

Oregon State Bar
Meeting of the Board of Governors
July 7-8, 2006
Open Session Agenda
6/16/2006 2:35 PM

(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, July 7, 2006, at 12:23 p.m. by President Dennis Rawlinson and adjourned at 12:48 p.m. The meeting was reconvened at 3:00 p.m. Friday, July 7, 2006, by President, Dennis Rawlinson and adjourned at 4:00 p.m. The meeting was once again reconvened by President, Dennis Rawlinson, Saturday, July 8, 2006, at 9:00 a.m. and adjourned for a final time at 11:40 a.m. Present at the first Friday meeting (12:23 p.m. – 12:48 p.m.) were Theresa Wright, Mark Comstock, Douglas Minson, Jon Hill, Ward Greene, Gerry Gaydos, Robert Vieira, Carol Skerjanec, Albert Menashe, Bette Worcester, Tim Gerking, John Enbom, Linda Eyerman, and Dennis Rawlinson. Staff present was Karen Garst, Teresa Wenzel, Margaret Robinson, Susan Grabe, Sarah Hackbart, and Jane Gillespie.

Present at the second Friday meeting (3:00 p.m. – 4:00 p.m.) were Bette Worcester, Dennis Rawlinson, Mark Comstock, Marva Fabien, Jon Hill, Carol Skerjanec, Linda Eyerman, Theresa Wright, Robert Vieira, John Enbom, Tim Gerking, Douglas Minson, Rick Yugler (by phone), and Ward Greene. Staff present was Karen Garst, Sylvia Stevens, Susan Grabe, and Rod Wegener. Present from the PLF was Ira Zarov, Tom Cave, Robert Cannon, and Louis Santiago. Present from the ONLD was John Marandas.

Present at the Saturday meeting were Carol Skerjanec, Mark Comstock, Robert Vieira, Albert Menashe, John Enbom, Dennis Rawlinson, Marva Fabien, Ward Greene, Bette Worcester, Jon Hill, Theresa Wright, Tim Gerking, Linda Eyerman, Gerry Gaydos, and Douglas Minson. Staff present was Karen Garst, Sylvia Stevens, Rod Wegener, Susan Grabe, Jeff Sapiro, Stella Manabe, and Teresa Wenzel. Also present were Tom Kranovich (9:30 a.m. – 10:30 a.m.), Diane Gruber (10:15 a.m. - 10:30 a.m.), and Velda Rogers (10:00 a.m. – 10:30 a.m.).

Friday, July 7, 2006

1. Work Session - Member Services Department

Members of the Member Services Department staff presented information to the board regarding the function, charge, and outcomes of the Member Services Department. Presenters were Margaret Robinson, Jane Gillespie, and Sarah Hackbart. Member Services assists the membership through some of the following services: Providing administrative assistance to committees, sections, and all bar entities; providing and coordinating leadership and volunteer opportunities; assisting in the appointments process; overseeing polls and elections; assisting in the judicial selection process; administrating the Leadership College; providing the new admittee packets to new attorneys; and providing administrative resources for Law Day projects. Through their efforts,

the relationship among the bar, sections, and committees has improved significantly and the Leadership College is becoming a highly successful and diverse program of the bar.

2. Report of Officers

A. Report of the President

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

Mr. Rawlinson, Ms. Garst, and Ms. Grabe met with the Chief Justice. He continues to take action on issues important to the Oregon Judicial Department. He indicated his opposition to Ballot Measure 24 and volunteered to bring the motion regarding the reauthorization of the affirmative action program before the HOD at its September, 16, 2006, annual meeting.

2. Clackamas County Bar Luncheon

Mr. Rawlinson attended a luncheon at the Clackamas County Bar Association at which the elimination of mandatory Elimination of Bias MCLE credits was discussed with local bar members.

3. Future of the Tent Show

Though Mr. Rawlinson and those working on the Tent Show are committed to the concept of the Tent Show, it is not financially feasible to continue and it is not possible to reverse the financial losses, so it will be canceled. Mr. Rawlinson would like to thank all of those who assisted in the project.

4. Expansion of Elimination of Bias Study Group

Mr. Rawlinson thanked the board for allowing him the latitude to add an additional member to the study group and thanked the group for its excellent work.

5. Gaelic Procedures

Mr. Rawlinson again reminded the board of the practice of eloquence and brevity when speaking during the board meeting. Mr. Enbom was in charge of the shillelagh.

B. Report of the President-elect

1. Eastern Oregon Trip

Mr. Menashe and Chris Mullmann, CAO Manager, had a great visit to Eastern Oregon. The topic of most discussions was the EOB issue. Participation, enthusiasm, and interest in the meetings were high. Local bar presidents are elected at different times during the year, making coordination and communication among them complicated. Mr. Menashe would like to make an effort to have elections for

all local bars officers at the same time of year. Mr. Menashe thanked Ms. Skerjanec for joining them in Ontario.

2. LCAB Meeting in Salem

Mr. Menashe spoke to the LCAB at its meeting in Salem. The program is very successful and the participants are very diverse with the average lawyer having 15 years of experience.

3. Miscellaneous

Mr. Menashe thanked the board for approving the revised Statement of Professionalism. He will attend the NCBP in Hawaii in August; he is working with Ms. Garst to plan the November retreat; and he accepted the ABA award for the CEJ at a recent reception.

C. Report of the Executive Director

1. 2005 Admittee Longitudinal Study

Ms. Garst discussed the longitudinal study of bar members who were admitted in 2005. The study found the average indebtedness of the students was \$80,000 and the beginning salary for many new lawyers was low. The board will receive a yearly update on the study.

2. BOG Meeting Requirements Survey

The survey concerning BOG meetings indicated board members would like more of a say in choosing locations of the board meetings, they prefer Friday night for the local bar social, and they would rather choose guest rooms at a reasonable rate rather than the lowest rate. Bar staff will meet each year with the president-elect to ascertain his/her meeting desires for the presidential year. The 2007 bar retreat will be at Tu Tu T'un Lodge in Gold Beach.

D. Oregon New Lawyers Division

1. Update

Mr. Marandas reported on the very successful ABA Young Lawyers Division Northwest Meeting held in Portland in May, for which the ONLD was the local host. Christine Meadows was the Oregon conference coordinator. There were about 450 attendees; 300 of which were outside of the northwest. The Honorable Ellen Rosenblum spoke at the Council Dinner on Thursday evening and ABA President Michael Greco spoke at the Friday evening event. Activities included a Friday welcoming reception for the attendees, education programs, and several service projects. Several Oregon corporations including Nike and Intel were sponsors and their lawyers attended the events. The ONLD is co-sponsoring a reciprocity CLE with Washington State Bar's young lawyers. The ONLD is also

preparing for the Super Saturday CLE, continuing its outreach to law schools, coordinating its essay contest, providing e-mentoring at Forest Grove High School, and preparing for its next meeting, which will be held in Ashland.

3. Professional Liability Fund

A. Update

Mr. Zarov indicated the PLF has the results of recent financial and claims audits. He will review the audits and present the findings to the board at its next meeting. The staff attorneys and defense counsel appear to be doing well and the audit includes suggestions about case handling and reserve policy. Mr. Zarov will make copies of the audit and forward it to the board. The PLF is conducting a security audit on accounting and case handling. There are very few holes in the system and it will have a complete report to the board at its next meeting. Currently, it is not known if it will be necessary to raise the PLF assessment for 2007. The PLF remains cautiously optimistic that it can hold the line on assessments. Actuarial information has been sent and the PLF is waiting for results. It will present its budget to the BOG at its September meeting. Jeff Crawford and other staff have traveled to Eugene, Newport, and Medford to discuss the excess program with the local bars. The PLF hopes to cover all communities in the next two to three years. Mr. Zarov will make a presentation on malpractice insurance at the NABE in Hawaii in August. Mr. Cave and Mr. Cannon discussed the PLF's investment strategy, indicating it is following the recommended direction of the stock market and the investment committee feels good about the direction it is going.

Action: Ms. Worcester moved, Ms. Skerjanec seconded, and the board unanimously approved the PLF recommended changes to PLF Policy 5.200.

Saturday, July 8, 2006

4. Special Appearances

A. Oregon Bench/Bar Commission on Professionalism

1. Statement of Professionalism

Ms. Garst presented the history of the proposed revisions to the Statement of Professionalism. Mr. Zarov worked with Judge Wittmayer on revising the statement.

Action: Mr. Comstock moved, Mr. Enbom seconded, and the board unanimously approved the revised Statement of Professionalism for submission to the House of Delegates.

5. Rules and Ethics Opinions

A. Proposed Amendment to Oregon RPC 3.5(b)

Ms. Stevens presented the Legal Ethics Committee's recommendation for amending ORPC 3.5(b), the rule on *ex parte* contact.

Action: Mr. Yugler moved, Mr. Gerking seconded, and the board unanimously approved the recommended change.

B. Proposed Formal Ethics Opinion – No. 2006-176

Ms. Stevens presented information concerning Proposed Formal Ethics Opinion – No. 2006-176, which addresses the ethical implications of a lawyer fulfilling multiple roles in a real estate transaction.

Action: Mr. Gaydos moved, Ms. Wright seconded, and the board unanimously approved the proposed formal ethics opinion for publication.

C. Proposed Formal Ethics Opinion – No. 2006-177

Ms. Stevens reported that Proposed Formal Ethics Opinion – No. 2006-177 will be brought back to the BOG at a later date; there is concern among the LEC members that the defense bar has not had sufficient opportunity to review and comment.

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

A. Access to Justice

1. Affirmative Action Program

Ms. Garst presented information concerning the budget and outcomes of the Affirmative Action Program. The program has increased the minority population in law practice by 136 over the last 30 years. While a relatively small number of individuals, statistically that is a 2500% increase in minority lawyers in Oregon. The minority population in Oregon is about 10% and the bar's goal is to have its attorneys reflect similar numbers. This is important not only to the bar, but to law firms who corporate clients are expecting diversity in their counsel. Statistics indicate that once the minority attorney passes the bar exam, he/she tends to remain in Oregon.

Ms. Eyerman indicated at the beginning of its study, the Access to Justice Committee had only a limited understanding of the impact the program had on Oregon. The committee learned that the affirmative action program benefits all minorities – be it gender, race, economic, sexual, ethnicity, or others. Some students are assisted directly by financial means, others by law firm supplements, and others through OLIO. The committee found the number of minority lawyers has grown 18 times faster than the new lawyer population in general.

Board members expressed thoughts on the approval of the resolution to continue the Affirmative Action Program including some of the following observations: The board cannot be quiet on this issue; the board needs to become a leader in this area

and advocate for the resolution; this is the face and spirit of what guides justice; this is not about political correctness, it is about justice; and this should be an issue that is powerful and should inflame our members to action. One board member expressed pride at being a part of what Oregon has done in this area; another expressed concern regarding the long extension of the program for another 15 years; another said he could see a change taking place where minorities are included more in social activities than in the past; and there was concern about how this issue will be communicated to the general membership – it is a complicated issue and takes education for the membership to be well informed. The members of the Affirmative Action Committee are traveling the state informing members of the importance of this issue. A special thanks was extended to Tom Kranovich for his participation and support. The resolution will be presented to the HOD by Chief Justice Paul J. De Muniz.

Action: The board unanimously approved the committee’s recommendation to forward the resolution to the House of Delegates for consideration at its annual meeting in September, 2006. If the resolution passes the HOD, it will be forwarded to the Supreme Court for final implementation.

B. Budget and Finance Committee

1. New Bar Center

The contract is still being negotiated, with the main issue being the warranties. An appraisal has been ordered on the bar center and there appears to be of interest in purchasing it. The bar would like to lock in rates for financing the new building as soon as possible because they are on the rise. Mr. Wegener indicated he is keeping a close eye on the changing financial obligations. The original budget included some “wriggle room” to account for changing interest rates and construction costs. We are still within allowable margins. The Budget and Finance Committee, in conjunction with Mr. Wegener, will continue watching the costs and will come back to the board if the interest rates or building costs are not favorable to the bar. We are still within budget for tenant improvements and we will remain so.

2. Update on Section Financial Matters

The committee reviewed funds held by sections. Although the bylaws discourage the accumulation of “excessive funds” in section accounts, it was decided the funds belong to the sections and it is their responsibility to monitor those funds. Currently, the bar assesses \$4.00 per section member, which is 50% of the cost of administrative fees. That amount will be raised to \$5.25 per member, as costs have risen in the last five years. In the future, the bar may look at charging the sections more than 50% of the administrative costs.

C. Committee on the Judiciary

1. Oregon Supreme Court Vacancy

Mr. Hill presented information concerning the pending vacancy on the Supreme Court, which the governor will fill by appointment. There are currently 11 applicants for the vacancy. The Committee on the Judiciary will be doing interviews July 27 and 28, 2006, at the OSB Center. Although the committee feels certain it has adequate members to conduct the interviews, if any board member would like to participate in the interview process, they may contact Mr. Hill. Mr. Hill asked for time on the board's August 4, 2006, agenda.

D. Executive Director Evaluation Committee

1. Update

The committee is looking at the process it will use to obtain a new Executive Director when Ms. Garst retires. The committee will provide the board with more information at the board's next meeting.

E. Public Affairs Committee

1. Political Update

Mr. Gaydos presented information regarding the coming legislative session. He indicated things are moving forward well and the committee will encourage the bar to be more active on certain issues. Ms. Grabe indicated there is only one new attorney-legislator, Susan Bonomici; however, there are several members of the legislature who are supportive of the bar. Mr. Gerking presented information concerning his trip to Washington, D.C. with Ms. Grabe and William Carter. They felt they had done well in their efforts to increase legal services funding, but at the last minute, the recommended amount was decreased substantially. In the end, additional funding was added on the House floor, but the amount was still less than originally requested. It is now on its way to the Senate where Senators Kennedy, Smith, and Wyden have agreed to support the increase.

F. Policy and Governance Committee

1. Report from Workgroup Regarding MCLE Elimination of Bias Requirement

Mr. Comstock reported that the final resolution is a compromise and nobody got everything they wanted. The proposals for multiple MCLE credit hours for EOB credits, credit for foreign language, changing the name to something broader, and a mandatory requirement for new admittees within the first five years of admittance were rejected by the workgroup. The workgroup recommended that the PLF's Learning the Ropes program could consider including EOB elements.

Mr. Comstock thanked Ms. Stevens for her assistance in keeping the minutes and drafting the proposed MCLE rule changes.

The board discussion included: the board is a governing body, only 20% of the membership even voted on this issue and the HOD voted it down twice; even if the

board and HOD approve the resolution, we need to be prepared for the Supreme Court to vote it down; this is not eliminating the EOB, it is just making it voluntary; even if the vote was from only 20% of the membership, they are the ones paying attention, and the board should listen; and the board should support the workgroup.

Action: The committee motion to accept the workgroup's recommendation and submit the proposed MCLE rule amendments to the HOD passed (yes, 13 [Skerjanec, Comstock, Vieira, Menashe, Enbom, Rawlinson, Fabien, Greene Worcester, Hill, Gerking, Gaydos, Minson]; no, 2 [Wright, Eyeran]; absent, 1 [Yugler]). The resolution will be forwarded to the Supreme Court for final approval.

2. Record Retention Policy

Mr. Comstock presented information concerning the committee's recommendation for the bar's records retention policy for regulatory records, which will be forwarded to the Supreme Court for final approval.

Action: The board unanimously passed the committee recommendation to forward the proposed regulatory records retention policy to the Supreme Court for its approval.

3. OSB Participation in Oregon Savings Growth Plan

Mr. Comstock presented information concerning the committee's recommendation that bar employees be authorized to participate in the Oregon Savings Growth Plan. There will be no financial consequences for the bar, as all funds invested are employee funds.

Action: The board unanimously passed the committee recommendation to participate in the Oregon Savings Growth Plan.

4. Section Membership for 50-year Members, Judges, and their Lawyer Staff

Mr. Comstock presented the committee recommendation that the bar encourage sections to allow 50-year members, judges, and their lawyer staff to attend CLEs at no charge.

Action: The board unanimously approved the committee recommendation that the bar encourage sections to allow 50-year members, judges, and their lawyer staff to attend CLEs at no charge. Ms. Stevens was asked to draft amendments to the Standard Section Bylaws to incorporate and institutionalize the policy.

7. Consent Agenda

Ms. Wright asked to change the minutes of May 5-6, 2006, indicating she was not present during the times indicated in parenthesis on May 6, 2006. Mr. Comstock indicated he did not attend the meeting with the Chief Justice as noted on Page 8 of the May 6, 2006, minutes.

Action: The board approve the minutes with changes by consent as well as the rest of the consent agenda.

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

Mr. Comstock reminded the board that the deadline for awards nomination is July 14 and there are currently very few nominations.

The keeper of the shillelagh for the next board meeting will be Mr. Minson.