

Oregon State Bar
Meeting of the Board of Governors
January 31, 2004
Open Session 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 meeting of the Oregon State Bar Board of Governors was called to order Saturday, January 31, 2004, at 9:00 a.m. by President William Carter and adjourned at 1:20 p.m. Board members present were Linda Eyerma, Mark Comstock, Lisa LeSage, Marva Fabien, Bette Worcester, Nena Cook, Lauren Paulson, Gerry Gaydos, Frank Hilton, Dennis Rawlinson, Phyllis Edmundson, Jon Hill, Jack Enbom, Albert Menashe and Williams Carter. Staff present was Karen Garst, George Riemer, Kay Pulju, Jeff Sapiro, Susan Grabe and Teresa Wenzel. Also present was Ira Zarov, PLF (9:00 a.m.-11:50 a.m.); Robert Cannon, PLF (9:00 a.m.-11:00 a.m.); Christine Meadows, ONLD; John Bridges, Futures Committee (11:00 a.m.-11:15 a.m.); Mark Johnson, ABA (11:00 a.m.-11:30 a.m.); Marilyn Harbur, ABA (11:00 a.m.-11:30 a.m.) and Adrienne Nelson, ABA (11:00 a.m.-11:30 a.m.).

1. Work Session - Communications

Kay Pulju, Communications Manager, discussed the programs and services of the Communications Department. The Department is responsible for the Customer Service Desk, the Bulletin and other member communications, public education, Referral and Information Services, and the Annual Meeting. Recent developments include a series of blast e-mails with current bar news, a redesign of the Bar's web site based on member comments and including the launch of Casemaker™, work by the media relations area with the Oregon Judicial Department regarding budget cuts, and special projects such as the Legal Aid Open Houses, member and public surveys, and voter information. Public information includes the popular Tel-Law scripts now available on the web site, two tapings per month on the Legal Links cable TV program, and legal help such as lawyer referral, pro se assistance and the military assistance panel. In the first 24 hours of the launch of a web-based lawyer referral process, 25 requests were received.

2. Report of Officers

A. Report of the President

1. Introduction

Mr. Carter began his report with the Swahili word "jambo" which means "hello" in Swahili. Mr. Carter recently returned from an exciting trip to Kenya. Mr. Carter outlined his goals regarding the process of board meetings: Openness and vigorous debate, on-time meetings, and disagreement through respectful conduct including toward staff. He reiterated that the Board has

one employee, the Executive Director. Any problems with bar staff should go through her and any problems with her should be directed to the president. He indicated Lisa LeSage had asked to be added to the Member Services Committee and that will be done. He is particularly interested in the new Member Services Committee and he will work with staff and the Committee to develop a process for approving new ideas for programs and services. Issues like having sections add pertinent information to Casemaker™ at their expense will be pursued immediately. He asked staff to create a Members Room at the Bar for out-of-town members to be able to use a computer and access their e-mail.

2. Meeting with Chief Justice Carson

As reported in the agenda handout.

3. Swearing in of New Board Member - Linda Eyerman

New member, Linda Eyerman, was sworn in.

B. Report of President-elect

Ms. Cook outlined various groups with whom she will be meet in the near future including the executive committee of Oregon Women Lawyers, the ABA mid-year meeting including the National Conference of Bar Presidents' meeting, the upcoming PLF meeting, the ABA Bar Leadership Institute in Chicago and the Western States Bar Conference. She discussed the activities of the newly created Member Services Committee and in addition to three priorities identified by Mr. Carter: Online CLE Publications, video conferencing and electronic filing in state courts; the Committee will identify and prioritize other ideas. Staff will send out the current list of ideas to the entire Board in order to solicit additional input. Ms. Cook, joined by board member Frank Hilton and past board member David Hytowitz, met with the Board of Bar Examiners, Supreme Court Justice Rives Kistler, BBX Executive Director Marlyce Gholston and Bar General Counsel George Riemer as requested by the Board of Governors. The group discussed current procedures for tri-state reciprocal admission (Idaho and Washington) and made a series of recommendations to improve the current process including the adoption of the ABA definition of what constitutes a qualifying law degree; a refinement of the required length of active practice; a definition of the active practice of law; and a further requirement for applicants who had previously failed the Oregon Bar Exam.

Action: Ms. Cook moved, Mr. Enbom second and the Board unanimously approved the changes to Admission Rule 15.05 as presented. If, in the next few months, these changes work well, the BBX indicated its support to recommend inclusion of the state of Utah into the reciprocal admission rules.

C. Report of the Executive Director

1. Legal Services Program – Columbia County

Ms. Garst outlined the current issues of Legal Services Program standards and compliance with them by the legal services program in Columbia County. The LSP Committee received a plan from the county program to come into compliance. The Committee will examine that plan at an upcoming meeting.

2. Client Assistance Office Report

Ms. Garst outlined the Client Assistance Office report contained in the board agenda. The CAO has received a drastic increase in the numbers of inquiries as compared to the previous experience of the Disciplinary Counsel's Office due to the current acceptance of phone calls, e-mails, etc. Ms. LeSage asked whether CAO handling intake has allowed Disciplinary Counsel to concentrate on more serious matters, especially older files. Mr. Sapiro responded his office has been able to work down the number of open files with roughly 50% fewer investigations compared to a couple of years ago. Mr. Carter indicated the problems identified in the program should be the substance for ongoing CLE programs. Mr. Riemer indicated lack of communications between the lawyer and the client is a chief cause of client dissatisfaction. Ms. Worcester inquired whether there was a process for determining if an inquiry that was dismissed should later turn up as a valid complaint. Staff will look into this.

3. Miscellaneous

Ms. Garst asked board members who have questions regarding the Board's actions or history of those actions to be addressed to her. She will compile the information and respond to the board member. She indicated six bar members volunteered for the recently created Voluntary Defense Counsel Panel for accused lawyers.

D. Oregon New Lawyers Division

1. ONLD Report

Christine Meadows, Chair-elect of the Oregon New Lawyers Division, outlined the ONLD's six standing committees with work encompassing the high school essay contest, formalizing the mentor program involving legislators, and the pro bono program. In the latter, the ONLD is working with the Multnomah Bar Association to produce a pro bono catalogue. In addition, the ONLD is exploring county fair booths similar to the popular

Oregon State Fair booth staffed by ONLD and bar volunteers. Ms. Meadows requested support from the Board of Governors to explore hosting an ABA Young Lawyers Conference in 2005. The Division will partner with Oregon Women Lawyers, the Multnomah Bar Association and the Oregon Minority Lawyers Association. The Division will seek firm and other sponsorships to defray the costs associated with hosting the conference. 1994 was the last such conference hosted by the ONLD. Mr. Rawlinson and Ms. LeSage gave strong support to the proposal. Mr. Hilton requested the Budget and Finance Committee be involved in the final financial proposal.

Action: Mr. Hill moved, Mr. Enbom seconded and the Board unanimously approved a motion to authorize the Division to propose up to \$10,000 in financial support to the effort at a May meeting with the ABA.

3. Rules and Ethics Opinions

A. Legal Ethics Opinion

1. Proposed Formal Opinion No. 2004-175

Mr. Gaydos presented the Legal Ethics Committee's proposed Formal Ethics Opinion, 2004-175 dealing with lawyers' participation in business networking groups. He disclosed he participates in a similar type group himself. He also indicated adoption of the proposed opinion may upset business lawyers in the Bar. The proposed opinion states it is unethical to participate in such a group if the purpose of the group is referrals, referrals are a condition of membership and there is a mandate referrals must be followed-up on. In essence then, a quid pro quo program is unethical. The Board discussed possible changes to the opinion. Ms. Cook stated in her numerous discussions with business lawyers there were two problems. She proposed to change the draft opinion by changing the word on page 16 from "except" to "unless" and by deleting "an unwritten obligation."

Action: Mr. Gaydos moved, Ms. Cook second and the Board unanimously approved the opinion with the changes recommended by Ms. Cook. The motion included a provision to send the revised opinion back to the Legal Ethics Committee. If that committee concurs with the changes, the opinion will be published. If not, it will be brought back to the Board of Governors.

B. Special Ethics Committee

1. Status of Proposed Oregon Rules of Professional Conduct

Mr. Riemer updated the Board on recent discussions with the Supreme Court regarding the HOD proposed adoption of new Model Rules of Professional

Conduct. It is expected the Supreme Court will respond soon with a letter outlining its concerns with the proposed rules and suggestions for changes. Ms. LeSage stated thousands of volunteer hours had been spent on the development of these rules. Mr. Comstock felt there had perhaps been a breakdown in the dynamics on the Supreme Court in dealing with this issue. Ms. LeSage suggested having a standing working group with the Supreme Court to communicate more frequently on matters of common concern such as the development of these rules. Ms. Eyerman stated the Supreme Court is not a political body and does not want to change the rules just because bar members would like to be in more conformity with other states that have adopted the Model Rules. She stated if the changes are too extensive, it may not be worth sending the proposal back to the House of Delegates. Mr. Menashe stated it would have been better to have the Supreme Court “take part in the takeoff so they would be there for the landing” Mr. Carter stated if the letter from the Supreme Court is unsatisfactory, a joint meeting should be proposed between the Supreme Court and the Board of Governors. Staff was requested to distribute the Court’s letter to both the Board and the House of Delegates.

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

A. Client Security Fund

1. CSF Claims Recommended for Payment

Action: Mr. Comstock moved, Mr. Gaydos seconded and the Board unanimously approved a motion to pay the \$4,000 claim in *Trulson v. McNanny*.

Action: Mr. Comstock moved, Mr. Gaydos seconded and the Board unanimously approved a motion to pay the \$914 claim in *Flemming v. Moe*.

Action: Mr. Comstock moved, Mr. Gaydos seconded and the Board unanimously approved a motion to pay the \$30,670 claim in *Ewing v. Judy*.

Action: Mr. Comstock moved, Mr. Gaydos seconded and the Board unanimously approved a motion to pay the \$1,231.25 claim in *Williams v. Cuniff*.

Action: Mr. Comstock moved, Mr. Gaydos seconded and the Board unanimously approved a motion to pay the \$11,234.48 claim in, *Johnson v. Gallagher*.

Action: Mr. Comstock moved, Mr. Gaydos seconded and the Board unanimously approved a motion to pay the \$330 claim in *Tenorio v. Fernandez*.

B. President's Advisory Committee on Future Issues Affecting the Legal Profession

1. Committee's Annual Report

John Bridges, Chair of the President's Advisory Committee on Future Issues Affecting the Legal Profession, discussed the report of the Committee. He outlined the history of the Committee that first focused on the Bar's programs and services including discussion of a Consumer Assistance Office and Multi-disciplinary Practice, an issue identified by the ABA. The current Committee has focused on issues facing the legal profession. This year, it identified and explored three issues: technology, privacy issues associated with electronic filing, and pro se assistance or self-help. Mr. Bridges also serves on the Chief Justice's Futures Committee. The goal of the Committee was to provide the BOG with a research tool to identify long-term issues. The Board's support of Casemaker™ aligns with increased use of technology by lawyers. The Chief's plan to put more court records on the Court's website aligns with the federal courts' development of PACER, an electronic filing program. Privacy issues balance public and private interests.. Dennis Karnopp had previously presented a letter to the Board of Governors indicating the Committee thought it should continue its work. Mr. Bridges commented that more people are needed on the Committee and the Committee needs people who are not product oriented. Ms. LeSage indicated the role and product of the Committee are unclear and it is difficult to see the relevance of the report to the Board's strategic planning efforts. She stated her concern that volunteers be used efficiently and effectively. Mr. Paulson said the report was not programmatic enough and identifying breakthroughs such as Casemaker™ are more relevant. After Mr. Bridges' departure, the Board further discussed whether the Committee should continue or be sunsetted. Mr. Rawlinson conveyed Mr. Williamson's suggestion the Committee be sunsetted. Mr. Hilton suggested the Committee might consider the future of the bar building. Mr. Hill suggested the BOG itself needs to be engaged in the discussion of future issues. Ms. Eyerman proposed to thank them for their work and to wait for a new mission for a future task force or special committee.

Action: Mr. Rawlinson moved, Mr. Enbom second and the Board unanimously approved a motion to commend the group for its work and to indicate the Board itself needs to consider these issues. The motion also included disbanding the Committee.

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

A. Policy & Governance Committee

1. MCLE Rules and Regulations

Ms. Cook discussed the previous board approval of changes to the MCLE Rules and Regulations regarding diversity. The Chief Justice's Access to Justice Committee advised the Supreme Court it was unhappy with the proposed changes. Staff was directed at the previous board meeting to revise the rules and return them to the Board. Conversations occurred with the Chief's Access to Justice Committee Chair, Judge Robert Wollheim. The proposed changes found in the board exhibit indicate a compromise that is acceptable to his Committee. The name "diversity" is changed to "elimination of bias" and the definition used by Minnesota is substituted for the current definition. These are changes in addition to those proposed at the previous BOG meeting. Mr. Carter expressed his concern this would cause further turmoil in the membership with what they saw as an imposed requirement.

Action: The Committee's motion passed with Mr. Carter voting no.

B. Public Affairs Committee

1. Update on Current Political Situation

Mr. Gaydos introduced the Committee's work plan for the year that included improving relationships between the BOG and individual legislators. A draft "talking points" was included for those board members who desire to speak to their respective legislators soon. The draft will continue to be developed.

2. Standards for Juvenile Law Practitioners

Action: The Committee moved to create a task force to refine standards for juvenile law practitioners. The new members include Katherine Berger, Lea Easton, Julie McFarlane, John Potter, Ingrid Swenson, Timothy Travis, Lissa Kaufman, Angela Sherbo, The Honorable Kirsten Thompson, Janie Burcart, Leslie Harris, Bradley Lechman-Su, Una Swanson, Kent Fisher and Jon Hill. The motion passed unanimously.

3. Update on Ballot Measure 30 Regarding Income Tax Surcharge

Mr. Gaydos indicated that the results of Measure 30 would be known next week and pointed out the informational brochure developed by the Bar.

C. Committee on the Judiciary

1. Update

Mr. Gaydos reported on the activities of the Committee in the absence of Chair Ron Bryant who was unable to attend the meeting. He indicated the Committee is discussing several issues and its 2004 work plan is in progress. Mr. Riemer indicated the Bar's Judicial Administration Committee would like to meet with the Committee on the Judiciary on February 20, 2004. A report on measures to increase the efficiency and effectiveness of the Supreme Court undertaken by the Appellate Practice Section would come to the Board of Governors prior to any formal dissemination of it. Mr. Carter explained several appellate lawyers apparently contacted Mr. Landauer, an editor of *The Oregonian*, regarding their concerns about case decision delays at the Supreme Court. Mr. Landauer wrote a column on this issue in a recent edition of *The Oregonian*.

6. Appearances/Special Issues

A. ABA Update

Mark Johnson, Marilyn Harbur and Adrienne Nelson, the Bar's delegates to the ABA House of Delegates, updated the Board on issues to be addressed at the ABA's mid-year meeting the following week in San Antonio, Texas. Mr. Johnson stated Oregon's participation and influence in the activities and decisions of the ABA are out of proportion to its number of delegates. State Delegate Katherine O'Neil chairs Oregon's ten-member delegation. The ABA HOD previously considered in August 2003, a controversial report on the ABA Task Force on Corporate Responsibility regarding disclosure of client confidences and the evidence of financial fraud. The proposed resolution on civil marriage outlined in the Board's materials is against any federal enactment that would restrict the ability of a state to give effect to a civil marriage validly contracted between two persons. (The Board's Policy and Governance Committee previously declined the invitation to have the Bar co-sponsor this resolution and did not forward that request to the full Board.) The ABA will also deal with a controversial law school de-accreditation proceeding regarding Western State University Law School in Orange County, California. Mr. Johnson stated Oregon is ahead of other states in terms of a CLE diversity requirement, its lawyers assistance programs and its client security program. Ms. Nelson and Mr. Johnson are running for re-election and Ms. Harbur's position is not up this year.

7. Professional Liability Fund 11:55 a.m.

A. PLF Update

Bob Cannon and Ira Zarov represented the PLF update at the board meeting. Mr. Zarov updated the BOG on the 2004 work plan of the PLF to review both the basic and excess plan and practice management issues. The PLF is working with the Bar on the idea of online CLE publications and problem areas identified by the CAO. Mr. Zarov further reported the Special Issues Committee had met twice. The first claim has been settled and the second is in process of being settled. Mr. Carter commended the process as doing exactly what it was designed to do

B. PLF Policy 5.200

Mr. Zarov explained the proposed modification to PLF Policy 5.2000 that clarifies definitions in the PLF's investment guidelines. The policy was developed with the advice of the PLF's outside investment consultants.

Action: Mr. Rawlinson moved, Ms. LeSage seconded and the Board unanimously approved the changes as presented.

C. Change to Article 3.5 PLF Bylaws

Mr. Zarov presented a proposed change to PLF Bylaws 3.5 changing the Board of Directors' terms to a calendar year to align with the BOG's terms of office.

Action: Mr. Rawlinson moved, Mr. Comstock seconded and the Board unanimously approved the changes as presented.

8. Consent Agenda

Action: Mr. Gaydos moved, Mr. Enbom seconded and the Board unanimously approved a motion to waive the one-meeting notice required to make the Bylaw change proposed in the Consent Agenda.

Action: Mr. Rawlinson moved, Mr. Gaydos seconded and the Board unanimously approved the Consent Agenda with the addition of the Appointments Committee Recommendations, page 149-A of the agenda.

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