover letter

should include the process described above that the Rules Committee went through. The motion passed unanimously.

B. Proposal #2 – Written Advisory Opinions

1. The Board discussed proposed new Disciplinary Rule 1-105 as passed by the HOD. Staff stated the DR could not be altered but changes could be made to BOG Policy 9.400 without going back to the HOD. The Board discussed the issue of liability insurance for the person providing the advice. The decision was made to ask the Budget and Finance Committee to explore provision of such insurance.

Action: Mr. Carter moved and Mr. Gaydos seconded to move the proposed DR 1-105 to the Supreme Court and to approve the proposed changes to BOG Policy 9.400, as amended by changes Mr. Riemer prepared dated January 29, 2003, based on comments received from the Legal Ethics Committee. The motion passed unanimously.

C. Proposal #3 – CLE Seminars on Problem Ethics Areas

Action: The Board approved the proposal to have Disciplinary Counsel's Office communicate to the CLE Seminars Department on an annual basis the list of problem areas identified through the disciplinary process. These issues would be the focus of a CLE Seminar including a description of the disciplinary process itself. The Board felt many members still do not understand the process.

D. Proposal #4 – Consumer Assistance Program/Central Intake

1. The Board discussed this proposal at length. Earlier in the meeting, the Board had voted to begin the Consumer Assistance Program (CAP) without the intake process that would require Supreme Court approval. The Board wants the program to be called the Consumer Assistance Program with less focus on the intake function. In addition, the decision was made to use the word "potential" rather than "arguable" ethics issue to avoid confusion with the current process. One of the issues discussed was whether or not there should be an appeal process for inquiries that do not make it out of the intake process, in other words, are not sent to the Disciplinary Counsel's Office. Several ideas were proposed: allow an appeal to the SPRB, allow an appeal to the General Counsel's Office that supervises the CAP program, do not allow any appeal, allow an appeal to the SPRB but have an appeal that is not denied go back to the CAP for further study. The Board asked staff to draft these ideas and bring them back to the next board meeting. There was a short discussion on what would be revealed to the public – would inquiries be disclosed over the phone? It was agreed all written material would be a public record. This issue will be decided at a later date.

E. Proposal #5 – Diversion

Action: Mr. Paulson moved to table. The motion died for lack of a second.

1. The Board discussed the proposed changes to BR 2.9 (b)(4) and (d)(5) at length. The issue regarding (4) involved whether, because the program is new, a lawyer who may have previously been disciplined should have access to diversion. One suggestion was to add “since implementation of the diversion program” to the proposal and to delete the words “in the preceding five years.” Another would be simply to delete “in the preceding five years.” Another suggestion concluded an attorney should have one “bite of the apple” for similar misconduct but two “bites” if the second issue was different. All agreed diversion was for minor offenses and not for something like misappropriation of client funds. Another proposal was to have the period longer, say ten years. Staff was asked to draft options for the next meeting. Changes to (d)(5) involved the maximum length of time for a diversion agreement. Issues of length of time to rehabilitate were discussed. There appeared to be a consensus that the length would not be more than twelve months except under special circumstances it could be extended to 24 months. Because both the attorney and the SPRB had to agree to diversion, this seemed to make sense. The issue of due process was raised. However, the Board clarified that diversion is discretionary on the part of the SPRB and there is no property right to diversion. There was an agreement there would be no appeal beyond the SPRB to the termination of a diversion agreement but the attorney could make a written appeal to the SPRB to reconsider.

F. Proposal #6 – Expungement of Dismissed Complaints

1. The Board had previously heard a report from Mr. Williamson that Representative Max Williams, Chair of the House Judiciary Committee, was adamant about not introducing the bill this session. This will be communicated to the HOD.

G. Proposal #7 – SPRB Discretion to Decline Prosecution

1. The Board discussed the differences between acting “intentionally or knowingly.” The Board asked staff to explain the intended meaning of these terms and to return with a reworking of this proposal at the next meeting.

H. Proposal #8 – Disciplinary Board Clerk

1. This proposal involves a central filing of all complaints that will be heard by a trial panel. The clerk would be a new duty assigned to the General Counsel’s Office. There will be a database for all cases available to the state and regional chairs to better facilitate the scheduling and completion of trial panels.

Action: Mr. Carter moved and Mr. Bryant seconded to adopt the proposal as presented and to submit it to the Supreme Court. The motion carried unanimously.

I. Proposal #9 – Alternative Dispute Resolution (ADR)

1. Staff explained, while the HOD recommendation only involved a study group regarding ADR, staff had drafted a proposal to enable setting up a mediation process.

Action: Mr. Paulson made a motion to delete “after the filing of a formal complaint” language in BR 4.9 (b). The motion died for lack of a second.

Action: Mr. Paulson then proposed deletion of the words “shall not delay a hearing before a trial panel scheduled...” The motion died for lack of a second.

Board members discussed whether the mediation process would be successful or not.

Action: Mr. Bryant made a motion and Mr. Comstock seconded it to adopt the proposal as presented. The motion passed (yes, 13; no, 2 [Paulson, Brown]).

J. Proposal #10 – Court Review

1. This proposal eliminates automatic review of sanctions greater than six months by the Oregon Supreme Court. Either party could still ask for Supreme Court review. Under this proposal the Supreme Court could not review a case on its own motion.

Action: Ms. Cook made the motion and Ms. McCauley Burrows seconded it to approve the proposal as written and forward to the Supreme Court for its consideration. The motion passed unanimously.

K. Proposal #11 – Greater Use of Probation

1. This proposal is a draft letter to the Supreme Court requesting the Disciplinary Board and the Supreme Court utilize probation as a sanctioning option when appropriate. The Board supported the view that although probation is not always an appropriate alternative to suspension, there might be additional opportunities to use it than is currently the practice.

Action: Mr. Comstock moved and Mr. Enbom seconded a motion to approve the letter as written and to send it to the Supreme Court with a copy to the SPRB. The motion passed unanimously.

Open Session

1. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Carson
 - a. OSB President, Charlie Williamson, reported on the recent meetings with the Chief Justice. The first meeting was with the representatives of collection companies. They are interested in increasing the amount of outstanding revenue that is collected for state agencies and the judicial branch. This discussion also addressed the 8% deduction from filing fees that was deferred during the 2001-03 biennium. The Bar is working with legislators who, because of an opinion of Legislative Counsel, do not believe this fee can be deducted from filing fees. The Chief Justice stated because the Ways and Means Committee appropriated the money, the Oregon Judicial Department (OJD) was obligated to collect it. As a follow-up, the OJD staff will talk to Legislative Counsel.
 - b. The second meeting focused on the 2003-05 OJD budget. The governor's balanced budget included \$238 million for OJD operations, administration, trial and appellate courts, and mandated payments. The indigent defense budget will be transferred July 1, 2003, to the Public Defense Services Commission. Also included

were discussions about the change in the Bar Act to address multi-jurisdictional practice and court review of discipline cases, Disciplinary Board appointments, Kateri Walsh (OSB) and her work with the Chief Justice on budget messages, proposals for changes to the Oregon Code of Professional Responsibility based on the new ABA Model Rules and electronic filing. The Chief Justice expressed a concern about going to the ABA Model Rules and he wanted to wait to see what the federal courts did regarding electronic filing.

2. 2003 Legislative Reception and Bar Leadership Conference

- a. Mr. Williamson also discussed the successful reception with legislators, the recent Legislative Tips Workshop and Bar Leadership Conference and the meeting with Representative Max Williams regarding the proposal for expungement of disciplinary complaints. Ross Sheperd from the public defender's office in Eugene, as well as, Lindsay Partridge from the OSB Criminal Law Section attended the meeting as did BOG Member Lauren Paulson. Representative Williams said the bill would not get a hearing in the house and asked the Bar to do what it could internally through its processes to try to resolve this issue. He also indicated the bill to increase indigent defense attorney payments to \$90 per hour should not be introduced at this time.

3. Update on President's Advisory Committee on Future Issues

- a. Mr. Williamson mentioned a recent President's Advisory Committee on Future Issues Facing the Legal Profession and expressed a concern they were not looking far enough into the future. He asked staff to send the committee members a copy of the bar's strategic plan. The committee plans to report to the Board in November, 2003.

B. Report of the President-Elect

1. Western States Bar Conference

- a. President-elect Mr. Carter reported Ms. LeSage, Mr. Williamson, Mr. Gaydos and he would attend the Western States Bar Conference.

2. ABA Bar Leadership Conference

- a. Mr. Carter will attend the ABA's Bar Leadership Conference on March 6-8, 2003, in Chicago.

3. PLF Orientation for New Board Member

- a. The PLF orientation for new board members was cancelled due to the death of PLF Board of Directors member Stephen Bloom's wife. Mr. Carter will attend the next PLF BOD meeting on February 7, 2003.

C. Executive Director

1. OSB Policies on Expenses, Travel, etc.

- a. Ms. Garst discussed the bar's policies in regard to expense reimbursement, travel, and other expenditure issues that have been raised recently in media coverage concerning the Oregon Lottery Commission. The Board briefly discussed the bar's policy on frequent flyer miles and whether the Bar should not allow employees to count a business flight for purposes of their personal mileage account. Mr. Riemer stated the bar's personnel policies allow employees to keep these miles as a form of compensation and he believed this to be permissible under Oregon Government Standards and Practices Commission guidelines. Flight arrangements, however, are made based on the best fare, not the airline.

D. Oregon New Layers Division (ONLD)

1. Andrew Smith, chair-elect of the ONLD, attended his first meeting as BOG liaison. He discussed the brown bagger CLE series put on by the ONLD, as well as, the division's high school essay contest. This year the essay involves body art and piercing and whether they should be regulated. The ONLD will once again conduct its Pro Bono Challenge and is working on a new format for leadership development.

2. Appearances/Special Issues

A. ABA Update

1. OSB delegates to the ABA, Mark Johnson, Adrienne Nelson, and Marilyn Harbur, updated the Board on the past ABA House of Delegates (HOD) in Washington, D. C. held in August, 2002, and the upcoming ABA HOD meeting to be held on February 10 and 11, 2003, in Seattle. Issues of multi-jurisdictional practice and state judicial elections were raised at the 2002 meeting. The preliminary agenda for Seattle includes guidelines for defense counsel in death penalty cases and proposals to combat money laundering. The Board discussed whether the proposal regarding guidelines for death penalty counsel was really a disguised proposal to oppose the death penalty. If the latter, the Bar should not take a position because of *Keller* concerns. In addition, there are several resolutions from the Commission on Uniform State Laws. Martha Walters, a bar member in Eugene, serves on the Commission. A late addition to the ABA agenda for the February, 2003, meeting is a report from the Commission on Asbestos Litigation. The ABA likely will be raising the dues and the expected increase would be 15%.

B. Classroom Law Project

1. Marilyn Cover, Executive Director of the Classroom Law Project (CLP), appeared before the Board and thanked it for its ongoing support of the CLP. The goal of the CLP is to help students become active citizens. This year, the CLP has added one region for the Mock Trial competition. There are seventy high schools involved with ten new teams. The state competition will be March 14-15, 2003, and board members were encouraged to participate as judges. The topic for the Youth Summit this year was "Who Should Be Governor?" At the outset the group chose Kevin Mannix. In a final vote, they chose Ted Kulongoski. Lincoln High School, in Portland, won the "We the People" constitution competition with Grant High School (Portland) coming in second. The CLP visited Croatia, taking along a student from a Portland alternative high school. In regard to the 200th anniversary of *Marbury v. Madison*, the CLP is referring teachers to the ABA website.

3. Rules and Ethics Opinions

A. Formal Ethics Opinions

1. Credit Card Payments

- a. Mr. Riemer presented the proposed Formal Ethics Opinion regarding Credit Card Payments. The opinion will help lawyers know how to set up charges for credit cards that are used to pay for legal work, such as a retainer, that must be deposited in a trust account. One alternative is for the lawyer to request the bank deduct credit card charges, on these fees, from the business account. Another is to deposit an amount into the trust account to cover the charges. The Legal Ethics Committee discussed this issue with bank representatives and law firm administrators.

Action: Mr. Bryant moved and Mr. Hill seconded to approve the proposed ethics opinion. The motion passed unanimously.

2. Interim Payments in Probate Cases

- a. This proposed Ethics Opinion replaces Formal Opinion No. 1991-63 because it is incomplete and misleading. The revised opinion states an attorney needs court approval for any payment of estate funds to a lawyer probating the estate. The revised opinion indicates a personal representative could pay a lawyer out of personal funds without court approval, but any reimbursement of that payment out of estate funds must be approved by the court.

Action: Mr. Hytowitz moved and Mr. Bryant seconded a motion to approve the proposal. The motion passed unanimously.

3. Proposed Opinion Regarding DR 1-102 (D)

- a. The Legal Ethics Committee continues to work on this opinion and it will return to the BOG at a later date.

4. Proposed Opinion 2002-168

- a. Because of the adoption of this opinion, it is necessary to clarify the rules of the OSB's Referral and Information Services Program (RIS) that an attorney may not give legal advice to callers. The RIS rules currently allow such practice.

Action: Mr. Hytowitz moved and Mr. Gaydos seconded a motion to delete the current provision for legal advice from the RIS Rules. The motion passed unanimously.

4. OSB Committees, Sections, Councils, Divisions and Task Forces

A. Client Security Fund

1. No. 02-11 *Cederwall v. Wilson*

- a. The CSF Committee found no evidence of dishonesty in Ms. Wilson's acceptance of funds from Cederwall, but concluded she did not earn all of the \$750 advanced for her professional services. The committee voted to refund \$250 to compensate for the work left undone at the time Wilson abandoned the case.

Action: Mr. Comstock moved and Ms. LeSage seconded the motion to approve the recommendation of the CSF Committee. The vote was unanimous.

2. No. 02-12 *Hymes v. Judy*

- a. The Board approved the payment of this claim in full and waiver of the requirement that the clients obtain a judgment against Judy.

Action: Mr. Comstock moved and Ms. LeSage seconded the motion to approve the recommendation of the CSF Committee. The vote was unanimous.

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

A. Policy and Governance Committee

1. Mr. Brown informed the Board the Policy and Governance Committee had reconsidered the proposal to not charge Active Pro Bono members a membership fee and had decided to withdraw the proposal. Mr. Hytowitz indicated the Budget and Finance Committee had also considered the proposal and did not support it.

B. Elections

1. Mr. Brown presented the committees recommendation. The Bar does not have the capability of verifying the signatures on the ballot envelopes, but the Board thought it was important to ask for them nonetheless. In addition, the motion directed the staff to seek a statutory change to the words "printed and mailed" in the current statute to something like "distributed" to allow for electronic voting. The Committee is investigating the possibility of conducting elections electronically either through software or through a private vendor.

Action: Mr. Brown, on behalf of the committee, moved that the Bar no longer void ballots if they are not properly filled out with the person's signature and address. The motion passed (yes, 10; no, 4 [Bryant, Hill, LeSage,

Worcester. Ms. McCauley Burrows was out of the room at the time of the vote.]).

C. Public Affairs Committee

1. Proposed Amendment of ORS 9.241

- a. Mr. Carter presented information on behalf of the committee to seek a change to ORS 9.241 in order to allow the Oregon Supreme Court to adopt rules for temporary practice in Oregon by out-of-state and foreign lawyers. Currently, the unlawful practice of law statute could be interpreted to cover out-of-state and foreign lawyers who do transactional or pre-litigation work in Oregon. The ABA has recently adopted a change to its Model Rules to allow for the temporary practice of law in such circumstances. The Chief Justice has stated he is not opposed to the Bar seeking enabling legislation.

Action: Mr. Carter presented a motion, on behalf of the committee, to seek a change to ORS 9.241 in order to allow the Oregon Supreme Court to adopt rules for temporary practice in Oregon by out-of-state and foreign lawyers. The motion passed unanimously.

2. Legislative Reception

- a. Mr. Carter stated the Thursday Legislative Reception was very well attended and ran from 4:30 p.m. to 7:00 p.m. He thanked Bob Oleson for encouraging legislators to attend the event. BOG members were encouraged to send notes to legislators with whom they spoke and to contact Mr. Oleson and Ms. Grabe regarding topics discussed which could be of legislative interest to the Bar. The Public Affairs Committee (PAC) will meet at 4:00 p.m. on February 12, 2003, to discuss some opposition to the bar's law improvement bill dealing with independent contractors. Unions and some others have expressed opposition to the bill. On February 3, 2003, from 1:00 p.m. to 3:00 p.m., the Public Safety Mapping Project regarding the courts will make a presentation to the legislature.

D. Access to Justice

1. Pro Hac Vice Fund Distribution

- a. A request from the legal aid programs to distribute a greater portion of the 2002 *pro hac vice* funds to the Oregon Law Center for the purpose of hiring a temporary statewide lobbyist to assist with the poverty law issues in the 2003 Oregon legislature was presented to the Board by Ms. LeSage. As an example of past

work, the Landlord Tenant Act was created in this manner. Judith Baker, OSB Legal Services Program Director, stated the change in funding needed to be at the funder level because the programs themselves could not do an exchange. Michael Keeney from Marion Polk Legal Aid stated funds have been redistributed in this manner since 1996. One of the purposes of the position is to deal with the budget cuts to programs that affect low-income Oregonians. Mr. Carter raised a concern about the purpose for which the legislature appropriated the funds, i.e. for legal services to the poor. The presenters clarified this would be a one-time change in the allocation. The position would not be involved in soliciting funds for the programs themselves.

Action: A motion to adopt the one-time change was moved by Ms. LeSage and seconded by Mr. Paulson. The motion passed (yes, 11; no, 4 [Brown, Carter, Hill, Hilton]).

2. Contribution to ABA Equal Justice Conference

- a. Ms. LeSage presented a proposal from the Access to Justice Committee to contribute to the ABA Equal Justice Conference to be held in Portland in April, 2003. Ed Harnden is working with the national committee to sponsor a social event. The committee is recommending up to \$7,500 be made available from the contingency reserve to cover sponsorship if Mr. Harnden is unable to cover the total funding with other sponsors. Mr. Hytowitz informed the Board the Budget and Finance Committee would support the appropriation but was concerned because the ABA had vetoed the Nike sponsorship that Mr. Harnden had obtained to cover the event.

Action: The committee motion passed (yes, 12; no, 3 [Hilton, Paulson, Comstock]).

E. Awards Committee

1. Mr. Hytowitz stated the committee had established a schedule for the 2003 awards process. The BOG will approve the recipients of the awards for 2003 at its June, 2003 meeting.

F. Public Member Selection

1. Mr. Hill informed the Board the committee had adopted a timeline for selection of the new public member. The committee is going to attach short biographies of retiring public members from various bar boards and committees with the press release. On August 3, 2003, the committee will narrow the field to finalists with a decision by the end of August.

G. Recruitment

1. Mr. Rawlinson was unable to attend the meeting. However, his committee did meet and Mr. Rawlinson has asked the board members to secure three people who are willing to run for the House of Delegates. The committee discussed other activities as well.

H. Professional Liability Fund

1. Ira Zarov informed the Board that the wife of one of the PLF Board of Directors, Stephen Bloom, had been killed in a car accident the previous week.
2. Final Case Statistics
 - a. Mr. Zarov discussed the final case statistics for 2002. The total was 817, the third highest year since the inception of the fund. January, 2003, has started at a more normal pace.
3. Report on Excess Program
 - a. The excess program is doing well. It grew 5%.
4. Financial Report
 - a. Bob Nunn presented the PLF financial report. As the Board has already heard, Mr. Nunn stated both claims experience and investments were not kind to the PLF in 2002. There were a number of claims that were severe and while the fund has a balanced portfolio of investments, dropping stock prices hit the PLF hard.
5. Rate of Comparison with Other States

- a. The rate comparison with other states, which is difficult because there are a significant mix of services in each program, shows the PLF is still lower than most other programs.

6. Inclusion of Patent Lawyers in PLF

- a. Discussion took place in Closed Session

Action: After a discussion of the impact of covering patent lawyers, Ms. McCauley Burrows moved and Mr. Gaydos seconded a motion to leave in the exclusion but to add the words to (s) “for an attorney not a member of the patent bar.” This was intended to exclude other attorneys who do occasional patent work. The motion was also to make this change subject to approval of the PLF Board of Directors. A concern was expressed by the Board that the PLF should price the coverage for these attorneys at its value. The motion passed unanimously.

7. Miscellaneous

- a. Mr. Zarov stated he had spoken on a panel regarding PLF-type coverage for medical doctors in Oregon. There has been a bill introduced in the legislature to create a PLF for the medical profession.

6. Other Issues

A. Letter from Former Supreme Court Justice Ed Fadely

- 1. The Board reviewed a request from former Supreme Court Justice Ed Fadely to sue the legislature for not properly funding the courts. The Board decided it was not interested and Mr. Williamson and Mr. Carter will collaborate on a letter to Mr. Fadely stating the legal and political reasons for declining Mr. Fadeley’s invitation.

B. Free Speech Rights for Judicial Candidates

- 1. Supreme Court Justice Robert Durham spoke to Mr. Williamson about the U. S. Supreme Court decision regarding free speech rights for judicial candidates. A group is examining whether Oregon’s Judicial Code needs to be changed in light of that decision. OSB Assistant General Counsel Sylvia Stevens is participating in that work group. Ms. Stevens will be asked to keep the Board informed of the group’s progress on this issue. Mr. Hytowitz indicated he was interested in working on this issue.

7. Consent Agenda

- A. Ms. McCauley Burrows moved and Mr. Gaydos seconded approval of the Consent Agenda including the handout from the Appointments Committee. The motion passed unanimously.