

Oregon State Bar
Meeting of the Board of Governors
April 4-5, 2003
Open Meeting 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 Board meeting was called to order Friday, April 4, 2003, at 1:03 p.m. by President Charles Williamson and adjourned at 5:02 p.m. Members present were Lisa LeSage, Lauren Paulson, Ronald Bryant, Mark Comstock, William Carter, Frank Hilton, David Hytowitz (phone), Dennis Rawlinson, Gerry Gaydos, James Brown, Nena Cook, John Enbom, Bette Worcester, Charles Williamson, Mary McCauley Burrows (1:03 p.m. – 2:00 p.m.) and Jon Hill (3:30 p.m. – 5:02 p.m. [phone]). Staff present was Karen Garst, George Riemer, Ira Zarov, Susan Grabe, Rod Wegener, Jeff Sapiro and Teresa Wenzel.

The Board meeting was reconvened Saturday, April 5, 2003, at 8:47 a.m. by President Charles Williamson and adjourned at 11:10 a.m. Members present were Ronald Bryant, Mark Comstock, Lisa LeSage, William Carter, Frank Hilton, Gerry Gaydos, Dennis Rawlinson, Nena Cook, John Enbom, Bette Worcester, Charles Williamson, Jon Hill (8:47 – 10:00 [phone]), Mary McCauley Burrows, James Brown, Lauren Paulson and David Hytowitz (9:30 – 11:10 [phone]). Staff present was Karen Garst, George Riemer, Susan Grabe and Teresa Wenzel.

Work Session

1. Evaluation of 2002 Program Measures

The Board held a work session to discuss the evaluation of program measures for 2002. Ms. Garst prefaced the presentation by stating that, to her knowledge, the OSB is the only mandatory bar that is engaged in such an effort. The following comments were made.

Affirmative Action

The Board felt that it was important to keep working on creating a critical mass of minority lawyers in the state. While the numbers themselves were disappointing, the effort continues to be worthwhile. The membership has voted twice to support the program. The current resolution requires another vote to continue the program in 2006. There are a large number of partners involved in this effort.

CLE Publications

The Board raised the issue of competitiveness with the private sector, not just other bar associations. A concern was raised about providers such as Clay Tablet and their impact on

our publications, in particular the forms in *Advising Oregon Business*. The last outcome will be changed to reflect private sector offerings.

CLE Seminars

Ms. Garst stated that while there was a deficit this year, the program appears to be doing better and has brought the brochures produced outside the department inside in order to achieve more efficiency.

Communications

Ms. Garst explained that other bars are trying to promote the image of the lawyer by promoting such activities as leadership in Boy Scouts activities or as soldiers. The Bar's approach involves portraying what lawyers actually do as lawyers and increasing the public's access to information. The Board wanted to try to have something similar to Utah's distribution of a one page sheet regarding the rule of law (*Marbury v. Madison*) distributed in Oregon's newspapers.

Convention

The Board will continue to have the Policy and Governance Committee oversee the newly designed convention.

Disciplinary Counsel

The Board wanted to have the Policy and Governance Committee consider surveying lawyers and judges who file complaints and lawyers who defend other lawyers in bar disciplinary proceedings. In addition, a joint meeting between the SPRB and BOG next fall should be planned.

Governmental Relations

It is likely that the Bar's law improvement bills will not have as good a record this session as many are encountering opposition.

Legal Services

Ms. Garst stated that only 3% of the filing fee revenue is used for administration.

Member Services

The Board wants to explore any services that the members might find useful to their legal practice in addition to Casemaker. The Budget and Finance Committee is exploring some options for the Board to consider.

MCLE

The Bar is moving to a transcript system for courses approved by the department. Thus, each member will be provided with what the Bar has on record prior to the end of their reporting period.

Referral and Information Services

In the past the Board considered, and rejected requiring lawyers to share a portion of contingent fees earned from referred cases as a way of garnering more revenue for and enhancing services provided by this program.

Support Services

Because this department's services had been previewed at the last board meeting, little discussion took place on these services. Ms. Garst stated that the diversity of manager/supervisor positions, in terms of minorities, had increased to 2/20.

2. Discipline Statistical Summary

- A. Ms. Garst introduced this topic which was requested by a Board member concerned about the delays in processing bar complaints. She explained the Disciplinary System Task Force received many comments about the delay in the system, but decided early on not to recommend either structural changes to the volunteer nature of the system or adding more resources to this area. She also pointed out that in most instances the Bar keeps statistics for the average number of days taken in each part of the process and the percentage of cases that met the specific standard. Very often, these yield differing pictures of the timelines.

Disciplinary Counsel, Jeff Sapiro, gave an overview of the data. While there was an increase of 7% in the total number of complaints in 2002, the department closed out 4.5% more files than the previous year. In addition, staff kept more investigations in house sending only 26 cases to Local Professional Responsibility Committees (LPRCs). The LPRC process is a particular problem because of the delays in completing reports and sending them back to Disciplinary Counsel. The time standard for completing LPRC investigations was met once in the last 50 investigations, with the average investigation in 2002 taking nearly a year to complete.

In terms of ultimate results in 87 disciplinary proceedings concluded in 2002, the Bar prevailed in large measure in all except one. While the process can be slow, Mr. Sapiro stated that it is a mistake to focus solely on the timelines because of a need to balance right versus fast. If there is pressure to dismiss valid complaints because of delays, then the public will not be served. In each of the benchmarks or goals, the department has done a little better this year than last. He acknowledged that for the accused lawyer, the timelines are a burden. Mr. Sapiro stated that the rule recently adopted by the Supreme Court regarding the Disciplinary Board Clerk position should assist in getting trials scheduled and opinions back in a more timely fashion. In 2002, there were 87 disciplinary proceedings brought to a conclusion. The average length of time from receipt of complaint to decision was 28 months. For those matters that went to trial and were appealed the average time was 4 years. On some of those matters, the appellate process itself took 2 ½ years. The Supreme Court is interested in having the ability to not review appeals from the process if it so chooses.

The Policy and Governance Committee is asked to study this issue and bring it back to the full Board for further consideration.

The Board discussed the issue of the role and quality of LPRC investigations. Several suggestions were offered: have staff work up the investigation and ask the LPRC to review (later oversight versus primary investigation); look to a system similar to Washington State where one person, not a committee, is assigned a matter; eliminate the LPRCs; give LPRC work some compensation; establish a firm deadline for LPRC reports and then pull back to staff if not met; and selecting a group of bar members statewide to serve as investigators. The Policy and Governance Committee was assigned the task of examining this issue in more detail and reporting back to the full Board.

3. Financial Controls

- A. OSB President-Elect Bill Carter requested that the Board review its fiduciary responsibility at this meeting based on ideas presented at a workshop he attended at the Bar Leadership Institute recently held in Chicago. OSB CFO Rod Wegener stated that the Bar has a new accounting manager, is in the process of purchasing new accounting software and has one accounting clerk who is retiring. All of these instances provide an opportunity to review financial processes within the department. The Bar's recent biennial audit did not include a management letter because no concerns were raised. This has been true for the past several audits. The audit is mailed directly to the Board of Governors. In terms of the Bar's investment policy, the Board's Budget and Finance Committee reviews investments thus assuring Board input into the policy and a checks and balances system with staff. Internal controls are many, including having at least two people involved in each process whether reconciling the bank statement, dealing with cash receipts or signing checks. These controls reduce the probability of mistakes and intentional fraud. After a short discussion, the Board asked that the auditors meet first with the Bar's Budget and Finance Committee and then directly with the full Board subsequent to the Bar's next audit. Mr. Wegener also responded to a question regarding salary draws for staff. He indicated there is no draw for staff on salary and that there is a maximum \$200 cash advance for an out-of-state trip. The Board remarked that this was appropriate. In response to a question about credit cards, Mr. Wegener stated that the Bar had switched credit card processing companies on its website. Credit card numbers are not maintained in the bar's database, thus solving the problem of someone hacking into our system for the numbers. The credit card processing company receives the credit card number and verifies it.

Open Agenda

4. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Carson

The meeting with the Chief Justice included discussion of the potential surcharge to filing fees to provide the courts with some additional funds. The surcharge would be temporary and raise almost \$8 million over the biennium.

2. Western States Bar Conference

At the Western States Bar Conference, it appeared that the Oregon Judicial Department was in the bleakest shape financially of the states represented at the conference. King County Bar Association (Washington) is developing a program to deal with the issue of drug use, Microsoft is working on a program to provide legal assistance to immigrants and the ABA has a task force on the development of a model definition of the practice of law. Former Board of Governors President, Ed Harnden made a presentation on access issues and the Northwest states had a meeting to discuss reciprocity and other issues.

3. ABA/NCBP – Seattle

Mr. Williamson reported on the Spirit of Excellence Award Luncheon where one of the recipients was the OSB's Affirmative Action Director, Stella Manabe.

B. Report of the President-Elect

1. ABA Bar Leadership Conference - Chicago

Mr. Carter reported on the recent Bar Leadership Institute held in Chicago. There were 161 presidents-elect in attendance, as well as 60 executives with 48 states represented. He thought the conference was very well done and felt that each member of the Board of Governors should attend one national leadership conference. The conference emphasized issues of board governance including that the board has one employee, the executive director. The board sets goals and the executive director devises the means to achieve them. He also stated that it is important internal and external communications be coordinated so the Bar speaks with one voice. There was a workshop on financial controls with an emphasis on the board's fiduciary responsibility.

2. Western States Bar Conference

At the Western States Bar Conference, George Riemer did a great presentation on reciprocity. Other states are working on similar arrangements. North Carolina has a statewide program providing health insurance for members. Mr. Carter asked staff to draft a brochure on member services similar to the one he had obtained from the State Bar of Arizona.

3. Miscellaneous

Participants from the OSB met with MBA representatives and decided to explore statewide insurance coverage for bar members.

C. Report of the Executive Director

1. Transfer from Active to Inactive Status

Ms. Garst presented an issue of bar members who make an attempt to change from active to inactive status but do not complete one piece of the paperwork by the deadline and members who get called up on military duty past the dues deadline. The Board will give the executive director discretion in cases of this type for the year 2003 and allow the executive director to waive the deadline. The Board also asked the Policy and Governance Committee to consider a permanent policy change on this subject.

Action: Mr. Bryant moved and Mr. Enbom seconded to give the executive director discretion to accept applications for those cases involving inactive status changes and military waivers under the extenuating circumstance set forth in the agenda materials for 2003 and to ask the Policy and Governance Committee to consider a permanent policy change on this matter. The motion passed unanimously.

2. Year End Analysis of *Pro Hac Vice* Fees

Ms. Garst discussed the year-end statistics for the *pro hac vice* fee totaling \$67,000.

Mr. Williamson indicated that he had received a letter from Kirk Hall, former PLF CEO, stating his concerns about the legality of the *pro hac vice* statute. Mr. Hall sent another letter to Justice Tom Balmer on the same subject. Mr. Riemer indicated that Mississippi dedicates its *pro hac vice* fee to indigent defense services and the Texas legislature is considering the adoption of a *pro hac vice* statute, which also allocates *pro hac vice* fees to legal aid services.

3. Miscellaneous

a. Letter from Marion County Bar Association

Ms. Garst shared a thank you letter from the Marion County Bar Association for the Board's participation in their annual Awards Banquet and Judges' Reception.

b. Ms. Garst's Special Leave

The Board approved, by consent, changing the dates of Ms. Garst's special leave to from after the June Board meeting until to before the September Board meeting. She stated that the change would allow her to miss only the summer meeting.

5. **Appearances/Special Issues**

A. Constitutional Law Section's Amicus Brief Request

The Board considered the request of the Constitutional Law Section to allow either the section and/or the Board to submit an *amicus* brief in a future case arguing the Supreme Court has authority, under the Oregon Constitution, to issue decisions in cases that are moot where the question of law is capable of repetition, yet evades review in order to set precedent regarding the underlying legal issues.

Action: Mr. Rawlinson moved and Ms. Cook seconded to approve the Constitutional Law Section's *amicus* brief request upon the following two conditions: (a) the Board will be informed of the case that has been selected and retains the authority to decide whether to authorize the *amicus* brief in that case and (b) the Board will have the opportunity to review and approve the brief. The motion passed unanimously.

6. **OSB Committees, Sections, Councils, Divisions and Task Forces**

A. Disciplinary System Task Force

The Board reviewed alternatives for the three House of Delegates' proposed changes to the disciplinary system.

1. Disciplinary System Changes

a. Proposal #4 – Attorney/Client Assistance Program (ACAP)

- (1) The Board decided that the name of the program should be the "Client Assistance" Program or Office (CAP). This

program has also been referred to as the consumer assistance or the ombudsman program. The remaining issue was what right of appeal would be available. The options were: no appeal from CAP, an appeal from CAP to General Counsel, an appeal from CAP to Disciplinary Counsel and then to the State Professional Responsibility Board (SPRB), or an appeal directly from CAP to SPRB. The Board voted to have the right of appeal from CAP to General Counsel.

Action: Mr. Rawlinson moved, Mr. Enbom seconded and the Board voted unanimously to approve the proposed changes to implement a CAP including the following language:

Rule 2.5 - Intake and Review of Inquiries and Complaints by Attorney Client Assistance Office.

(a) **Attorney client assistance office.** The Bar shall establish an attorney client assistance office, separate from that of Disciplinary Counsel, that shall receive and review all inquiries and complaints, oral and written, about the conduct of attorneys.

(1) If an inquiry or complaint, either on its face or after investigation by the attorney client assistance office, does not raise an actual complaint of misconduct, the attorney client assistance office will retain the inquiry or complaint and attempt to resolve for the person making the inquiry or complaint the concerns expressed therein, to the extent possible and as resources permit. A decision of the client assistance office that an inquiry or complaint does not raise an actual complaint of misconduct may be appealed to General Counsel. The decision of General Counsel is final.

(2) If an inquiry or complaint does raise an actual complaint of misconduct, it shall be considered a disciplinary complaint and the attorney client assistance office shall refer the matter to Disciplinary Counsel.

(b) **Actual Complaint of Misconduct Defined.** An actual complaint of misconduct exists when the attorney client assistance office determines that there is credible evidence to support an allegation that misconduct has occurred.

b. Proposal #5 – Diversion

The Board reviewed five criteria for diversion eligibility at its January meeting. The Board wanted to discuss alternatives to the last two of these criteria:

(4) The attorney has not been reprimanded or suspended in the preceding five years for misconduct similar to that under consideration for diversion; and

(5) A prior complaint or allegation of misconduct against the attorney has not been dismissed after diversion under this rule.

The Board reviewed alternatives to criterion Number 4: either deleting it entirely or stipulating that the discipline occurred prior to the adoption of the revised BR 2.9. They discussed alternatives to Number 5: specifying a specific period of time, misconduct for a complaint that was not diverted, or deletion entirely.

Action: Mr. Rawlinson moved and Ms. LeSage seconded a motion to remove proposed BR 2.9(b)(4) and (5). The motion passed unanimously.

Action: Mr. Bryant moved and Ms. Worcester seconded a motion to approve the following language for BR 2.9(d)(4). The motion passed unanimously.

The term of a diversion agreement shall be no more than 24 months.

c. Proposal #7 – Discretion to Decline Prosecution

Mr. Sapiro stated that the current rules do not allow for discretion on the part of the SPRB either for resources or staffing. If there is a violation, the issue must be pursued. The concept of no harm, no foul is not in the rules. There are some narrow exceptions to this: when there is already a disbarment proceeding in process, the member is not an active member and the issue could be dealt with on reinstatement, or the issue is taken care of elsewhere. The Disciplinary System Task Force sought to bring some kind of prosecutorial discretion to the SPRB. The SPRB considered the House of Delegates' recommendation and stated its concerns to the proposed draft: are these the right criteria?; are they too limiting?; and is there likely to be a discussion of entitlement for dismissal based upon the criteria? Mr. Sapiro proposed a new alternative as follows:

“BR 2.5(h)(3). Notwithstanding a determination by the SPRB that probable cause exists to believe misconduct has occurred, the SPRB shall have the discretion to dismiss a complaint or allegation of misconduct if the SPRB, considering the facts and circumstances as a whole, determines that dismissal would further the interests of justice. Factors that the SPRB may take into account in exercising its discretion under this rule include, but are not limited to: the attorney’s mental state; whether the misconduct is an isolated event or part of a pattern of misconduct; the potential or actual injury caused by the attorney’s misconduct; whether the attorney fully cooperated in the investigation of the misconduct; and whether the attorney previously was admonished or disciplined for misconduct.”

Action: Ms. Worcester moved and Ms. Burrows seconded the motion to add the following language to Mr. Sapiro’s alternative. The motion passed unanimously.

Misconduct that adversely reflects on the attorney’s honesty, trustworthiness, or fitness to practice law shall not be subject to dismissal under this rule.

2. Miscellaneous

- a. There was a short discussion about how the Board reviews the prosecutorial demeanor and approach of the Discipline Department. The Board decided that it would like to receive yearly feedback from defense counsel who regularly represent accused lawyers. The Board’s Policy and Governance Committee was asked to draft a set of questions for the Board to review. Mr. Sapiro indicated that he welcomed any comments or suggestions they might provide.

B. Client Security Fund

1. CSF Claims Recommended for Payment

- a. *Ramos v. Stache (No.02-05)*

Action: Mr. Comstock moved and Ms. Worcester seconded the motion to waive requirement for a judgment and to pay the claim of \$1,950. The motion passed unanimously.

b. *Hausmann v. Gloyn (No. 02-10)*

Action: Mr. Comstock moved and Ms. LeSage seconded a motion to waive requirement for a judgment and to pay the claim of \$625. The motion passed unanimously.

c. *Ray v. Groh (No. 03-01)*

Action: Mr. Comstock moved and Mr. Enbom seconded a motion to waive requirement for a judgment and to pay the claim of \$850. The motion passed unanimously.

d. *Evergreen v. Jones (No. 03-05)*

Action: Mr. Comstock moved and Mr. Bryant seconded a motion to waive requirement for a judgment and to pay the claim of \$2,300. The motion passed unanimously.

e. *Hinz v. Kramer (No. 02-09)*

Action: Mr. Comstock moved and Ms. Worcester seconded a motion to deny the claim. The motion passed (yes, 12; abstain, 3 [Williamson, Hilton, Rawlinson]; absent, 1 [Hill])

C. MCLE Committee

1. Request for Review of MCLE Committee Decision

The MCLE Committee asked the Board to review the decision of the MCLE Committee not to grant diversity credits to a program sponsored by the Metropolitan Public Defender (MPD) for its staff lawyers. The MCLE Committee wanted clarification on the issue of what constitutes the criteria for a diversity credit. The Board affirmed the denial based upon the conclusion that the program did not address the issues that are the focus of the “other aspects of professional responsibility” language in Rule 3.3(a). The purpose of the new rule is to increase lawyer’s understanding of how cultural and other differences affect the perceptions of judges, juries, lawyers and court staff about the various individuals whom they come into contact with. The focus of the MPD program was to show lawyers the mechanics of an administrative process.

Action: Mr. Gaydos moved and Mr. Brown seconded the motion to uphold the MCLE Committees ’s denial of diversity credits for the program sponsored by the Metropolitan Public Defenders. The motion passed unanimously.

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

A. Policy & Governance Committee

1. Spousal/Partner Expenses for Western States Bar Conference

The committee recommended Board Policy 5.500 be modified to allow spouse/partner expenses for the Western States Bar Conference (WSBC) to be reimbursed for both the president and the president-elect. All Board policies that state “spouse” should be modified to state “spouse/partner.” In addition, the policy should be modified to add “any out-of-state conference that is budgeted for” rather than listing the NCBP mid-year and annual and the ABA Lobby Day, Bar Leadership Institute, etc. Specific language will be brought to the Board at its June, 2003 meeting.

Action: Mr. Brown moved and Mr. Enbom seconded a motion to reimburse the president and president-elect for spousal/partner expense for the WSBC, to change all language in board policy from spouse to spouse/partner and to modify Policy 5.500 to state “any out-of-state conference that is budgeted for” rather than listing each event. The motion passed unanimously.

B. Public Affairs Committee

1. Emerging Issues

Mr. Carter reviewed the emerging issues at the legislature. SJR 29, supported by Crime Victims United, would refer to voters the issue of electing appellate judges by geographic district. The bill may not get out of committee. The Bar is monitoring and will oppose if it has a chance of getting out of committee. HJR 42, sponsored by Rep. Patridge, would require Senate confirmation of judges. The Bar’s Judicial Administration Committee made comments. The Bar is against the bill. SB 274 and HB 3072 would allow professional licenses to be suspended if the person owed local government \$100 or more or failed to pay his or her taxes. While these bills don’t specifically refer to lawyers, it contemplates that they are included. The Bar is monitoring these bills. Ms. Garst gave an update on HB 2088 and the Bar’s efforts to increase filing fees for legal aid services. While the Bar and related groups were working on HB 2088, which would provide \$1 million in new revenue per year; another group, led by Rep. Patridge, was working on a surcharge of the base filing fee to provide additional revenue for the courts. A compromise was offered to phase in the provisions of HB 2088 over the biennium. It will still take work to assure this provision passes. SB 5512 and SB 5524 provide for budgets for the Council on Court Procedures and the Judicial Fitness Commission. There is a

possibility these groups may not receive state funding. The Bar is monitoring these bills and wants to be sure these commissions are not de-authorized.

2. Judicial Department Budget

Mr. Carter gave an update on the state of the Oregon Judicial Department's (OJD) budget. While the surcharge mentioned in 7.B.1. may garner an additional \$7-8 million over the biennium, it doesn't make up the \$30 million shortfall that OJD is facing.

3. Miscellaneous

a. Law Improvement Bills

Law improvement bills are facing challenges but there appear to be compromises in the works for SB 40, the independent contractor bill. HB 2057, the Bar bill including the provision for electronic elections, is working its way through the system.

b. Public Affairs Department Activities and Concerns

The Public Affairs Department is already working on the Legislative Notebook that will be available at the Annual Convention in September. Mr. Carter suggested a page in the *Bulletin* spotlight the work of the Public Affairs Department. This is important work and other board members commented the membership doesn't fully understand what the Bar is doing in this area. In addition, the Board stated the X-Team, those bar members who are interested in being more involved in public affairs, should be poised to discuss new revenue proposals that may emerge from this legislative session.

c. Bob Oleson's Retirement

Ms. Garst stated long-time lobbyist Bob Oleson will retire prior to the end of this legislative session. Ms. Garst stated her intention to hire him as a temporary employee in order to complete the session and finalize the Legislative Notebook. She further stated she did not feel it appropriate, on a long-term basis, to use retired employees either as temporary employees or independent contractors. The Board raised no issues with or objection to her decision. She also stated that Susan Grabe will assume the position of lobbyist at the time of Mr. Oleson's departure.

C. Recruitment Committee

1. HOD/ABA Filings and Status of BOG Election

Mr. Rawlinson thanked board members who recruited candidates for both the House of Delegates vacancies and the upcoming Board of Governors vacancies. There are still some vacancies in the House of Delegates for Region 3, but some members who were not able to get the paperwork completed in time want to be appointed. There are two positions in Region 5 for the Board and one in Region 6. Mr. Rawlinson indicated he would take the lead in Region 5 and Mark Comstock will take the lead in Region 6. In particular, they are interested in recruiting women candidates for the Board.

D. Budget & Finance Committee

1. Contingency Fund

a. Mr. Wegener discussed issues facing the Bar in 2003. The major issue is the expected increase in PERS employer rates. If a projected 8% increase occurs, it would mean a \$300,000 increase in the bar's budget on an annualized basis. Given the possibility of legislative adjustments prior to the end of the session, this number is expected to drop somewhat. Because of the uncertainty and the size of this problem, the Budget and Finance Committee met and recommended that the bar's contingency fund be frozen until the issue is settled.

Action: The committee's motion to freeze the fund was adopted unanimously by the Board.

2. Miscellaneous

a. Sidewalk In Front of OSB Center

Ms. Garst indicated she fielded a phone call from a Lake Oswego resident concerned about the lack of sidewalk in front of the Bar and another building on Meadows Road. Because of the slope of the bar's property, the cost of putting in a sidewalk may be exorbitant. After bids are received the Budget and Finance Committee will be asked to review the bids.

b. 2004 Salary Pool

Ms. Garst indicated she had discussions with staff regarding the salary pool for 2004 because of increased health care costs and the PERS increase. She and Mr. Zarov will discuss the size of the pool shortly.

Ms. Garst indicated that a salary freeze for upper level positions may be necessary, but that she wanted to have something available for the lower range positions.

c. Janitorial Contract at OSB Center

Ms. Garst indicated the Bar is exploring its janitorial contract to assure the contractor is paying a fair wage to employees and issues such as training on safety are being met. Ms. Garst and Mr. Wegener met with representatives of SEIU, Local 99 and they indicated there were several companies that service commercial enterprises that have signed on to a contract providing for the above

E. Judicial Selection Committee

1. Judicial Preference Poll in Marion and Josephine Counties

Nena Cook outlined the meeting held recently including Ron Bryant and staff with MardiLyn Saathoff, the Governor's Legal Counsel. Ms. Cook indicated the Governor was dissatisfied with the bar's preference polls in the case of an appointment of a local circuit court judge. He preferred a process similar to what the Bar does for appellate appointments. Ms. Cook emphasized the importance of both member and public input into the process. If the Bar supports local screening committees, it will be important to assist them by providing a template for a local process. Board members stated they wanted to provide the opportunity for the Board to conduct a poll itself, as well as at the Governor's request. Ms. Cook indicated the Judicial Selection Committee would continue to work with the Governor's Office on a local screening process. The Board asked that a letter be sent to all bar members in Marion and Josephine counties indicating a bar preference poll would not be conducted and the rationale for the Board's decision.

Action: Mr. Bryant moved and Mr. Rawlinson seconded a motion to waive the one meeting notice requirement. The motion passed unanimously.

Action: Mr. Bryant moved and Ms. Cook seconded a motion to change Board Policy 5.603 (c) to stipulate that a preference poll would be conducted at the request of either the Governor's Office or the Board of Governors. The motion passed unanimously.

F. Public Member Selection Committee

1. Committee Report

Bette Worcester, Vice-Chair, informed the Board of the new timeline the committee has developed in order to choose a new public member to replace Mary McCauley Burrows who will be leaving the Board at the end of the year. The Committee will make a final recommendation to the Board at its September 17, 2003 meeting. Mr. Enbom noted that the Board minutes of January 31-February 1, 2003 need to be changed to reflect the deadline is August 1, not August 3, for the meeting to select finalists for the position.

8. Professional Liability Fund

A. General Update

1. PLF CEO Ira Zarov gave an update of activities at the PLF. He reported staff is carrying a fairly high caseload, 843 cases.

B. Financial Report

1. The hedge fund investments the BOG authorized last year are doing well and are outperforming equity markets. The PLF Board of Directors is looking for a more active manager for its U.S. equities portfolio with the help of consultant R. V. Kuhns. As of February, the PLF is breaking even on claims.

C. Report on Patent Lawyer Coverage

1. In regard to the issue of removing the exemption for patent lawyers, Mr. Zarov reported PLF has received only positive comments from bar members. Mr. Zarov will be meeting with the Patent Law Section because there may be some confusion about how corporate counsel are covered and there also may be some feeling the PLF moved too quickly. However, these corporate counsel continue to be exempted from the provision for PLF coverage. There are also some details that need to be dealt with regarding the retroactivity date. A number of the patent lawyers are also buying PLF excess coverage that is being offered to them. The fund has done due diligence in regard to their claims history.

D. Report on Coverage Plan Issues for 2004 Plan

1. The PLF is dealing with the issue of limits of coverage with several of the large Portland firms that are concerned about limits of coverage when the claim involves a related occurrence and more than one lawyer is involved. This issue

is a difficult one and is of special interest to large Portland firms who have large SIRs (self insured retentions).

9. Consent Agenda

Action: Mr. Hytowitz moved and Mr. Bryant seconded a motion to approve the consent agenda with the amended Appointments Committee Consent Agenda of April 4, 2003 and the Workers' Compensation Board proposed amendments. The motion passed unanimously.

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

A. Board of Bar Examiners and Board of Governors Joint Committee

Mr. Williamson indicated he wanted to form a joint committee with the Board of Bar Examiners to look at the current reciprocity rules and processes and to explore the addition of Utah to the current reciprocal admission arrangement. He indicated he would appoint Frank Hilton, David Hytowitz and Nena Cook to represent the Board. There would be three appointments from the Board of Bar Examiners and then hopefully representatives from the Supreme Court. The Idaho State Bar has voted to add Utah to its reciprocity rule. The Idaho State Bar's recommendation will now go to the Idaho Supreme Court for approval.