

**Oregon State Bar**  
**Meeting of the Board of Governors**  
February 3, 2006  
**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 regular meeting of the Oregon State Bar Board of Governors was called to order Friday, February 3, 2006, at 12:35 p.m. by President Dennis Rawlinson and adjourned at 5:00 p.m. Board members present were Theresa Wright, Linda Eyeran, Mark Comstock, Tim Gerking, Marva Fabien, Jon Hill, Robert Vieira, Bette Worcester, Ward Greene, Rick Yugler, John Enbom, Dennis Rawlinson, Albert Menashe, and Gerry Gaydos. Staff present was Karen Garst, George Riemer, Rod Wegener, Susan Grabe, and Teresa Wenzel. Present from the PLF were Ira Zarov and Bob Cannon. Others attending were John Marandas (ONLD), Gary Georgeff, and Tom Howser.

**1. Work Session – Finance and Operations, Rod Wegener, OSB CFO**

Rod Wegener, OSB CFO, presented information concerning the duties and responsibilities of the Finance and Operations Department of the bar. The department includes Accounting, IT, Contract Services, and Facilities. The department's processes include the following: preparing financial statements for bar sections and committees; developing the bar's budget; billing members for dues; processing payments online, and accumulating pro bono online data, all made possible by its new *Great Plains* software. One in nine attorneys make payments online and this also updates bar records and saves time in the dissemination of data. The department also manages the bar's reserves (restricted and board designated funds) amounting to \$4.4 million; facilitates an audit by an independent audit firm every two years; and maintains the bar's website which includes the online membership directory, payments online, reporting of pro bono hours, and the Casemaker™ Legal Research Library. The department also oversees print production, which provides the membership directory, brochures for the bar, newsletters for sections, among other printed items for bar groups. The department has reduced staff by six FTE over the last several years through technology and outsourcing. It outsources services to IKON, which provides copying, mailroom services, shipping, and scanning services to the bar. The IT portion of the department maintains the network, provides hardware and software for the bar's operation. The Facilities Department maintains the bar center and assists in the set-up of meetings for more than 420 member and/or public events yearly.

Going forward, the department will continue to develop its e-commerce capabilities; will scan files so more information will be available online and cut the cost of storing hardcopies of documents; look into the feasibility of joining an alliance of bar associations to share software and other technology tools; expand online member services in the areas of online publications, podcasting, web based materials, newsletter research online, and disciplinary information online; and will have a significant role in the move to a new bar facility.

**2. Report of Officers**

A. Report of the President

1. Board Leadership Opportunities

Mr. Rawlinson indicated that the board was comprised of a great group of people. He thanked board members for the work they did at the November retreat. He thanked Ms. Fabien and Ms. Eyerman for their willingness to substitute for him at a meeting of the ONLD; Mr. Gerking for assisting with the Ashland reception; Ms. Skerjanec for her willingness to assist with a reception when the board attends its meeting in Baker City; Mr. Menashe for his attendance at the Leadership Conference in January; Mr. Yugler and Ms. Eyerman for the work they did on the Classroom Law Project; and all members in general for their service on behalf of the profession. He also indicated he has received a number of compliments regarding the *Bulletin* article containing information about each board member and thanked the board members for their participation to make the article great.

Mr. Rawlinson indicated the board has a great deal going on this year: a new facility, supporting the upgrading of court facilities, the member initiative on the Elimination of Bias requirement, and other emerging issues. He asked the board for its assistance in moving forward on these issues. He commended Mr. Gaydos for stepping forward to be the point person regarding updating courthouses; Mr. Comstock for his guidance on the Elimination of Bias issue, MCLE changes, and the military ad controversy; Mr. Greene for being the board representative regarding the new facility; Ms. Eyerman for her assistance with Access to Justice, LRAP, and Affirmative Action Program; Mr. Hill for the hours he has contributed as chair of the Committee on the Judiciary; Mr. Yugler for his assistance with the Membership Committee, the online CLE project, and the tent show; and Ms. Skerjanec for chairing the Executive Director Evaluation Committee and beginning the process of looking for someone to replace Ms. Garst upon her retirement.

In the interest of meeting efficiency, Mr. Rawlinson asked that the board work hard, play hard, and try to move the agenda along quickly, to take time when necessary, and to not repeat what someone else has already said. He asked that board members be organized for committee meetings and to let him know if time slots are not long enough. There will only be Saturday board meetings when they are truly needed.

## 2. Gaelic Procedures

Mr. Rawlinson introduced a little Irish nonsense in the form of two pieces of Irish magic - a marble stone and a shillelagh. The stone is to be rubbed for the blarney and is purported to supply the person rubbing the stone with eloquence. The shillelagh is to be tapped three times in the event a speaker becomes too long winded. The person holding the shillelagh (the equivalent of a sergeant-at-arms) will tap it on the table three times; the speaker must cease speaking, and pay the "tapper" an Irish whiskey at the next appropriate opportunity. The person holding the shillelagh will choose the next meeting's sergeant at arms at the end of the board meeting.

### B. Report of the President-elect

1. Mr. Menashe mentioned receiving the President's notebook provided by staff and indicated he was thankful for the information it contained and that Mr. Rawlinson and he were the first recipients. He attended the bar's Leader Conference and will be attending the ABA meeting in Chicago February 9-11 and the Western States Bar Conference in San Diego, California in March.

### C. Oregon New Lawyers Division

Mr. Marandas appeared by phone to give his report. The ONLD had a retreat in early January. Its goals include increasing communication among its members and throughout the bar; letting people know about its services; and increasing its statewide outreach. The division has a communications task force chaired by Christine Meadows. It will call new lawyers by phone, send them e-mails, review and update the ONLD's website, and participate in indirect marketing by attending bar functions and recruit with leadership opportunities. Upcoming events include a Pro Bono Fair, the Multnomah Bar Association's ONLD event to be held at the Embassy in Portland, two CLEs, a reception, awards ceremony, and the ABA Young Lawyers Division Conference, May 18-20, 2006. The conference will be held at The Hilton in Portland with events at the Bridgeport Brew Pub, the Arts Bar at the Performing Arts Center, dinner at the World Trade Center, and a day trip and wine tasting.

## 3. Professional Liability Fund

### A. Approval of Pro Bono Program Coverage Plan

Ira Zarov presented information concerning the PLF Board approved Pro Bono Program Coverage Plan for the Board of Governors' approval.

**Motion:** Mr. Menashe moved, Mr. Comstock seconded, and the board approved the PLF's Pro Bono Program Coverage Plan (yes, 11; absent, 5 [Skerjanec, Minson, Gaydos, Greene, Eyerman])

B. Update

Mr. Zarov stated that while final numbers are not yet available, early indications are that the PLF year will be positive both financially and substantively. Final actuarial figures will be available before the next BOG meeting. He also noted the Excess Program grew by 8% in 2006. He did not expect that growth rate to continue. The year also featured the biannual PLF Defense Panel training.

Mr. Zarov outlined the major initiatives that the PLF would be working on in 2006. The claims department with the CFO will analyze the reasons for the escalation in defense costs during the last five years to determine if there are measures that the PLF can take to control defense costs. Among the ideas that have been discussed are use of in-house lawyers for some litigation or different arrangements with defense panel members. Mr. Zarov said that the defense cost increases may reflect only the inflation of attorney fee rates and that other approaches may not be viable. In addition to addressing defense costs, the current asset allocation plan will be reviewed. This is done annually. In 2006, there will also be a claims audit. Claims audits are done at least once every five years. The audits involve outside consultants who review open and closed cases to make certain that PLF reserving policies, settlement procedures, defense panel oversight, and other areas of the PLF operation are done effectively and efficiently. Finally, the Practice Management group has as a goal of more contact with the larger Oregon firms.

**4. Special Appearances**

A. Request to Co-Sponsor Resolutions before ABA House of Delegates

Mr. Rawlinson explained the request of the ABA Commission on Immigration that the OSB co-sponsor seven resolutions it has submitted to the ABA House of Delegates. Mr. Rawlinson indicated that the OSB had no special expertise on the topics covered by the resolutions; questioned whether the OSB should routinely co-sponsor resolutions presented to the ABA House of Delegates; and indicated that co-sponsoring the resolutions at this point prevented the bar's delegates from considering amendments and other issues at the meeting because bar policy requires them to support positions taken by the board.

**Motion:** Mr. Gerking moved, Mr. Comstock seconded, and the board unanimously declined the request of the ABA Commission on Immigration.

## OSB Committees, Sections, Councils, Divisions and Task Forces

### B. Client Security Fund

#### 1. *OSB v. Philip M. Kelley* – CSF Collections

Mr. Comstock presented the request for additional funds to pursue the bar's judgment against Mr. Kelley.

**Motion:** Mr. Comstock moved, Mr. Greene seconded, and the board unanimously approved the expenditure of up to an additional \$5,000 to pursue the bar's judgment against Mr. Kelley.

#### 2. *Munoz v. Feest* - No. 05-22

Mr. Comstock explained Mr. Munoz' appeal of the CSF Committee's denial of his claim.

**Motion:** Mr. Comstock moved, Mr. Greene seconded, and the board unanimously approved the denial of Mr. Munuz' claim against Mr. Feest.

#### 3. Robin Moore

Mr. Comstock explained Ms. Moore's appeal of the CSF Committee's denial of her claim.

**Motion:** Mr. Comstock moved, Mr. Hill seconded, and the board unanimously approved the denial of Ms. Moore's claim against M. Elliott Lynn.

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

### A. Appointments

#### 1. U of O Request for Distinguished Service Award Nominations

Mr. Gerking presented information concerning the U of O's request. Last year Chief Justice Wallace P. Carson, Jr. was nominated, but did not receive the award. This year the committee nominated Jim Hennings and Marilyn Cover. Because of the February 3 deadline, the committee has already submitted the nominations.

#### 2. Appointment for OLC and LASO

**Motion:** Mr. Gerking moved, Ms. Eyerman seconded, and the board unanimously approved the nominations listed in the supplemental agenda memo to the boards of the Oregon Law Center and the Legal Aid Services of Oregon.

### B. Budget and Finance Committee

#### 1. New Bar Center

Mr. Menashe presented information concerning three issues on which the board would be asked to take action: the extension of the date of the letter of intent requiring Mr. Rawlinson's signature to February 28, 2006; selection of an attorney to represent the bar; and selection of a project manager or owner representative to represent the bar as the new bar center project moves forward.

Mr. Menashe thanked David Bennett for his donated legal services on the Letter of Intent. The board thanked him for his generosity. On a going forward basis, the committee would like Dick Alexander, a senior partner at Stoel Rives, to substitute for Mr. Bennett as the bar's attorney on this project. The board would need to set a budget for his services and determine the source of the funds to pay him. Mr. Greene has had preliminary discussions with Mr. Alexander and he has agreed to reduce his hourly rate to \$275. A preliminary estimate of the cost for Mr. Alexander's services is in the range of \$25,000 to \$50,000, depending on the complexity of the documents involved. The Budget and Finance Committee will determine a source of funding and track expenses. Options are to use part of the estimated \$4.4 million in the bar's reserve fund; to use a portion of the funds set aside for the updating of the HVAC at the current bar center; to use the money set aside for the prepayment of the bar's mortgage; and/or to borrow money from other funds in the budget. The bar anticipates receiving \$7 million from the sale of the bar center and about \$1 million from capital reserve.

The project manager/owner representative would be working solely for the bar to make sure everything is done the way the bar expects it to be. The Budget and Finance Committee will develop criteria for the selection of a project manager; determine a source of funds; and track expenses. Mr. Menashe also indicated that Mr. Greene was willing to serve as the board's representative on this project. He has a strong management and financial background. If appointed, Mr. Greene would make the day-to-day business decisions on behalf of the board concerning the project.

Mr. Rawlinson agreed to set aside time at each meeting to discuss the progress of this project.

The board discussed the concern that communication with members is vital and important on this project. Response so far is positive, but it does not appear many members have heard of the project. To keep communications open, a member of the Communications Department will assist the Budget and Finance Committee and will provide board members with talking points regarding the new bar center. It was suggested that board members be ambassadors and communicate with members of their regions and where possible, find other bar members in their regions to communicate to yet other bar members about the project too. The board was reminded that the project has a positive cash flow for five years. Staff is being asked to look at ways to keep the membership informed about the project on the bar's website, articles in the *Bulletin*, and periodic updates in the *Bar News*. Mr. Zarov and Mr. Cannon will keep the PLF informed and in the loop.

OPUS will be subcontracting out the architectural portion of the project for the interior space. The board and staff need to make decisions on interior colors, office size, etc. and Mr. Greene will be the point person on this with Rod Wagener, Margaret Robinson, and Karen Garst.

Mr. Menashe cautioned the board that before it begins adding to the plan, it will need to have the funds available to complete the entire project including moving expenses.

Mr. Greene asked that the board and staff consider the building's "greenness" as plans and construction move forward. That is to say, he expressed his hope that the impact of the building on the environment would be considered as matters move forward.

There was a question as to how the extension of the letter of intent would affect the completion date of the project. OPUS is working on a zoning issue, which must be resolved before the project can move forward. It may be resolved by February 28, but the LOI may need to be extended another time. If the LOI is extended to February 28, it should not affect the completion date, though it will affect the start date.

**Motion:** The board approved the committee motion to extend the letter of intent to February 28, 2006 (yes, 13; no, 1 [Eyerman])

**Motion:** The board approved the committee motion to retain Dick Alexander of Stoel Rives with a budget and source of payment to be determined by the Budget and Finance Committee. (yes, 12; no, 1 [Eyerman]; abstain, 1 [Yugler])

**Motion:** The board approved the motion to appoint Mr. Greene as the board representative for day-to-day decisions regarding the building project (yes, 13; no, 1 [Eyerman]).

**Motion:** The board approved the motion to hire a project manager with a budget and source of payment to be determined by the Budget and Finance Committee (yes, 13; no, 1 [Eyerman]).

C. Committee on the Judiciary [Mr. Hill]

1. Request for Direction from Committee on the Judiciary

Mr. Hill presented information concerning directions the board wished to give the Committee on the Judiciary for 2006. He asked the board to look at the functions of the bar as outlined on the first page of its agenda. Mr. Hill reviewed an update of the Overview of OSB Activities concerning the Judicial Department and Judges as contained on page 65 of the agenda.

After discussion, the consensus of the board was for the committee to continue to discuss how the bar may be able to assist the Judicial Department in implementing its existing performance measures. The board asked the committee

to continue to discuss the issue of free OSB CLE for judges and staff and to discuss the financial implications of this proposal with the Budget and Finance Committee.

D. Member Services Committee

1. Report of the Tent Show Planning Group

**Motion:** The board unanimously approved the committee motion to establish a Tent Show Planning Group with the members indicated on the exhibit.

2. Review of Communications and Services to Bar Member Groups

The committee will look at developing a statewide communication process with members, local bars, and specialty groups.

3. Leadership College Fellows

Mr. Yugler referred the board to the names of the people in the first class of the Leadership College and indicated he would provide more information about the activities of the College this summer.

4. HOD Recruitment

Mr. Yugler asked board members to review the list of HOD members whose terms are expiring this year. He asked that each governor review the spreadsheet, contact the HOD members in his/her region, and if appropriate, ask them to re-up. He would like each board member to commit to contact the members in his or her region.

E. Policy and Governance Committee

1. Membership Petition Regarding MCLE Elimination of Bias Requirement

Gary Georgeff and Tom Howser appeared before the board to discuss the Elimination of Bias requirement and the membership petition.

Mr. Howser indicated that this was the first time a member initiative had been submitted to the board and a vote on the measure was an opportunity for grassroots democracy. He urged the board to submit the measure to a vote of the membership. He indicated that this process is a milestone and thanked Gary Georgeff for his efforts in this process.

Mr. Georgeff indicated that there is a perception amongst the general membership of a bar administration out of touch with its members and that the bar is divided between urban and rural attorneys because of the huge concentration of attorneys in Portland. Even if the bar cannot support the petition, it can get behind the process. Let members know you care by making voting easy and accessible. By the board getting behind the process, it may change the perception. Mr. Georgeff offered to help with the process of getting the measure ready for a vote of the membership.

Mr. Comstock presented information from the Policy and Governance Committee indicating the initiative should be submitted to a vote of the membership.

**Motion:** The committee recommends that the matter be referred to the membership for a vote. The ballot should use the language of Mr. Georgeff's initiative measure. The vote should be by e-mail for those having an e-mail on file with the bar. If the e-mail bounces back, if the member has no e-mail, or if a member requests a written ballot by a date certain, the bar will send a paper ballot. A voters' pamphlet will be inserted into the Bar *Bulletin*, if possible. Ballots will include the measure, pro and con statements limited to 200 words each, and background information. There would be one statement favoring the initiative (prepared by Mr. Georgeff) and one statement opposing it (perhaps by former OSB President Angel Lopez). There will be a link to a bar website forum for members to express their opinions and the bar will post written letters it receives on the forum as well. The board approved the motion unanimously.

2. Henry Kane's Petition Asking that Bar Bylaw 10 on Diversity be Amended to Delete "Sexual Orientation"

**Motion:** Mr. Comstock moved, Mr. Greene seconded, and the board unanimously approved asking Mr. Kane if he would allow the board to defer action on his petition until the U.S. Supreme Court decided the case of Forum for Academic and Institutional Rights (*FAIR v. Rumsfeld*). Mr. Comstock and Mr. Yugler volunteered to work with Mr. Rawlinson to follow up on this matter with Mr. Kane.

F. Public Affairs Committee

1. Judicial Compensation

Mr. Gaydos presented information concerning judicial compensation, which will be a big issue in the next legislative session. The Public Affairs Committee is working with the judges' associations to be sure all parties are on the same page when speaking with representatives and senators.

2. Court Facilities

Improving Oregon's courthouses has been a long-standing issue. There was a request from the Multnomah Bar Association, and past Presidents Ed Harnden and Charlie Williamson for support of funding for court facilities in Multnomah County. The Public Affairs Committee decided not to act on this specific request, preferring to approach the issue on a broader basis of assisting in improving courthouse facilities throughout the state.

**Motion:** The board unanimously approved a committee motion for the Oregon State Bar to be supportive of adequate funding of court facilities throughout the state.

3. Miscellaneous

Mr. Gaydos presented Past President Williamson's concerns for support for psychological and medical assistance for the military and the Appellate Section's request to hold a forum for Supreme Court candidates. The committee felt the forum was fine but wanted to make sure the content and the information were neutral and all sides were represented.

G. Budget and Finance

1. 2006 Budget in the Default Agenda

Per a request from the board, Mr. Wegener discussed the budget, as it appears in the default agenda, and matters which need to be changed and updated for a more accurate assessment of the future. The preliminary 2005 budget deficit of \$400,000 is attributed to legal fees and CLE Publications. Some people may be waiting for publications online and holding off purchasing hardcopies of books. Mr. Wegener will review the 2005 budget and check to see that the budget for 2006 is correct for CLE Publications and legal counsel. CLE is not likely to break even in 2006 and the budget needs to be adjusted to reflect that. The first few years after a dues increase usually allows for a surplus budget, but these two issues may ramp up the need for another dues increase sooner than expected.

**6. Consent Agenda**

The board removed the MCLE Committee appointment of Kevin Keaney and the Bar Bylaw changes on the Annual Meeting from the Consent Agenda.

**Motion:** Mr. Gaydos moved, Ms. Worcester seconded, and the board unanimously opposed the motion to waive the one meeting notice requirement to vote on the Bar Bylaws.

**Motion:** Mr. Enbom moved, Mr. Gaydos seconded, and the board unanimously approved the Consent Agenda without the MCLE Committee appointment and the approval of the Bar Bylaw changes.

**7. Default Agenda**

A. Budget and Finance

1. November 30, 2005, Financial Report

Removed from the Default Agenda for discussion.

**8. Closed Session Agenda**

A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1))

B. Litigation and Advice of Counsel (Executive Session pursuant to ORS 192.660(1)(f) and (h))

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

The question was asked if board members' communications were still being vetted by the president-elect. Mr. Rawlinson suggested that if there were any questions regarding communications with the membership, they should be vetted with Mr. Menashe.

Mr. Comstock will be the keeper of the shillelagh at the next meeting.