

**Oregon State Bar
Meeting of the Board of Governors
August 1, 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 on Friday, August 1, 2003, at 1:00 p.m. by President Charles Williamson and adjourned at 4:20 p.m. Members present were Lisa LeSage, Lauren Paulson, Ronald Bryant, Mark Comstock, William Carter, Frank Hilton, David Hytowitz, Dennis Rawlinson, Gerry Gaydos, James Brown, Nena Cook, John Enbom, Bette Worcester, Charles Williamson, Mary McCauley Burrows and Jon Hill. Staff present was George Riemer, Tom Cave (PLF), Sylvia Stevens (by phone), Susan Grabe, Rod Wegener, Judith Baker, Jeff Sapiro and Donna Richardson. Guests included Judge Owen Panner (by phone) and Nancy Cooper (by phone).

1. Presentation by OSB Legal Services Program/Work Session

Judith Baker, Director of OSB Legal Services Program, gave an overview of the Oregon State Bar Legal Services Program and efforts to enhance the Bar's pro bono activities. The initial presentation was given during lunch and continued on with an Access to Justice report and action item presented by Ms. LeSage.

2. Professional Liability Fund

Mr. Cave appeared on behalf of the PLF. He reported that at its September meeting, the BOG will be presented with recommendations regarding revision of the PLF's policies on the Special Underwriting Assessment, patent lawyer coverage, and mission statement, along with the 2004 budget and 2004 assessment.

A. Audit Report

A clean audit opinion has been issued. The BOG has been sent a copy of the report.

B. Financial Report

The PLF continues to be doing well financially as a result of improved investment returns and a lower frequency of claims. Mr. Cave indicated that the PLF Board is cautiously optimistic regarding the 2004 Assessment. A recommendation regarding the 2004 Assessment will be presented to the BOG at the end of August for consideration at the September meeting.

C. Report on Patent Lawyer Coverage

A PLF exemption for patent lawyers was removed earlier this year. Patent lawyers are slowly signing up as outside insurance coverage ends. The PLF Board of Directors passed a policy change on this topic that will come to the BOG in September along with several other policy issues.

D. Report on Current Claims Count and Trends

Mr. Cave reported that the PLF had 733 open claims, the lowest number since 1998.

E. Capital Fund/Survey/Defending Claims

Mr. Cave informed the Board that the PLF is considering creating a “capital” fund for its excess funds. It will be incorporated in its mission statement that it is revising. The PLF has also surveyed covered lawyers and received satisfaction levels in the high 90 percentile.

Mr. Paulson asked what settlement parameters the PLF used when defending a claim. Mr. Cave explained that if there is no negligence the PLF will take the matter to trial if necessary.

3. Closed Session Agenda

1:15 to 1:55 p.m.

4. Report of Officers.

A. Report of the President

1. Report on Meeting with Chief Justice

- a. The July meeting with the Chief Justice included discussion of the proposed changes to the Code of Professional Responsibility. The next meeting is scheduled for August 14, 2003.

2. 2003 President’s Special Award of Appreciation

Mr. Williamson explained that the President’s Special Award of Appreciation is discretionary and requested that the Board concur in his selection of Eric and Hollie Lindauer to receive the award. The Lindauers’ efforts in bringing

together legal services, CEJ, bar and state government leaders to obtain added funding for legal services programs should be recognized.

Action: Mr. Hytowitz moved and Mr. Gaydos seconded the motion to present the 2003 President's Special Award of Appreciation to Eric and Hollie Lindauer. The motion passed unanimously.

3. Annual Meeting of National Conference of Bar Presidents

Mr. Williamson informed the Board that he would be attending the Annual Meeting of the National Conference of Bar Presidents in San Francisco the week of August 4.

4. Legislative Resolution

Mr. Williamson explained that a resolution thanking key Oregon lawyer legislators for their efforts this session was being drafted. Mr. Williamson proposed that the BOG introduce the resolution at the HOD meeting. The following legislators will be honored: Rob Patridge, Max Williams, and Lane Shetterly in the House; and Peter Courtney, Kate Brown and Charlie Ringo in the Senate.

Action: Mr. Hytowitz moved and Mr. Rawlinson seconded the motion to authorize Ms. Grabe and Mr. Carter to finalize the proposed resolution and have it placed on the HOD agenda. The motion was unanimously approved.

B. Report of the President-Elect

1. PLF Liaison Report

Mr. Carter indicated that his report was covered by Mr. Cave's report of the PLF and he had nothing further to add.

C. Report of the Acting Executive Director

1. Kudos to Board

Mr. Riemer thanked board members for their extra efforts in attending committee and section meetings this year.

2. Board Conference Call

Mr. Riemer reminded the Board that a conference call meeting has been scheduled for noon on August 15, 2003 to approve the HOD agenda.

3. Next Board Meeting

Mr. Riemer reminded the Board that agenda items for the September BOG meeting are due on August 29, 2003 with exhibits due on September 5, 2003.

4. Annual Meeting

Mr. Riemer informed the Board that registration is required in order to attend any portion of the annual meeting. BOG members are not charged registration fees.

5. Oregon Law Institute

Mr. Riemer informed the Board that CLE Seminars had brought to his attention the request of OLI to have early notice of OSB CLE programming. OLI is a CLE competitor of the OSB just like any other CLE provider. In the past OLI has requested, and the Bar has provided, information about its programming in advance of printed material. Mr. Riemer advised the Board that he had informed OLI's executive director that the Bar will not share preliminary planning information with other CLE providers. All other CLE providers have access to the Bar's published CLE programs calendar as it is released.

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

A. State Lawyers Assistance Committee

1. Proposal for Volunteer Counsel For Accused Lawyers

The State Lawyers Assistance Committee is requesting that the Oregon State Bar establish a panel of lawyers who are willing to provide some volunteer assistance to lawyers who are involved in disciplinary matters. This would be done through the Bar's volunteer opportunity process. This issue has been previously considered by the Board. The Committee hopes to have satisfied the Board's prior concerns. Accused lawyers would be provided with a disclaimer emphasizing that there is no constitutional right to appointed counsel in disciplinary proceedings, that the OSB does not vouch for any attorney on the panel, and that the Bar cannot guarantee that any volunteer will accept a particular case. The Bar could begin recruiting through broadcast e-mails, *Bulletin* articles and other marketing efforts. Accused lawyers will be

provided with the list of volunteer counsel, along with a disclaimer drafted by the Bar.

Action: Ms. Worcester moved and Mr. Rawlinson seconded the motion to approve establishing a panel of lawyers who are willing to provide volunteer assistance to lawyers involved in disciplinary matters. Referrals would be prefaced with a disclaimer. This volunteer opportunity will be added to the Bar's volunteer opportunity form in 2004. The motion passed unanimously.

6. Rules and Ethics Opinions

A. Report from the Ad Hoc Committee on the Oregon Rules of Professional Conduct

1. Designation of BOG Member to Introduce New Rules at HOD Meeting

Mr. Gaydos agreed to introduce the proposed new Rules of Professional Conduct at the OSB House of Delegates Meeting on September 20, 2003. He will be assisted by Nancy Cooper, chair of the Special Legal Ethics Committee, other members of the committee and staff.

2. Consider Five Possible Changes to the Proposed Oregon Rules of Professional Conduct

Mr. Riemer reviewed the proposed changes to the ORPC and asked the Board to approve the changes.

Action: Mr. Hytowitz moved and Ms. Cook seconded the motion to approve additional changes to the proposed ORPC as shown on agenda exhibit pages 7 through 10. The Board unanimously approved the recommended changes with the exception of item 5 which was removed for separate discussion. The motion unanimously passed.

Action: Mr. Bryant moved and Ms. Worcester seconded the motion to keep the trust account overdraft program in the Office of Disciplinary Counsel. The motion passed (yes, 15; no, 1 [Hill]).

3. Attorney General's Letter

The Board considered Mr. Myers' letter and further input of the Special Legal Ethics Committee on the questions presented. No motions were made. The Attorney General will be informed of his right to raise the points he made in his letter with the House of Delegates on September 20, 2003.

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

A. Policy and Governance Committee

1. Rewrite of BOG Policies on PLF

The Committee recommended that the Board approve the proposed revisions to the Board's policies on the PLF for inclusion in the master bylaw/policies revision Ms. Garst is working on. Ms. Worcester pointed out several typographical errors which will be corrected during the revision project.

Action: The Committee motion was unanimously approved by the Board.

2. Amendments to Standard Section Bylaws

The Committee recommended that the Board approve the proposed amendments to the Standard Section Bylaws. The amendments allow executive committee members to serve nine rather than seven years, allow a member-at-large to serve no more than four consecutive years and provide for electronic distribution and notification. The proposed amendments have been circulated to all sections. Mr. Williamson asked staff to contact Conrad Hutterli to inform him that the term of treasurer is not limited to one year.

Action: The Committee motion was unanimously approved by the Board.

3. Review of Constitutional Law Section's Draft Amicus Brief on Mootness

Mr. Brown explained that the Board had previously authorized the Constitutional Law Section to draft an amicus brief on judicial authority to decide moot cases that are capable of repetition yet evading review. The Board asked that the brief be submitted for Board approval. The Committee recommends the Board approve the draft brief. The Section will select an appropriate case in which to file the brief and bring the matter back to the Board for final approval at that time.

Action: The Committee motion was unanimously approved by the Board.

B. Public Affairs Committee

1. Legislative Session Update

Mr. Carter advised the Board that the Private Investigators Licensing Board had taken the position that expert witnesses had to be licensed investigators.

This presented a serious problem that needed to be fixed. He complimented the Public Affairs Department on drafting an appropriate amendment and obtaining legislative approval of the amendment on very short notice late in the session.

2. 2003 Annual Convention

Mr. Carter explained that some changes had been made to the Annual Meeting agenda regarding the legislative CLE which will hopefully improve attendance.

3. PAC Resolution on Stable Funding for the Justice System

The Committee recommended that the Board adopt a resolution urging the Oregon Legislative Assembly to adopt appropriate tax reform to ensure stable funding for the justice system.

Action: The Committee motion was approved by the Board (15 yes; 1 absent [Cook]).

4. State Securities Law Amendments

Securities legislation has been passed and is before the Governor for signature. Late opposition to the legislation has been brought to the attention of the Board of Governors. Both proponents and opponents of the bill would like the Bar to step in and take a position. Mr. Carter explained that both sides participated by conference call in the Public Affairs Committee meeting earlier in the day. Both sides were advised that the PAC would be proposing that Ms. Grabe help the parties negotiate an appropriate resolution to the dispute. Representative Max Williams has been notified that the Bar has made this offer. There was concern expressed regarding the impact of the legislation on the PLF. The proposal could be interpreted to impose additional liability on lawyers beyond that provided under existing law. Mr. Carter asked for Board ratification of the PAC's position that the Bar not get involved in the substantive debate, but offer the services of Bar staff to see if a compromise can be reached between the parties. The Securities Section expressed concern that it did not receive notification of this bill. Ms. Grabe assured the Board that the Public Affairs staff had taken appropriate steps to notify the section of this legislation.

Mr. Rawlinson expressed concern that the bill had started as a technical, clean-up, bill, but had changed dramatically over the course of time. Ms. Grabe again

assured the Board that when there are bills that directly affect the liability of lawyers, they are given top priority by PA staff.

Action: The Board unanimously approved the Committee motion to take no position on the substance of the legislation, but to offer the services of Bar staff to assist the parties in negotiating a compromise, if possible.

C. Budget and Finance Committee

1. 2004 Executive Summary Budget

The Committee has approved the 2004 OSB Executive Summary Budget with the exception of the \$50,000 grant to the Campaign for Equal Justice. The Board has asked for, and has not yet received, a report from the CEJ on the expenditure of prior Bar contributions. The Committee's present intention is to earmark \$50,000 for CEJ for 2004 contingent on the receipt of the previously requested report. Ms. LeSage indicated that she has a draft report with a specific proposal from the CEJ. The budget proposal continues the existing CSF assessment, the Casemaker assessment and reduces the contingency fund to \$50,000. With these assumptions, it is the goal of the Committee that a member fee increase will not be necessary until 2008.

2. Member Fee Resolution for 2004

Mr. Riemer advised the Board that HOD approval of the 2004 membership fee is not necessary since there is no increase. It will be shown as an information item on the HOD agenda.

Action: Mr. Hytowitz presented a motion, on behalf of the Committee, that the 2004 membership fee due date be set as February 2, 2004, and that the 2004 fee resolution be approved with the following changes suggested by Mr. Riemer:

- A. Remove the word "active" from the first paragraph: "It is hereby resolved by the Board of Governors of the Oregon State Bar that the 2004 annual ~~active~~ membership fees..."
- B. 1.G.(1) should read: "Members who were admitted to practice law in Oregon prior to January 1, 1954, are exempt from the payment of all active membership fees and assessments."

The motion was passed unanimously.

3. Funding of Legal History Book

Judge Panner appeared by phone and briefly stated that he was pleased to have had the privilege to assist with the development of the Legal History Book, that the Committee has done a great job and that it is a very worthwhile project. He firmly believes that the book will sell. He indicated that the Board had commissioned the project, that it is at a critical stage and that it should be finished.

The Budget and Finance Committee recommended that the request for \$15,000 be denied based on its previous recommendation to freeze the contingency fund.

A lengthy discussion ensued during which concerns were expressed about the Board's prior decision to allow the book to be prepared and how it would look at this point if the Board declined to advance funds to actually complete the project.

Ms. Cook suggested that there be a marketing effort to pre-sell the book and to apply those funds to the \$15,000 "loan."

There was a discussion regarding the Bar's PERS liability and the contingency fund.

Action: Mr. Rawlinson moved and Mr. Enbom seconded the motion to unfreeze the 2003 contingency fund and approve a \$15,000 advance to the Legal Heritage Interest Group for completion of the OSB History Book. This would be done only with the understanding that the marketing effort for the sale of the book would be coordinated with the Bar's Communications Department and efforts would be made to pre-sell the book. A request was made that it be made clear to the Legal Heritage Interest Group that the funds are to be fully repaid out of sales revenue and that Bar funds are being unfrozen in order to "advance" the \$15,000. Mr. Rawlinson agreed to notify the Legal Heritage Interest Group of the Board's action and the conditions placed on the \$15,000 advance. The motion passed (yes, 12; no, 4 [Worcester, Paulson, Hilton, Hytowitz])

D. Bar Works

1. Improving the Judiciary

Mr. Hilton reported that one of the goals of this Committee is to improve and enhance the high quality and standards of the state judiciary. The Committee believes that the Bar should be more active in developing a program to assist

judges in doing a better job and being more prepared. If the Bar developed a program, what would the judges like to see? The Committee believes the Bar should assist in developing an organized program that is coordinated by the judges and the Bar. Mr. Hilton suggested that the Committee start with broaching the foregoing concept with the Chief Justice. The Board had no objections to the Committee discussing the concept with the Chief Justice. Mr. Hilton will arrange a meeting with the Chief Justice and take his input back to the Committee for the development of a more concrete plan to present to the Board of Governors at a later date.

D. Access to Justice

1. Request of Chief Justice for the Oregon State Bar's Assistance in Developing Statewide List

The Chief Justice has asked for the Bar's help in creating a statewide list of lawyers willing to represent military personnel on a pro bono or reduced-fee basis. Mr. LeSage explained that the Access to Justice Committee met earlier in the day to discuss options.

Action: Ms. LeSage presented a motion, on behalf of the Committee, to establish a statewide referral panel of lawyers willing to represent military personnel on a pro bono or reduced fee basis. The motion unanimously passed.

Ms. LeSage will notify Chief Justice Carson of the Board's action.

E. Appointments

Mr. Bryant alerted the Board to the additions made to the recommendations to the Supreme Court for the Disciplinary Board.

Action: Mr. Bryant moved and Mr. Rawlinson seconded a motion to approve the additions to the Disciplinary Board recommendations shown on the amended Appointments Committee Consent Agenda of August 1, 2003. The motion was approved unanimously by the Board.

8. Consent Agenda

Action: Mr. Bryant moved and Mr. Hill seconded a motion to approve the consent agenda with the amended Appointments Committee Consent Agenda of August 1, 2003. The motion passed unanimously.

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

A. OSB Financial Controls

Mr. Riemer mentioned the memorandum that Mr. Wegener prepared on OSB financial controls. He indicated that specific policy changes to implement the recommendations contained in the memo will be prepared and presented to the Board.

B. Client Assistance Office

Mr. Riemer advised the Board that his memo on Client Assistance Office implementation issues had been considered by the Policy and Governance Committee and that CAO computer records will not record the names of lawyers until something in writing is received by the Bar. Telephone inquiries will be recorded in CAO computer records as to subject matter and disposition, but will not include lawyer names.

C. Reciprocity

Mr. Riemer informed the Board that the Bar was still waiting to hear from the Chief Justice about the members of the Court that would be willing to meet with members of the Board and Board of Bar Examiners to evaluate the reciprocity admission program.