

**Oregon State Bar**  
**Meeting of the Board of Governors**  
November 18-19, 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.*

A special executive session of the Oregon State Bar Board of Governors was called to order Friday, November 18, 2005, at 8:15 a.m. by President Nena Cook and adjourned at 9:25 a.m. to discuss proceeding with a letter of intent to purchase a new bar center. Board members present were Frank Hilton, Carol Skerjanec, Marva Fabien, Gerry Gaydos, Rick Yugler, Nena Cook, Tim Gerking, Mark Comstock, John Enbom, Dennis Rawlinson, Jon Hill, Linda Eyerman, Bette Worcester, Albert Menashe, and Doug Minson. Staff present was Karen Garst, George Riemer, Susan Grabe, Rod Wegener, and Teresa Wenzel. Others present were Kevin VandenBrink and Jim Hand.

The regular meeting of the Oregon State Bar Board of Governors was called to order Saturday, November 19, 2005, at 11:15 a.m. by President Nena Cook and adjourned at 5:00 p.m. Board members present were Frank Hilton, Carol Skerjanec, Marva Fabien, Gerry Gaydos, Rick Yugler, Nena Cook, Tim Gerking, Mark Comstock, John Enbom, Dennis Rawlinson, Jon Hill, Linda Eyerman, Bette Worcester, Albert Menashe, and Doug Minson. Staff present was Karen Garst, George Riemer, Susan Grabe, Jeff Sapiro (by phone 11:40 a.m. – 11:50 a.m.), Rod Wegener (1:10 p.m. – 5:00 p.m.), and Teresa Wenzel. Others attending were Louis Santiago (PLF 1:10 p.m. – 1:20 p.m.), Robert Cannon (PLF 1:10 p.m. – 1:20 p.m.), Marilyn Harbur (ABA 2:15 p.m. – 2:30 p.m.), Ward Greene (new board member), and Bob Vieira (new board member).

**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. Open Session**

1. Election of President-elect

Marva Fabien and Albert Menashe, the two candidates for the office of president-elect, addressed the board. Ms. Fabien stated that increasing the dialogue with the membership and the affirmative action reauthorization were two important issues for her. Mr. Menashe stated he wanted to be sure we work with our stakeholders prior to making decisions on issues such as the plan for the new facilities. He also wanted to encourage professionalism among our members. After their remarks, the board members voted to elect Mr. Menashe as president-elect. Following is the tally of that vote: Albert Menashe (Comstock, Cook, Enbom, Gaydos, Gerking, Hilton, Hill, Menashe, Minson, Rawlinson, Skerjanec, Worcester, Yugler) and Marva Fabien (Eyerman, Fabien).

2. Oath of Office for New Members

New board members Ward Greene and Robert Vieira were sworn in by Ms. Cook. Mr. Gaydos, Ms. Worcester, and Mr. Hill, who will serve continuing terms, were also sworn in by Ms. Cook.

**3. Report of Officers**

A. Report of the President

1. Update on Current Activities

Ms. Cook reported on her recent visit with the Lincoln County Bar Association.

2. Meeting with Chief Justice Carson on November 9, 2005

Justice Paul DeMuniz, who will be Chief Justice on January 1, 2006, attended the meeting with the current Chief Justice, Wallace P. Carson, Jr. The meeting covered judicial evaluations and judicial compensation.

3. HOD Meeting Feedback

Ms. Cook thanked board members for their support at the recent House of Delegates meeting.

4. Leadership College Update

Ms. Cook announced one addition to the Leadership College Advisory Board, Mr. Bill Van Atta from Ontario.

B. Report of the President-elect

1. New Board Member Orientation

Mr. Rawlinson reported on the New Board Member Orientation that occurred on November 18. He encouraged board members to continue to recruit such outstanding members.

2. Retreat and Strategic Planning

Mr. Rawlinson thanked the board for their efforts during the strategic planning retreat in identifying issues for 2006. He will ask all board members to serve as ambassadors to the membership in the upcoming year.

3. Tent Show

The Tent Show was successful with 490 attendees. Financially, the show did better than last year losing only \$8,000.

4. Miscellaneous

Mr. Rawlinson indicated that the board minutes in 2006 would be more of a summary of the meetings versus identifying what each member said. Mr. Rawlinson reminded the board there will only be five meetings in 2006, which may mean it might be more difficult to get everything done in one day.

C. Report of the Executive Director

1. Live Audio and Videoconferencing of Seminars

Ms. Garst discussed the progress that CLE Seminars is making in conducting seminars live on-line with LegalSpan. She also indicated that the International Law Section attempted a live program and had only two people sign up. They went to a lot of work to offer an alternative format, but the members were not responsive.

**4. Professional Liability Fund**

A. General Report

Mr. Santiago thanked the PLF liaisons for attending the PLF Board of Directors meetings this year and the board for working closely with the PLF on the new facility discussions.

B. Update of August 31, 2005 Financial Statements and Loss Prevention Update and 2005 3<sup>rd</sup> Quarter Report

The PLF is doing well financially: claims frequency and claim severity are down. The investment portfolio has improved as well since the last report. The financial forecast for 2006 includes changes already approved by the Board of Governors including decreasing the step-rated assessment. The loss prevention program is an important element in avoiding claims. The PLF plans to handle more claims in-house in order to reduce defense costs.

C. Request to Approve 2006 Claims Made Plan with Changes to Exclusions 6 and 17

Mr. Cannon presented the PLF BOD's request for approval of the claims made plan (expand the coverage regarding a financial interest in a business – exclusion #6 and regarding cases involving harassment – exclusion #17).

D. Request to Approve Claims Made Excess Plan with Changes to Exclusion 6

Mr. Cannon presented information concerning proposed changes to the excess plan.

E. Request to Approve PLF Policy 7.700(E) - Rules Concerning Non-Oregon Attorneys and Patent Agents

Mr. Cannon presented the PLF BOD's request to approve PLF Policy 7.700 (E) regarding non-Oregon attorneys and patent agents. The new ratio will be 30% of non-lawyers to Oregon lawyers in the firm. The specific reference to Alaska and California will be deleted and the new references will be branch offices that present "unacceptable" risk. This primarily concerns patent lawyers.

F. Request to Approve Changes to PLF Policy 3.500 Special Underwriting Assessment

Mr. Cannon presented the PLF BOD's request to approve changes to PLF Policy 3.500 regarding the Special Underwriting Assessment to allow charging a SUA when a lawyer or law firm demands separate legal representation in a vicarious liability situation and the PLF does not deem that additional representation is necessary to resolve the claim.

**Action:** Mr. Rawlinson moved, Mr. Comstock seconded, and the board unanimously approved all changes as presented by the PLF Board of Directors in 4C, 4D, 4E, and 4F above.

**5. Special Appearances**

A. ABA Update

1. Update

Ms. Harbur gave an update of the upcoming ABA mid-year meeting in 2006 in Chicago. Items include a 17% dues increase and an initiative to ask for more pro bono activity. At the last annual meeting, one of the governance proposals was to reduce the number of delegates from five to four as the threshold that would require certification of at least one "new lawyer" delegate. The ABA incorrectly included the Multnomah Bar Association in with the number of delegates from the Oregon State Bar in the calculation. This change will take place in 2007.

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

**A. Client Security Fund**

1. Request for Review: CSF Claims No. 05-19 *Curl v. Gallagher* (\$4,990)

Mr. Comstock introduced the CSF Committee’s denial of Claims No. 05-19 *Curl v. Gallagher*. The claimant requested board review of that decision. The CSF Committee denied the claim because Mr. Gallagher was not an active member of the bar at the time of the conduct. The statute does allow the board to waive the “active membership” requirement under special circumstances including hardship. The board discussed whether the first contact that the client made when Mr. Gallagher was an active member should be relevant when the alleged misconduct occurred a year later when he was no longer an active member.

**Action:** Mr. Comstock moved, Ms. Skerjanec seconded, and the board passed a motion to uphold the denial of the claim. (Yes, 10; no, 5 [Hilton, Hill, Yugler, Worcester, Enbom]).

2. Request for Review: CSF No. 05-18 *Cooper v. Knapp*

Mr. Comstock introduced the second request for board reversal of a CSF Committee denial in *Cooper v. Knapp*, No. 05-18. The CSF Committee denied the claim because they did not believe there was an attorney client relationship between the parties. The issue is the subject of a federal prosecution involving fraud set for trial in early 2006.

**Action:** Mr. Comstock moved, Mr. Gaydos seconded, and the board unanimously passed a motion to uphold the CSF Committee’s denial of the claim.

**B. MCLE Committee**

1. Amend MCLE Regulation 4.350

Ms. Skerjanec introduced a proposal to amend MCLE Regulation 4.350 pursuant to the direction of the House of Delegates who voted on October 1, 2005, to exempt local bar associations from payment of the MCLE program sponsor fee. The two options included exemption of all local bar associations or just local bar associations in Oregon.

**Action:** Ms. Skerjanec moved, Ms. Eyerman seconded, and the board unanimously passed a motion to exempt only local bar associations in Oregon from MCLE program sponsor fees.

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

### A. Access to Justice

#### 1. State Family Law Advisory Committee Conference

Ms. Eyerman presented the request of the committee to allocate \$1,500 from the 2005 contingency budget to help pay for Richard Zorza to speak at the State Family Law Advisory Committee Conference. The Pro Bono Committee submitted the request to the Access to Justice Committee. The state judges association will pay for the rest of his expenses.

**Action:** The committee motion was passed unanimously by the board.

#### 2. Update to LRAP Program

Ms. Eyerman updated the board that by its 2006 July meeting, the committee will submit a proposal for administering the Loan Repayment Assistance Program.

### B. Appointments

#### 1. UPL Committee

Mr. Hilton introduced the committee's proposal to increase the number of members on the UPL Committee from 18 to 21. The committee's consent agenda includes the additional members.

**Action:** The board unanimously approved the committee motion to increase the number of UPL Committee members from 18 – 21.

### C. Budget and Finance Committee

#### 1. 2006 Budget

Mr. Hilton introduced the 2006 budget. Two changes include a reduction of a total of \$20,000 from the grant to the Campaign for Equal Justice and \$10,000 to the Classroom Law Project. The increase in reductions made from the printed budget will be used to provide for additional scanning of archived material. Mr. Hilton indicated that increased IOLTA funds have been provided to low income legal services in 2005. Ms. Eyerman had spoken to CEJ and the reduction will come from work at the federal level. There will be no economic survey in 2006.

**Action:** The board unanimously approved the 2006 budget as submitted for approval by the committee.

#### 2. Future Bar Center

**Action:** Mr. Enbom moved, Mr. Menashe seconded, and the board unanimously passed a motion to allow the newly sworn-in board members to participate in the discussion about the proposed new bar center, which was then held in Executive Session.

**Action:** Mr. Yugler moved, Mr. Rawlinson seconded, and the board passed a motion that the board sign the letter of intent with Opus Northwest. In addition, the membership will be informed of the opportunities, risks, and the financial projections prior to the execution of a final agreement. The language referring to confidentiality in the draft letter of intent will be deleted (yes, 13; no, 2 [Eyerman, Skerjanec]).

The board discussed the timeline for execution of the final agreement, which is intended to occur by the end of December. Some of the rationale for a new building was revisited for those new to the board. Concerns about the responsibility of managing real property were also voiced. Cost, location, growth flexibility, free parking, member accessibility, staff accessibility, long term appreciation, leasing risk, nearby amenities, good timing for selling the existing building, and having PLF move with the bar were the criteria used to select this particular property. Of all the properties reviewed, the committee members felt that this opportunity fit the most criteria identified. The membership communication will be through the board's regional newsletters.

3. Audit of Financial Statements for 2004 and 2005

The board approved contracting with Pauly, Rogers, and Co., P. C. to perform the bar's audit per the Budget and Finance Committee's request.

**Action:** The board unanimously approved the committee's recommendation to hire Pauly, Rogers, and Co., P.C. to perform the bar's audit.

D. Committee on the Judiciary

1. Report to the Board

Mr. Hill introduced the committee's report proposing a feasibility study concerning judicial performance evaluations. In preparation, the committee first studied what other states were doing on this issue. The committee identified the controversy involved in proposing judicial performance evaluations. Chief Justice Wallace P. Carson, Jr. and Oregon Judicial Department staff have participated in some of the discussions of the committee. There are two types of evaluations: summative (used to rate people on some type of scale) and formative (designed to give people feedback on performance). The committee is recommending developing a detailed proposal with associated costs for a process for conducting formative evaluations of the state's trial court judges. Judges would be involved in this process. It is anticipated that there will likely be concerns from judges regarding embarking on this process. The issue of the confidentiality of the evaluations will continue to be examined as the proposal is developed.

The board discussed the importance of getting the Chief Justice (current and new) of the Oregon Supreme Court and the circuit judges on board with the proposal. The relationship between the work on judicial compensation and this process as well as the timing of the two was discussed. When this issue came up in the 1980s, a circuit court judge proposed that judges evaluate lawyers in return.

**Action:** Ms. Eyerman moved, Mr. Gerking seconded, and the board unanimously passed a motion to authorize Mr. Rawlinson and Mr. Hill to meet with the current and new chief justices to discuss the proposal before the board decides what action to take on the committee's recommendations. The board will consider those recommendations at its meeting in February 2006.

E. Executive Director Evaluation

**Executive Session**

1. Executive Session Pursuant to ORS 192.660(1)(i)- Executive Director Performance Review

**Open Session**

2. Executive Director Contract and Salary Decision

**Action:** The board unanimously passed the committee motion, presented by Mr. Rawlinson, to extend the contract of the executive director for one year and to increase her salary by 3% effective January 1, 2006.

**8. Consent Agenda**

**Action:** Item D. 1 was removed from the Consent Agenda, page 181 was revised, and page 183 was revised to include Ann Christian as the JAC secretary. Mr. Gaydos moved, Ms. Eyerman seconded, and the board unanimously passed a motion to approve the Consent Agenda with these changes.

**9. Default Agenda**

Mr. Hill raised the issue of the letter from Mr. Lang on pp. 237-238. He wanted to know how to respond. Mr. Riemer indicated that some of the ideas he presented are not consistent with the Bar Act, the House rules, or parliamentary procedure. The matter will be referred to the Policy and Governance Committee for discussion on January 6. Mr. Gerking will so inform him.