

Oregon State Bar
Meeting of the Board of Governors
May 5-6, 2006
Open Session Minutes

(Note: For ease of future research, the minutes are written to conform to the order of items as they appear on the agenda, rather than in the order in which they were considered by the Board.)

The regular meeting of the Oregon State Bar Board of Governors was called to order Friday, May 5, 2006, at 1:10 p.m. by President Dennis Rawlinson and adjourned at 5:00 p.m. The meeting was reconvened Saturday, May 6, 2006, at 8:00 a.m. and adjourned at 9:20 a.m. Present at the Friday meeting were Gerry Gaydos, Jon Hill, Linda Eyerman, Dennis Rawlinson, Albert Menashe, Rick Yugler, Bette Worcester, John Enbom, Ward Greene, Tim Gerking, Carol Skerjanec, Theresa Wright (1:45 p.m. – 5:00 p.m.) and Mark Comstock. Staff present was Karen Garst, Sylvia Stevens, Susan Grabe, Jeff Sapiro (by phone, 3:30 p.m. – 5:00 p.m.), and Teresa Wenzel. Present from the PLF were Robert Cannon (1:00 p.m. – 1:15 p.m.) and Louis Santiago (1:30 p.m. – 3:45 p.m.). Also participating were Judge Adrienne Nelson (2:25 p.m. – 2:30 p.m.), Gary Georgeff (1:00 p.m. – 3:30 p.m.), and Judge Baldwin (3:10 p.m. – 3:30 p.m.)

Present at the Saturday meeting were Gerry Gaydos, Jon Hill, Linda Eyerman, Dennis Rawlinson, Albert Menashe, Rick Yugler, Bette Worcester, John Enbom, Ward Greene, Tim Gerking, Carol Skerjanec, Theresa Wright (1:45 p.m. – 5:00 p.m.) and Mark Comstock. Staff present was Karen Garst, Sylvia Stevens, Susan Grabe, Jeff Sapiro (by phone) and Teresa Wenzel. Also present was Anne Fisher (8:30 a.m. – 9:00 a.m.).

1. Work Session - Public Affairs

Susan Grabe, Public Affairs Department Manager, presented information detailing how the department works within the bar and its contributions to the bar, the BOG, the judiciary, and the legislature.

2. Report of Officers

A. Report of the President

Mr. Rawlinson welcomed the bar's new General Counsel, Sylvia Stevens.

1. Meeting with Chief Justice Paul J. De Muniz - April 27, 2006

Mr. Rawlinson, Ms. Garst, and Ms. Grabe met with Chief Justice Paul J. De Muniz. They discussed proposed approaches concerning the HOD initiative petition related to the MCLE Elimination of Bias credits and cooperative relationships between judiciary liaisons and the Board of Governors.

2. Board Leadership

Mr. Rawlinson thanked the board members for stepping up and participating in the leadership of the bar in their regions. Specifically, he thanked Ms. Skerjanec for her assistance in preparing for the Baker City visit and Ms. Eyerman for attending Judge Adrienne Nelson's induction. He indicated his hope that board members would find their opportunities to participate rewarding and fun.

3. Pro Bono Fair and Challenge

Mr. Rawlinson attended the Pro Bono Fair and Challenge. There were CLEs, Pro Bono booths, and Pro Bono awards were presented. The number of hours of pro bono work was impressive.

4. July 7, 2006 Supper and Wine Tasting

Mr. Rawlinson invited the board to his home for dinner and wine tasting after the July board meeting and reception with the Leadership College.

5. Gaelic Procedures

Mr. Rawlinson reminded the board again of the significance of the shillelagh and passed around a marble stone, which according to legend, will provide persuasive eloquence to anyone who rubs it. Everyone in attendance rubbed the stone.

B. Report of the President-elect

1. NCBP in Chicago February 9-11

Mr. Menashe attended the NCBP in Chicago. He observed that Oregon is recognized as a strong contributor to the improvement of the profession and the practice of law and is very much respected at these meetings.

2. Leadership College

Mr. Menashe attended the Leadership College and its next meeting will be at the Supreme Court. It is putting together programs concerning professionalism. Mr. Menashe noted that members of the college have been in practice an average of 15-16 years.

3. WSBC in San Diego March 21-25

Mr. Menashe, along with Ms. Fabien and Ms. Garst, attended the 17-state WSBC in San Diego. As one of the largest bars in the group, Oregon stands out. There were reports from each state and Oregon is the only state having an

insurance system like the PLF, the facilitation of which continues to impress the other states. Next year the meeting will be in Hawaii.

4. Willamette University Third Year Law Students - April 5

Mr. Menashe spoke about professionalism to the third year lawyer students on their last day of class; the presentation is a “bookend” to the professionalism program that students attend on their first day of class.

5. 50-year Member Luncheon - April 7

Mr. Menashe attended the luncheon. The luncheon is a highlight for the attendees and functions as a reunion for many of the attorneys.

6. November Retreat

Mr. Menashe met with Ms. Garst concerning the November retreat and plans are starting to take shape.

7. Various Other Visits

During the week of May 22-26, Mr. Menashe will be visiting eastern Oregon with the CAO Manager and the Public Affairs Manager. In August, he will attend the NCBP in Honolulu.

C. Report of the Executive Director

1. Record Retention Policy

Ms. Garst outlined the process for reviewing the bar’s record retention policy in anticipation of the move to the new bar center. The regulatory programs policies will be presented to the board’s Policy and Governance Committee. After adoption by the full board, they will be presented to the Oregon Supreme Court for final adoption. All but historical records that will be kept on a permanent basis will be scanned to save on storage costs.

2. Program Measures

Ms. Garst discussed the 2005 evaluation of the bar’s programs and services. This year, each department head was asked to “benchmark” or compare one measurable outcome with another organization. These are highlighted in the booklet the board received. The complete evaluation is on the bar’s website.

3. Miscellaneous

The bar conducted a nationwide search to replace Mr. Riemer as General Counsel and after reviewing the applicants, decided Sylvia Stevens was by far

the best person for the job. The position vacated by Ms. Stevens has been renamed Deputy General Counsel and will be filled by Helen Hierschbiel.

Ms. Garst passed out a survey asking for the board's input concerning meeting requirements.

D. Oregon New Lawyers Division

1. Update

On behalf of John Marandas, who was unable to attend, Ms. Garst presented an update on the activities of the ONLD. The ONLD hosted a reception following the admittee ceremony and had several people sign up for committees. The division participated in the Pro Bono Challenge where David Frohnmeyer spoke at the awards dinner. ONLD continues to work to enhance its communication efforts and new website and to offer its brown bagger CLEs, and the Super Saturday CLE scheduled for October 21, 2006. The ABA Young Lawyers Division Conference is slated for May 18-20 in Portland.

3. Professional Liability Fund

A. Update

Robert Cannon presented an update concerning the PLF. The market is up, the portfolio is very diverse, and the fund balance is improving. Much of the portfolio is in bonds, which tend to decrease in value as interest rates increase. The audit will take place the week of May 8-12 and no problems are envisioned. The final audit report will be available for the BOG at its July meeting. The actuary report, which is performed every two years, will also be available for the July 2006 meeting. The report information looks good generally and it will show that claims are holding steady. There are some large claims working their way through the system, but that is not unusual for the fund. The cost of indemnity is holding even. Because of the single claims policy change made at the last board meeting, there may be some litigation over the new language. This will be in circuit court rather than being arbitrated.

4. Special Appearances

A. ABA Update

1. Support of ABA Resolutions

Judge Adrienne Nelson presented information concerning the ABA's request to all state bars to support the ABA resolution on diversity in the profession. The board voted to endorse the resolution. Ms. Stevens indicated the MBA has also voted to endorse the ABA resolution.

Action: Ms. Eyerman moved, Mr. Enbom seconded, and the board unanimously passed a motion to support the ABA resolutions.

5. Rules and Ethics Opinions

A. Legal Ethics Committee

1. Proposed Amendments to Oregon Rules of Professional Conduct

Ms. Stevens presented the Legal Ethics Committee's proposed amendments to Oregon RPCs 1.6, 1.9, 1.10, 1.13, 3.1 and 4.4 as per the exhibits in the agenda. If the HOD and the Supreme Court approve the changes in a timely fashion, it is expected they will go into effect January 2007. Mr. Yugler asked that the LEC study the *ex parte* contact rule (RPC 3.5(b)) further with a view toward clarifying that it applies only to contact on the merits of a case.

Action: Mr. Gaydos moved, Mr. Yugler seconded, and the board unanimously passed the motion to accept the changes proposed by the Ethics Committee and to submit a resolution to the House of Delegates denoting the changes.

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

A. Client Security Fund

1. *Bornowski v. Marsh* Claim

Mr. Comstock presented Mr. Marsh's request for the board to reconsider its decision to pay this claim. The board reviewed the mission of the CSF Committee in making its decision concerning the claim.

Action: Mr. Comstock moved, Mr. Gerking seconded, and the board approved a motion not to revisit the claim (yes, 12 [Comstock, Gaydos, Eyerman, Hill, Enbom, Worcester, Rawlinson, Menashe, Wright, Gerking, Skerjanec, Yugler]; no, 1 [Greene]; absent, 3 [Fabien, Vieira, Minson]).

2. Request for review: Claim 05-26 - *Cirina v. Judy* - \$22,000

Mr. Comstock presented the claimant's request for BOG review of the Committee's denial of his claim. Discussion ensued regarding the extent to which the loss was related to Mr. Judy's role as the claimant's lawyer and whether Mr. Cirina's position was that of a client or an investor.

Action: Mr. Comstock moved, Ms. Worcester seconded, and the board approve the motion to affirm the committee's recommendation to deny Mr. Cirina's claim (yes, 12 [Comstock, Gaydos, Eyerman, Hill, Enbom, Worcester, Rawlinson, Menashe, Wright, Skerjanec, Yugler, Greene]; no, 1 [Gerking]; absent, 3 [Fabien, Vieira, Minson]).

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

A. Budget and Finance Committee

1. Audit Report

Mr. Menashe presented information concerning the 2005 Audit Report.

Action: Mr. Menashe moved, Mr. Enbom seconded, and the board unanimously passed the motion to acknowledge receipt of the audit report.

2. New Bar Center

Mr. Menashe gave an update on the progress of the new bar center. Mr. Greene and Mr. Wegener have been spending a great deal of time working on the details of the plans for the new bar center and the conditions of the final contract, which has not yet been signed. Mr. Menashe emphasized the importance of the board being kept informed of the details as the project moves forward. Kateri Walsh will attend the new bar center meetings and will provide talking points for board members. The bar has hired Dick Alexander and David Weiner as its attorneys and Steve Cruzen of Shiels Oblitz Johnsen as its owner representative. It has also enlisted the services of LRS to analysis the environmental issues concerning the “greenness” of the new center with a cap of \$5,000.

Action: The board passed the committee motion to authorize Mr. Greene and Mr. Wegener to negotiate with and hire an owner’s representative for the building project at a cost not to exceed \$75,000; to use \$5,000 of that sum to engage an architect in evaluation of the “greenness” issues of the new building; and to obtain the \$75,000 from the mortgage prepayment fund (yes, 12 [Comstock, Gaydos, Gerking, Hill, Enbom, Worcester, Rawlinson, Menashe, Wright, Skerjanec, Yugler, Greene]; no, 1 [Eyerman]; absent, 3 [Fabien, Vieira, Minson]).

3. Bar Center Matrix

Mr. Menashe presented information and answered questions concerning the matrix regarding who is responsible for various decisions about the development of the new bar center. He indicated we are partnering with the PLF on this project and the PLF representative, Mr. Santiago, indicated he approved of the decision matrix.

Action: The board unanimously passed the committee motion to approve the bar center decision matrix.

4. Creating Separate Fund Balance for LRAP

Mr. Menashe presented information concerning the creation of a separate fund for the LRAP balance.

Action: The board unanimously approved the committee motion to establish a fund balance for LRAP to earn interest on its accumulated net revenue.

B. Committee on the Judiciary

1. Update

Mr. Hill updated the board and asked it to pay particular attention to the committee's minutes, as they appear in the Default Agenda of the May 5-6, 2006, board agenda. The Chief Justice's committee is moving forward. Mr. Hill expressed concern regarding voter education— past and present- and indicated that the current Supreme Court race will be an opportunity to assess how well the current system is working. There is concern about how to assure the public obtains good information about the judicial races and how to disseminate that information. It was suggested that Public Affairs might be one place to begin discussion of this concern.

C. Member Services Committee

1. Reception with the Leadership College at the Federal Courthouse

The Leadership College met May 19 for networking at the Supreme Court Building. It will meet with the court's professionalism committee. Mr. Yugler reminded the board there will be a reception with the Leadership College at the federal courthouse after the board's July meeting and before dinner with Mr. Rawlinson. All board members must be timely because the doors of the courthouse close at 5:00 p.m. sharp

2. CLE Publications Task Force Report

Mr. Yugler updated information and gave background concerning how the board had arrived at the pricing and licensing model. The following issues were discussed regarding the pros and cons of the pricing for the online CLEs: the courts are happy with the product and will purchase it under the pricing for a firm of 400; licenses will not be tied to a single PC, but to an individual lawyer so the library will be available anywhere, 24/7; licenses may be given to any lawyer in the licensed law firm; although large firms will pay more overall, small firms will pay more per attorney; the CLE Publications department's large financial loss in 2005 was perceived to be due to lawyers not purchasing CLE publications with the thought they would become available online; even if the bar goes to all online publications, the publication costs, editing costs, etc. will remain the same; and CLE Publications projects this will be a break-even project now, but if received well, the pricing could go down in the future.

After the committee motion was presented there was additional discussion regarding the cost to sole and small practitioners v. large firms: it was noted that some members had raised that concern; at least one member has indicated that as a sole practitioner, he felt it was better to have the entire library for what he originally paid for three books; if lawyers pay equally under PLF it was felt they also should pay equally for online CLEs; the board was reminded that the original cost of \$60-\$70 was assuming *all* Oregon attorneys pay; and with the new licensing model, the cost has to be increased to cover the cost of attorneys who chose not to participate. A question was raised whether this should be brought to the HOD.

Action: The committee motion to accept the task force' report and pricing passed (yes, 12 [Comstock, Gaydos, Gerking, Hill, Enbom, Worcester, Rawlinson, Menashe, Wright, Skerjanec, Yugler, Greene]; no, 1 [Eyerman]; absent, 3 [Fabien, Vieira, Minson]..

D. Policy and Governance Committee

1. Bar Bylaws – Annual Meeting

Action: Mr. Comstock presented the committee motion to eliminate references to the annual meeting from the Bar Bylaws. Mr. Comstock noted one additional reference to the annual meeting, which was not noted in the agenda materials. It is in the first sentence of the new Section 4.6 Award of Merit and should read: "The Award of Merit is the highest honor that the Bar can bestow."

Action: Ms. Skerjanec moved to amend the motion to put the issue of elimination of the annual meeting before the HOD. The motion died for lack of a second.

The discussion included the following observations and comments: Many attorneys outside of the Portland areas use the annual meeting as a time to network and reunite with other attorneys; removing the requirement for an annual meeting will not preclude periodically having a periodic convention or similar meeting; all of the components of the annual meeting still take place, but not all at the same time; and some of the HOD members would like to have more meetings during the year to discuss pertinent issues.

Action: The original motion passed with Ms. Eyerman abstaining.

2. Membership Vote Regarding MCLE Elimination of Bias Requirement

Mr. Comstock reported on the committee's discussion of the MCLE/EOB advisory vote, the results of which are available in the agenda exhibits. Two-thirds of those voting favored the proposition that the board recommend to the Supreme Court that there be no sanctions for members who do not complete the EOB credit requirement. Mr. Comstock, Mr. Rawlinson, Mr. Menashe, and Ms. Garst met with Chief Justice Paul J. De Muniz to discuss the matter. The

Chief Justice would prefer that the board not submit a proposal for an up or down vote; he suggested the formation of a work group to develop alternatives to the EOB requirement. The Policy and Governance Committee supports the work group approach, and recommends that the work group be instructed to report back to the board at its July meeting.

Judge Baldwin addressed the board regarding his concerns about the issue. He pointed out only 20% of the entire membership participated in the initiative vote. He thought the work group would be a good idea, but felt July 2006 seemed a little soon for a final decision. He felt the decision needs more work and time for more ideas. Judge Baldwin indicated that the Diversity Section agrees with the additional process and would support that approach, but also feels that July 2006 would be too soon. Judge Baldwin encouraged input from areas of practice and encouraged the bar to make this a priority. Mr. Rawlinson thanked the judge for his input. Gary Georgeff countered that 20% of the entire membership is more than the typical response to bar ballots; he also pointed out that the size of the voter turnout is irrelevant to the outcome. He felt it might be a good idea to consider putting this process into effect rather than making a final decision today. The point was made that if the BOG doesn't approve the workgroup recommendation at its July meeting, the next scheduled meeting is the day before the HOD meeting. There was concern that the HOD not lose confidence in the board's willingness to address member initiatives.

Action: The committee motion was presented as follows: Resolved, That a work group be formed. Two justices from the court will serve on the work group together with two board members and two bar members. The chief petitioner of the membership's advisory vote will be asked to participate. The goal of the work group will be to recommend alternatives to the EOB requirement in light of the advisory membership vote. The work group shall submit its report to the BOG at its July 7, 2006 meeting.

Action: Ms. Skerjanec moved and Mr. Gerking seconded a motion to amend the committee motion to provide that the goal of the workgroup is developing positive rather than punitive incentives to ensure access to the justice system for all Oregonians. The motion failed (yes, 2 [Gerking, Skerjanec]; no, 11 [Eyerman, Rawlinson, Menashe, Hill, Enbom, Wright, Greene, Comstock, Worcester, Gaydos, Yugler]; absent, 3 [Fabien, Minson, Vieira])

Action: The committee motion passed unanimously.

Mr. Rawlinson asked Mr. Comstock to serve as chair of the task force and to select the other BOG member. Mr. Comstock agreed and Mr. Georgeff also agreed to serve on the task force and to submit another name from the general bar membership for consideration.

3. BOG Oversight of Non-Disciplinary Litigation

The committee recommended no changes to the way non-disciplinary litigation is handled and the board concurred.

E. Public Affairs Committee

1. Free CLEs for Judges

Action: The board unanimously approved the committee motion to offer free CLEs and section membership to judges and lawyer staff.

2. Law Improvement Proposals

a. Administrative Law Section

Gerry Gaydos presented the board's Law Improvement Package. Anne Fisher, Administrative Law Section, discussed legislation the section would like to see before the legislature. The Public Affairs Committee requires sections purposing legislation to have unanimous approval from the section's executive committee before it will consider adding the items to its legislative package. This precludes one member or a small contingent of the section from arguing against the section's proposal and sending a mixed message to the legislature. There are two bills the Administrative Law Section has been trying to include in the Law Improvement Package for the past two sessions, but one member of the executive committee continues to speak out against it. Anne Fisher requested the Public Affairs Committee add the two bills to its Law Improvement Package even though there is not a unanimous decision by the Administrative Laws Section's Executive Committee. Mr. Rawlinson thanked her for her input.

Action: The committee motion to approve the Public Affairs Committee Law Improvement Package passed unanimously. This package includes the two bills Anne Fisher mentioned; however, this does not guarantee that the bills will continue as part of the bar's package if section dissension is not resolved.

3. Juvenile Law Task Force Report

Action: The board unanimously approved the committee recommendation to approve the Juvenile Law Task Force Report.

F. ABA Lobby Day

Tim Gerking, Ed Harden, Bill Carter, David Thornberg, and Susan Grabe represented the Oregon State Bar in Washington, D.C. They met with the Oregon delegation and with Mr. Wu and Ms. Hooley personally. They attended a luncheon honoring Texas

and Oregon. Oregon was honored for its work with the Campaign for Equal Justice and the bipartisan cooperation between Senators Wyden and Smith. Mr. Rawlinson thanked all those participating for their willingness to take a leadership role.

8. Consent Agenda

Two CSF claims were removed from the Consent Agenda.

A. *Carvill v. Cumfer*

Mr. Greene inquired about the CSF Committee's recommendation to pay more than the claimant requested. Ms. Stevens explained that the committee's figure was based on the time spent by the lawyer at the rate of \$50/hour, as provided in his fee agreement.

Action: Mr. Greene moved, Mr. Comstock seconded, and the board unanimously voted to pay the claim in the amount of \$8,500 as requested by the claimant.

B. *SAFECO v. Medonich*

Discussion of the claim included: Was the claim a malpractice matter and therefore would fall under PLF; it appeared that SAFECO mishandled the claim and was falling back on the bar for its malfeasance; although SAFECO is an insurance company it meets the qualifications under the CSF rules as a claimant; and although SAFECO was partially to blame, the matter was an issue of dishonesty on the part of Medonich.

Action: Mr. Greene moved, Ms. Skerjanec seconded, and the board approve a motion to reject the claim (yes, 8 [Greene, Skerjanec, Yugler, Rawlinson, Menashe, Enbom, Eyerman, Gerking]; no, 5 [Worcester, Gaydos, Comstock, Hill, Wright]; absent, 3 [Fabien, Minson, Vieira])

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