

Oregon State Bar Meeting of the Board of Governors

April 8, 2005

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 Friday, April 8, 2005, by President Nena Cook and commenced with a Work Session presented by Jeff Sapiro of the Disciplinary Counsel's Office from 10:17 a.m. to 11:30 a.m. Board members present for the Work Session were Carol Skerjanec, Linda Eyeran, Bette Worcester, Mark Comstock, Frank Hilton, Rick Yugler, Tim Gerking, Phyllis Edmundson, Albert Menashe, Gerry Gaydos, Nena Cook, Jon Hill, and John Enbom (10:50 a.m. arrival). Staff present was Karen Garst, George Riemer, Susan Grabe, Jeff Sapiro, and Teresa Wenzel.

The joint meeting of the Oregon State Bar and the Professional Liability Fund was called to order Friday, April 8, 2005, by Nena Cook and featured a presentation by Barbara Fishleder of the PLF. The meeting commenced at 12:00 p.m. and concluded at 12:45 p.m. Board members present for the Work Session were Carol Skerjanec, Linda Eyeran, Bette Worcester, Mark Comstock, Frank Hilton, Rick Yugler, Tim Gerking, Phyllis Edmundson, Albert Menashe, Gerry Gaydos, Nena Cook, Jon Hill, Marva Fabien, and John Enbom. PLF board members and staff present were Louis Santiago, Steve Bloom, Amanda Walkup, Jim Rice, Bob Cannon, Lisa Miller, Bill Crow, Ira Zarov, Cindy Hill, and Barbara Fishleder. OSB Staff present was Karen Garst, George Riemer, Susan Grabe, Jeff Sapiro, and Teresa Wenzel.

The Open Session of the Oregon State Bar Board of Governors meeting was called to order Friday, April 8, 2005, by Nena Cook, commencing at 1:02 p.m. and adjourning at 5:35 p.m. Board members present were Carol Skerjanec, John Enbom, Linda Eyeran Phyllis Edmundson (1:02 p.m. – 4:00 p.m.), Bette Worcester, Albert Menashe, Gerry Gaydos, Tim Gerking, Mark Comstock, Frank Hilton, Nena Cook, Rick Yugler, Jon Hill, and Marva Fabien. Staff present was Karen Garst, George Riemer, Jeff Sapiro, Susan Grabe, and Teresa Wenzel. Also present were Ira Zarov, PLF CEO (1:02 p.m. – 2:45 p.m.); Robert Cannon, PLF Board of Directors (1:02 p.m. – 2:45 p.m.); Christine Meadows, Oregon New Lawyers Division (by phone -1:50 p.m. – 2:45 p.m.); and Steve Walters and David Thornburgh, members of the Legal Services Program Committee (by phone – 2:30 p.m. – 2:45 p.m.).

1. Work Session – Disciplinary Counsel

Jeff Sapiro, Disciplinary Counsel, gave the board an overview of the various regulatory functions in his department including status transfers, resignations, reinstatements, pro hac vice applications, public records requests, child support and student loan defaults, good standing certificates, and UPL. These functions are in addition to the discipline function of the department. He then outlined the outcomes and timelines of the disciplinary process including trust account overdraft notices,

investigations by staff and the Local Professional Responsibility Committees, the role of the State Professional Responsibility Board, litigation, and appeals. Intake is now the responsibility of the Client Assistance Office.

2. **Joint Meeting of PLF Board of Directors and OSB Board of Governors**

At the joint meeting of the Professional Liability Fund Board of Directors and the Board of Governors, Barbara Fishleder, PLF Director of Personal and Practice Management Assistance/Oregon Attorney Assistance Program Executive Director, gave the joint boards an annual report of the personal and practice management assistance programs of the PLF. She reviewed that the two programs were confidential, and that information about who accesses the program is not provided to the PLF CEO, PLF BOD, OSB BOG, or anyone outside the OAAP or PMA. She noted that the PLF BOD and OSB BOG are given regular updates on program statistics, services, and policies in order to provide for program accountability while still protecting the privacy of the people who access the program. She gave a brief history of this structure. She explained that the programs are the confidential programs that are within the confidential PLF - and that the structure was created so that the fewest people possible would have to know the names of people who access the assistance program.

She stated that the PLF's Practice Management Assistance Program consists of practice aids (both in hard copy and on the website), CLE programs, and direct assistance of the practice management advisors (PMA). The PMAs provide assistance with docket control, trust accounting, calendar systems, and technology in the law office. The PLF's Personal Assistance Program consists of workshops, support groups, CLEs, and direct assistance of the Oregon Attorney Assistance Program counselors. The OAAP attorney counselors provide assistance with alcoholism, drug addiction, burnout, career satisfaction, and mental health issues.

In 2004, the PMAs visited 337 offices and 672 bar members accessed the various programs of the OAAP. Of the 672 lawyers who accessed the OAAP, 93 accessed the program for alcohol related issues. The OAAP is seeing a trend toward more problems in the areas of gambling and sex addiction.

The PLF is considering establishing a 501(c)(3) corporation for the purpose of accepting donations to the OAAP's treatment scholarship program.

3. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Carson on March 22, 2005

Ms. Cook reported on a recent meeting with Chief Justice Carson. Issues discussed included the OJD budget; the three phases of the budget hearings process; the Disability Task Force; and courthouse security.

2. Bar Visits

Bar visits included visits to the Coos/Curry County Bar Association and the Tillamook County Bar Association; dinner with the Multnomah County Bar Association Board of Directors; the OWLS dinner honoring Judy Ann Aiken and OSB Affirmative Action Manager, Stella Manabe; and attendance at the Western States Bar Conference.

3. Professionalism

Ms Cook attended a recent Professionalism Commission meeting, which is focusing on speaking with law students at both the beginning and end of law school.

4. Update on Current Activities

Ms. Cook reported on a February 8, 2005, Leadership Roundtable with representatives of specialty bars in order to encourage their participation in bar activities. Opportunities for volunteers will be communicated to them on a regular basis. She and Dennis Rawlinson, president-elect, attended the ABA Mid-year meeting.

5. Miscellaneous

Ms. Cook informed the board that discussions with Lexis-Nexis have been held regarding the online CLE Publications proposal. The board reaffirmed the volunteer author and editor basis for the bar's CLE publications process.

Ms. Cook announced Ms. Edmundson's resignation due to her retirement. Mr. Hill is interested in completing Ms. Edmundson's term on the Board of Governors.

Ms. Cook indicated there is discussion among the three Oregon law schools to coordinate Loan Repayment Assistance Program for new attorneys with similar requirements. Currently each law school offers different assistance for student loan repayment.

Because Steve Bloom of the PLF board is resigning, the BOG suggested appointing Ronald Bryant to complete the remainder of Mr. Bloom's 2005 term on the PLF Board of Directors. Mr. Bryant was the BOG's liaison to the PLF board in 2004. The matter will come before to the full board for final action at a special board meeting on May 6, 2005.

B. Report of the Executive Director

1. Use of BOG Conference Number

Ms. Garst reminded board members and staff present to let Teresa Wenzel know when they use the bar's conference phone number so the costs can be charged to the appropriate line item in the budget and also to remember to disconnect from the calls upon conclusion.

2. 2004 Program Measures

Ms. Garst discussed the outcomes of programs and services at the bar for 2004 as provided in the board exhibit and on the bar's website.

3. Miscellaneous

Ms. Garst shared with the board discussions at the first meeting of the Joint Bench Bar Disability Task Force. She learned the derivation of the word "handicapped" is "hand in cap" to signify begging.

Ms. Eyerman indicated she attended the Pro Bono Awards Reception and the turnout was excellent.

C. Oregon New Lawyers Division

Ms. Meadows reported that the next meeting of the ONLD Executive Committee will be in conjunction with the Mid-Columbia Bar Association. Current issues involve working with the bar's Communications Department with the goal of having more ONLD members volunteer for bar activities; having a booth during the Court of Appeals visits to high schools; October and spring brown bagger CLE series with possible expansion to Bend; October's Super Saturday CLE; and working on its tent show skit.

4. Professional Liability Fund

A. General Update

Mr. Zarov highlighted recent activities including rewriting of the Claims Made and Excess Plans; the bylaws and policies; and the Pro Bono Plan before the board April 8, 2005. The PLF broke even financially in 2004. Cases prior to 2003 did not turn out to be as severe as expected. The early indicators for claim severity in 2003-2004 suggest that claim costs may rise. Projects for this year include evaluating whether part-time lawyers should be offered a reduced assessment; an examination of factors involved in setting the assessment; and coverage of lawyers who serve Oregon clients but whose offices are outside of the state. We are cautiously optimistic about 2004. The number of cases resulting from CAO referrals seems to be stabilizing at around 900 claims a year. The highest claim count prior to the opening of the CAO was 830. Maureen DeFrank is the new Claims Attorney. The number of participants in the Excess Program increased 8%.

The PLF Board of Directors Chair, Steve Bloom, is resigning because he is joining the Peace Corp.

B. Approval of Pro Bono Program Claims Made Master Plan

Action: Mr. Gaydos moved, Ms. Worcester seconded, and the board unanimously approved the proposed changes to the Pro Bono Claims Made Plan.

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

A. Client Security Fund

1. *Cave v. Cue*, No. 04-06, \$250.00

Mr. Comstock outlined the basis of the claim and the controversy about who is entitled to the award.

Action: Mr. Comstock moved, Mr. Gerking seconded, and the board unanimously approved payment of the \$250 claim in *Cave v. Cue* with a check made payable jointly to the claimant and her sister.

2. *Keller v. Dealy-Browning*, No. 05-03, \$5,292.50

Action: Mr. Hilton moved, Mr. Comstock seconded, and the board unanimously approved paying the claim if, after tendering it to the PLF, the PLF will not pay the claim. The board felt the matter might be a malpractice issue.

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

A. Access to Justice

1. Proposed Amendments to the Oregon State Bar Legal Services Program Standards and Guidelines

Ms. Eyerman introduced the committee's motion to amend the Legal Services Program Standards and Guidelines. Mr. Steve Walters, Chair of the LSP Committee, outlined the history of the imposition of restrictions by the Legal Services Corporation. These restrictions have substantial impact on the ability of legal services programs to represent their clients. The LSC regulations impact a program's use of total funds not just LSC funds. Oregon set up separate entities in order to have services not bound by the restrictions available. The LSP Committee came to the conclusion that the LSC restrictions should be challenged in court. Oregon's Attorney General is willing to make a Tenth Amendment challenge to the LSC restrictions. The LSP Committee recommends changes to its standards and guidelines to emphasize the need for efficient delivery of services.

Action: The board unanimously approved the Legal Services Committee's recommended changes to the LSP Standards and Guidelines.

B. Budget and Finance Committee

1. Budget Update

Mr. Hilton reported that in 2004 the bar had a \$50,000 surplus (as opposed to the budgeted \$100,000 surplus). PERS announced an additional 5.4% rate increase in 2007; and because of the PERS increase, the membership fee increase scheduled for 2008 may need to occur in 2007.

2. Future Bar Center

Mr. Hilton outlined the recent discussions of the committee regarding future facilities. He said the PLF does not want to explore a change in its location. Yost Grube Hall presented a remodel plan involving construction of an additional 15,000 square feet and a two level parking structure. The legal status of an easement for access and setback requirements is unknown. The committee suggested finding the answers to these questions. The estimate for the remodel would be \$2.5 million or \$175 per square foot. Mr. Hilton said in comparing costs of moving (broker's commission, moving cots, etc.), the remodel may be

more economical than moving. He suggested remodeling in several years after the bulge in the PERS costs is over. An unknown factor is future expansion in programs and services. He said that in regard to debt, the remodel could be financed through a conventional mortgage, once our current debt is paid off in 2009. Other opportunities include the former ODS building; a development in the Gateway area; and a parcel of land near Wilsonville. The committee has no recommendation but would like input from the rest of the board. Mr. Riemer raised the issue of a possible Measure #37 claim if land use requirements since the bar purchased the present building had changed. Mr. Yugler said if the PLF does not want to partner with the bar, a larger building like ODS would not be feasible. Mr. Hilton said PLF was firm in its need to be separate from the bar. Mr. Menashe emphasized the value of the current facility. If we were going to sell, now may be the time to sell. By June, the issues of feasibility of the remodel should be known. The committee will report back at the next board meeting regarding issues raised by the remodel. Mr. Hill suggested the committee should list potential "gain in function" of any proposal it considers and their priority.

3. Tutorial on Budget and Finance

Mr. Menashe announced that Rod Wegener, OSB CFO, will present a tutorial on the budget process to board members. The meeting will take place April 14, 2005, from 12:00 p.m. – 2:00 p.m. at the offices of Gevurtz Menashe. Board members are encouraged to attend.

C. Committee on the Judiciary

1. Updates on Special Committee Meeting on March 5, 2005, Concerning Judicial Performance Evaluations

Mr. Hill reported on the recent meeting held March 6, 2005, to discuss judicial evaluations. Chief Justice Wallace P. Carson, Marilyn O'Dell, and Nancy Miller attended the meeting and shared background information and their thoughts and ideas. The committee intends to study issues of judicial independence and the Judicial Department's educational curriculum. The committee intends to present options to the board at its November retreat regarding judicial evaluations.

Mr. Hill also reported the Governor plans to interview about ten people with a final recommendation in May and June regarding the Court of Appeals vacancy.

D. Member Services Committee

1. HOD and BOG Elections

Ms. Cook reported candidates for the Board of Governors are currently being recruited and there are a large number of individuals running in the current elections for the House of Delegates as listed below:

<u>Region</u>	<u>Open Seats</u>	<u>Running</u>
1	2	3
2	4	3
3	6	14
4	4	5
5	17	30
6	11	20
Out-of-State	12	13
ABA Delegate	1	1

E. Policy and Governance Committee

1. Bar Bylaw 18.6

Mr. Comstock presented an additional proposal for an addition to the exhibit on Bar Bylaw 18.6. The board was provided input from some Region 4 members as well. The committee is recommending the revised language be acted upon at the board's next meeting. The revisions allow sixty days for the region to decide whether to proceed with a recall or whether they would recommend a temporary replacement. Mr. Yugler commented that this proposal will be unworkable because there is no mechanism for recommending the candidate for the temporary replacement. Ms. Eyerman commented that if it is the board's decision to suspend, it should be the board's responsibility to replace. Ms. Fabien said the board would be overreaching if it picked the name from a list. Mr. Menashe said the committee had a spirited discussion. Regions with single governors may be more impacted by a vacancy caused by a suspension. This proposal does allow the region to pick the replacement. Mr. Comstock said the region could pick any mechanism to choose a candidate. Ms. Skerjanec said the board dealt with the issue, but the person from the region created it. Ms. Worcester agreed with Ms. Skerjanec and suggested the bar would give the tools to assist the region in its deliberation. Mr. Hill said a guideline was not necessary because each region is structured so differently. Mr. Enbom raised a concern that we

need to function as a body and there should not be a vacancy on the board. Mr. Comstock said giving the regions the option deals with regions with multiple governors.

Action: Ms Eyerman moved and Mr. Gerking seconded a motion to waive the one meeting notice requirement. The motion failed (2, yes [Eyerman, Gerking]; 12, no [Comstock, Cook, Edmundson, Enbom, Fabien, Gaydos, Hill, Hilton, Menashe, Skerjanec, Worcester, Yugler]; absent, 1 [Rawlinson]; suspended, 1 [Paulson]).

The board discussed whether a majority was inclined to approve the revised proposal and a majority appeared amenable to doing so.

F. Public Affairs Committee

1. General Political Update

Mr. Gaydos complimented Susan Grabe and her staff for their work at the legislature. There was an OSB Lobby Day on March 10, 2005, which was successful. Local visits with legislators have been held in Portland, Klamath Falls, Eugene, Grants Pass, and Pendleton. Court facilities are not up to standards. The responsibility for maintaining them is at the county level. The bar is working with the Chief Justice's Court Facilities Task Force on suitable and sufficient standards and a prioritization process similar to the one done for judges.

2. Status of Bar Sponsored Package of Legislation

Most bar bills are moving through the process although some bills will not make it through, as the legislative leadership will likely be closing down committees at the end of the month.

3. Update on Recent and Future Legislative Events

Ms. Grabe reported the co-chairs of the Ways and Means Committee included additional dollars for the Oregon Judicial Department at a level only \$5 million short of the Chief Justice's maintenance level.

7. Consent Agenda

Action: Mr. Gaydos moved, Mr. Menashe seconded, and the board unanimously approved waiving the one meeting notice requirement to allow for the passage of item 7.B.1 on the Consent Agenda.

Action: Mr. Yugler moved, Mr. Gaydos seconded, and board unanimously approved the Consent Agenda with the changes listed below changes.

- Addition of the following sentence to the end of the Work Session portion of the January 28, 2005, minutes: “Not completed and will be completed at a later date.”
- *Keller v. Dealy-Browning* was removed from the Consent Agenda and acted upon in regular open session of the board’s meeting.

The approval of the Consent Agenda included an amendment to the minutes of January 28, 2005 (see above); minutes from March 4, 2005; adoption of a public records fee schedule; creation of a Military Assistance Panel; CSF claims; and appointments to various committees.

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

A. Other Business

Action: Ms. Eyerman moved, Mr. Enbom seconded, and the board unanimously approved spending up to \$10,000 to honor jurors and the jury system in support of Jury Appreciation Week. The Public Affairs Committee would decide on how the funds will be expended. Mr. Yugler suggested a note and a small gift of appreciation from the bar to each juror.