

Oregon State Bar
Meeting of the Board of Governors
September 30, 2005
Open Session Agenda

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, September 30, 2005, at 11:30 a.m. by President Nena Cook and adjourned at 3:25 p.m. Board members present were Marva Fabien, Tim Gerking, Frank Hilton, Albert Menashe, Jon Hill, Bette Worcester, Carol Skerjanec, Nena Cook, Mark Comstock, Linda Eyerman, Gerry Gaydos, Rick Yugler (phone), and Dennis Rawlinson (phone). Staff present was Karen Garst, George Riemer, Jeff Sapiro, Susan Grabe, Stella Manabe [11:30 a.m. – 12:30 p.m.], Rod Wegener [1:45 p.m.-3:45 p.m.], and Teresa Wenzel. Present from the PLF were Ira Zarov [2:10 p.m. – 3:10 p.m.], Tom Cave [2:10 p.m. – 3:10 p.m.], and Robert Cannon [2:20 p.m. – 3:10 p.m.]. Also present were Jim Hand, OPUS NW [2:10 p.m. – 3:10 p.m.], Kevin Vandenbrink, OPUS NW [2:10 p.m. – 3:10 p.m.], Lauren Paulson, and Christine Meadows (ONLD).

1. Closed Session Agenda

- A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet)
- B. Litigation and Advice of Counsel (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet)

2. Work Session – Affirmative Action Program [Stella Manabe]

Stella Manabe, Affirmative Action Program Director, stated that the OSB's AAP is one of a kind in the United States and has been honored in several national bar-related publications. From 1974 to 1997, the programs and services such as grants were for the benefit of minority law students only. In 1996, the Board of Governors authorized a Predicate Study that recommended the restructuring of the program. After that recommendation was implemented the program was bifurcated into allocative (financial) and non-allocative elements. The latter could be restricted to minority students only, the former could not. The non-allocative program is called Opportunities for Law in Oregon. The graduates of the program are just now at the bar exam stage. Data is being kept regarding the success of OLIO on the overall goals of the program. OLIO helps minorities understand how to operate in the law school and legal environment in Oregon. OLIO has been funded through grants and donations in recent years. In 2005, bar funds are again being used to fund elements of the program. All of these funds are under the \$30 appropriation given to the program from the membership fee assessment. Non-minority students have also played an important role in supporting the program. In 2006, the Board of Governors will be asked to

recommend to the House of Delegates re-authorization of the program at the 2006 HOD meeting.

3. Appointment of Region 4 BOG Replacement

1. Administer Oath of Office to New BOG Member – Douglas L. Minson

Ms. Cook introduced Doug Minson who was chosen by the Region 4 House of Delegates members to serve as a temporary replacement for Lauren Paulson under the provisions of Bar Bylaw 18.602. Mr. Minson took the oath of office. Mr. Minson has been a lawyer since 1969 and is a former member of the bar staff.

Action: Ms. Skerjanec moved, Mr. Gaydos seconded, and the board unanimously passed the motion to appoint Mr. Minson as a temporary replacement for Lauren Paulson under the provisions of Bar Bylaw 18.602.

4. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Carson on September 28, 2005

OSB President Nena Cook reported on a recent meeting with Chief Justice Wallace P. Carson, Jr. He had submitted the Court's concerns regarding two HOD resolutions. He will also speak briefly at the HOD meeting. He is not running for election thus his term will expire at the end of 2006. A new Chief Justice will be chosen prior to that time.

2. First Year Law Student Orientation at Lewis and Clark

Ms. Cook spoke to the first year law students at their orientation at Lewis and Clark Law School.

3. Professionalism Commission Meeting

The Professionalism Commission met recently. Mr. Menashe who serves on the commission reported on a recent survey regarding the views of a random set of bar members on professionalism, which indicates there is a concern for the level among courtesy of lawyers. The Professionalism Commission award will be presented to Wayne Annala from The Dalles and the commission will make a presentation to the fall judicial conference.

4. Swearing-in Ceremony

Ms. Fabien spoke at the admissions ceremony. The ceremony was well done and each new admittee who was present had their picture taken with the Chief Justice.

B. House of Delegates

1. HOD Agenda

a. Board Position on Printed HOD Resolutions

Ms. Cook walked through the agenda with the board asking if the BOG wished to take a position on any resolution that had been put forward.

(1) Delegate Resolution No. 1

Regarding Delegate Resolution No. 1, Mr. Riemer suggested that giving local bars the right to approve the accreditation of their own programs was not a good idea. Ms. Skerjanec suggested that the board not take a position. Ms. Cook indicated that any resolution regarding MCLE that was not a recommendation would be ruled out of order because the House does not have to authority to direct the board to adopt rules that require Supreme Court review and approval. She has talked to Mr. Lang and Mr. Georgeff and has advised them that their MLCE resolutions will be ruled out of order if they are not adjusted to be recommendations to the board. This impacts Agenda Items Number 8, 19, and 20 in the printed agenda and Mr. Lang's late filed MCLE resolution. Mr. Hill suggested that if Delegate Resolution No. 1 passes in its current form, the board should probably consider the issue at a later date. Mr. Minson suggested that the HOD may wish to know what the board will do if these resolutions pass in their current form. Ms. Eyerman asked if these resolutions had been reviewed by the MCLE Committee and was informed that they had not. Mr. Menashe suggested telling the sponsors how they needed to be amended so the situation does not become adversarial. Ms. Cook indicated she had already done so. The ruling of the chair can be appealed and voted on by the HOD by majority vote. Mr. Riemer explained that the Supreme Court adopted the MCLE Program by court order in 1987 though ORS 9.112 also now speaks to the BOG approving MCLE rules and the Supreme Court reviewing them.

(2) Delegate Resolution No. 2

The question was raised regarding the cost of this resolution. The board noted additional financial information is contained in the supplemental packet. Mr. Hilton will address the financial costs of this proposal. He suggested a surcharge. Ms. Garst suggested he discuss that with the HOD, as most members outside of the Portland area do not feel they should pay extra for their CLEs.

(3) Delegate Resolution No. 3

Mr. Hilton will again address the financial implications of this proposal. If it were only the section newsletters, it would cost less. It is unclear from the resolution, how broad the impact would be.

(4) Delegate Resolution No. 4

Mr. Yugler suggested that because of the bar's position on this issue during the last legislative session, the board should not support this resolution. Ms. Eyerman stated that one of the bar's priorities is to improve the image of the profession and if the bar takes a position to exempt lawyers from provisions like these, it does not improve the public image of lawyers.

Action: Mr. Yugler moved, Ms. Eyerman seconded and the board unanimously passed the motion to oppose Delegate Resolution No. 4.

(5) In Memoriam Resolution

The board decided to read the names out loud, consistent with past practice.

(6) Delegates Resolution No. 5

The Chief Justice has expressed concerns about this resolution and his position has been communicated to the HOD. The board took no position on this issue.

(7) Delegate Resolution No. 6

The board took no position on this issue.

(8) Delegate Resolution No. 7

Ms. Eyerman will present this position.

Action: Ms. Eyerman moved, Mr. Menashe seconded, and the board unanimously passed the motion to support this resolution (Mr. Gaydos was out of the room during the vote).

(9) Delegate Resolution No. 8

Mr. Yugler recommended that the board take a position against this resolution as well as the other two resolutions dealing with eliminating the MCLE Elimination of Bias requirement. Mr. Hilton suggested the change the board made regarding this MCLE requirement to allow substantive law courses be discussed. Mr. Minson suggested that the board should not take a position because the issue is out of order.

Action: Mr. Yugler moved, Mr. Gaydos seconded, and the board failed to pass a motion to oppose Delegate Resolution No. 8 (yes, 5 [Eyerman, Fabien, Gaydos, Gerking, Yugler]; no, 9 [Comstock, Cook, Minson, Hill, Hilton, Menashe, Rawlinson, Skerjanec, Worcester]; absent, 1 [Enbom]).

b. Board Position on Potential HOD Resolutions

Ms. Cook will recognize a motion to suspend the rules to consider these resolutions. Each resolution will be considered one by one in order to place them on the agenda. A two-thirds vote is required.

(1) Amend MCLE Requirements

The board took no position on this resolution.

(2) Amend ORCP 7

The board took no position on this resolution.

(3) Amend ORS 12.020

The board took no position on this resolution.

(4) Eliminate Prohibition of Post-Trial Contact with Jurors

The board took no position on this resolution.

(5) Amend ORS 813.010(1)

The sponsor had withdrawn this resolution.

(6) Arbitrary Caps on State Spending

Ms. Eyerman described the impact this initiative would have on the judicial system. Mr. Riemer indicated that the resolution as

currently worded could be claimed to violate the bar's Keller policy. The "Resolved" portion of the resolution should relate more directly to the Oregon Judicial Department and the legal profession. Ms. Eyerman stated that the HOD has taken positions on these types of initiatives in the past.

Action: Ms. Eyerman moved, Ms. Fabien seconded, and the board passed the motion to support this resolution.

(7) Authorization for Taking Deposition in Criminal Cases

Ms. Skerjanec and Mr. Gerking spoke against the resolution. The board did not take a position on this resolution.

(8) Resolution for HOD to Meet Semi-Annually

Ms. Cook stated that the financial impact would be \$10,000. The board took no position on this resolution.

(9) Additional Potential HOD Resolutions

There may be a resolution regarding the action the board took on military ads in the *Bulletin*. Mr. Menashe and Mr. Gerking will speak to this issue if it comes up.

Mr. Menashe and Mr. Comstock will speak against any resolution to rescind Bar Bylaw 18.6. A draft response to be used by them was discussed by the board. Mr. Hilton recommended a change on page 2 to add "Further, the LEC property had already been foreclosed on the congregation entity by the time the property was studied by the Budget and Finance Committee." The board will not hand the statement out at the meeting. Ms. Eyerman suggested that the discussion of the bylaw is appropriate but the specific allegations of the pending lawsuit should not be discussed.

C. Report of the President-elect

1. November Board Retreat

President-elect Rawlinson reported that the November retreat Friday's session would be devoted to strategic planning; the program measures will be a main focus.

2. Executive Director Evaluations

Mr. Rawlinson shared that the Executive Director Evaluation Special Committee has met and is in the process of gathering input.

3. Tent Show and Dinner

The Tent Show and dinner is proceeding. Thirty tables have been reserved for law firms, Wells Fargo has recommitted their sponsorship and there are a good number of acts for the show. Those outside of Region 5 are asked to recruit attendees including judges who will be able to attend free of charge.

D. Oregon New Lawyers Division

1. Update

Ms. Meadows reported the ONLD annual meeting will be held on October 14. There is a vacancy on its board from Region 3 and Mr. Gerking had a suggested name that he will pass on to Ms. Meadows. Its Super Saturday CLE will be held on October 22 in Wilsonville. There are three tracks. The committee planning the 2006 ABA Conference for young lawyers has met several times. It is going to be presenting an act at the Tent Show. It has produced a new pro bono handbook working with the Multnomah Bar Association's Young Lawyers Division.

5. Professional Liability Fund

A. Update

Mr. Zarov gave an update on the PLF. The PLF continues to have a good year. There has been a slight decrease in frequency in claims. The PLF did meet with the CAO regarding referrals. Some of the decrease may have come from that meeting and there was a bubble from a lawyer's practice that closed down. The issue of new bar facilities has been discussed. The PLF believes the proposal is a good situation. The OAAP is very busy at the current time. They are seeing more problems with gambling and sex addiction. There are also a lot of depression problems as well.

B. Request to Approve 2005 PLF Budget

Mr. Cave discussed the proposed 2006 PLF budget. The biggest cost item for the budget is staff. The budget includes a new claims attorney position and a 5% salary increase. Benefits have increased higher than the 5% figure. The extra claims attorney is designed to use fewer outside counsel and because of future retirements of experienced claims attorneys. Mr. Cannon said that the PLF Board had studied the budget and approved the addition of a claims attorney.

Action: Mr. Gerking moved, Mr. Menashe seconded, and the board unanimously passed the motion to approve the 2005 PLF Budget.

C. Request to Modify PLF Policy 3.250 Step-Rated Assessment

The request was made to modify PLF Policy 3.250 regarding step-rated assessments. The current policy's discount should be modified. It should generate about \$350,000 in savings in the budget. This was one idea about ways to reduce the assessment. Mr. Cannon said that there was considerable discussion about eliminating the step-rating entirely, but this proposal is a compromise. It is a 10% change. It will only last two years instead of three.

Action: Ms. Worcester moved, Mr. Gaydos seconded, and the board unanimously passed the motion to approve the change to PLF Policy 3.250.

D. Request to Approve Setting 2006 PLF Primary Program Assessment at \$3000.00

The final recommendation was to set the PLF assessment for 2006 at \$3,000, which is the same rate as 2005. In 1999, the fund had \$9 million in retained earnings. Today, the PLF has negative retained earnings of \$7 million.

Action: Ms. Skerjanec moved, Mr. Comstock seconded, and the board unanimously passed the motion to approve the 2006 PLF Primary Program Assessment at \$3,000.

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

A. Access to Justice

1. Loan Repayment Assistance Program (LRAP)

Ms. Eyerman stated the committee's motion to establish a Loan Repayment Assistance Program. The board should recognize the difficulty law school students have in entering public interest jobs with their high level of debt at graduation. The committee recommends assigning the design of the structure of the program to the committee and allocating \$5 of the proposed fee increase to the program.

Action: The board unanimously approved the committee recommendations regarding the implementation of the LRAP.

B. Budget and Finance Committee

1. Future Bar Center

Mr. Hilton reviewed the status of the bar's 2005 finances to date. These are the worst numbers that has been seen in ten years. It is due in part to fewer book purchases, increased PERS rates, and outside counsel expense. The potential project for the future bar facility is currently at a 75,000 square foot building rather than a 120,000 square foot building. This raises issues of PLF's concern about being too close to the discipline department. However, the

smaller size will reduce the financial risk the bar would take. The PLF will recognize savings in year one and the bar will better utilize space in a new building. The committee is recommending continuing its due diligence and to schedule a special board meeting on October 28 to consider signing a letter of intent. The occupancy might be 2008 instead of 2007. OPUS will guarantee the tenant improvements and the lease on the space the bar and the PLF do not occupy. The Oregon Medical Association has expressed an interest in having a separate building at the same site. There might be a way to share meeting facilities. Mr. Menashe stated that if the bar takes 30,000 – 35,000 square feet that will leave us as landlords for 25,000 – 30,000 square feet after the first five years. The idea is to space out the tenants' leases so that at any one time there would only be one small space available. Mr. Paulson asked what the legality of a letter of intent is. Mr. Hilton said not a lot. There would be a long way to go to the execution of final documents. Ms. Eyerman asked why there should be another vote today. There is a need to schedule a special board meeting. Ms. Eyerman stated that the project has changed especially with the idea that the OMA would be next door. Mr. Minson asked if there is a track record on the discussion. Mr. Hilton discussed the history of the past two years in looking at other properties. Ms. Worcester said that the letter of intent would have specific numbers. Ms. Eyerman said the total amount of mortgage has changed significantly.

Kevin VandenBrink from Macadam Forbes made a presentation on the facilities proposal and handed out a booklet with a specific proposal of a building of 72,500 square feet including a site plan, a floor plan, and financials. The plan now is to build two buildings on the site with the bar owning one of them. Other parties are interested in a separate building on the site. The building would be developed by Opus Northwest, a national design build firm.

Questions involved seeing a sample of a letter to intent; how much of the six acres would be owned by the bar (2/3), and the level of interest of the OMA (it is actively looking, but are just at the beginning of its process).

C. Member Services Committee

1. Approve Recommendations for Appointments to the Leadership College Advisory Board

Ms. Cook reported that the final roster for the Leadership College Advisory Board is not ready but it will be done by the November board meeting.

2. Approve Dates for BOG and HOD Elections in 2006

Action: The board unanimously approved the dates recommended by the committee for HOD and BOG election dates for 2006.

3. Approve Committee Recommendations for Recipients of the 2005 OSB President's Awards and Award of Merit

Action: The board unanimously approved the award recipients recommended by the committee.

D. Public Affairs Committee

1. General Political Update

Mr. Gaydos updated the board on legislative activities. There was a committee discussion about what to do about the lack of salary increases over the past several years for the state's judges. There was no increase voted on by the 2005 legislature.

E. Public Member Selection

1. BOG Public Member Recommendation

Mr. Hill introduced the committee's recommendation to appoint Robert Vieria to the vacant position. Ms. Skerjanec added that Mr. Vieria would be out of the country from September to December of 2006 taking a class around the world on a cruise.

Action: The board unanimously approved the committee's recommendation to appoint Robert Vieria as a Public Member of the Board of Governors.

7. **Consent Agenda**

Action: Mr. Hill moved, Mr. Gaydos seconded, and the board unanimously passed the motion to approve the consent agenda without changes.

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

Ms. Cook stated that several letters to the editor against the board's action on the military advertising will be published in the Bulletin.

Mr. Hill noted that at the November board meeting the Committee on the Judiciary will be recommending a pilot program for judicial evaluations. Second, the public should have more access to information on judicial elections. Finally, there will be a proposal to have judges and their law clerks attend OSB CLE for free.

Mr. Comstock reported that on October 14 the Electronic Filing Task Force is having a joint meeting with the OJD's IT Group to have four vendors explain their products. The Task Force has reviewed the federal system and the system in King County, Washington.

