

Oregon State Bar
Meeting of the Board of Governors
September 15, 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 the order in which they were considered by the Board.)

The regularly scheduled meeting of the Oregon State Bar Board of Governors was called to order Friday, September 15, 2006 at 12:45 by President Dennis Rawlinson and adjourned at 4:50 p.m. Present were board members Mark Comstock, John Enbom, Linda Eyerman, Marva Fabien, Gerry Gaydos, Tim Gerking, Ward Greene, Jon Hill, Albert Menashe, Douglas Minson, Dennis Rawlinson, Carol Skerjanec, Theresa Wright, Bette Worcester, and Rick Yugler. PLF Board members present were Ron Bryant, Robert Cannon, Lisa Miller, Amanda Walkup, Louis Santiago, and James Rice. OSB staff present was Sylvia Stevens, Teresa Wenzel, Susan Grabe, Rod Wegener and Jeff Sapiro. PLF staff members present were Ira Zarov, Tom Cave, Jeff Crawford, Cindy Hill, and Barbara Fishleder.

Friday, September 15, 2006

1. Work Session - Legal Service Program/OLF

Judith Baker, assisted by Debra Maryanov and Dawn Nelson, presented information on the operations of the Oregon Law Foundation and the Legal Services Program. Ms. Baker reported on her work with banks to increase the amount of interest paid on IOLTA accounts while reducing or eliminating the service charges assessed against those accounts. As a result of those efforts, coupled with an improving economy and increased participation in the program, IOLTA funds for the OLF are anticipated to be nearly \$3 million for 2006. Ms. Maryanov discussed pro bono programs, including their mission and outreach efforts as well as statistics regarding lawyer participation. Ms. Eyerman commended Ms. Baker and her staff on the work they have accomplished in the areas of access to justice and legal services.

2. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Paul R. De Muniz – September 5, 2006

Mr. Rawlinson and the Chief Justice received an update on efforts of the bar to educate the membership and the public about Constitutional Amendment 40, and of the Protect Our Oregon campaign in opposition, including the campaign's efforts to raise \$1000 from each of 1000 lawyers. The court is also gathering information from polling to help it understand what aspects of the issue are important to voters. On September 19, the court will hold a hearing to accept comments on whether or not to eliminate the Elimination of Bias MCLE requirement for lawyers. The court will decide the issue at its public meeting on October 10, 2006.

2. President's Award

Mr. Rawlinson announced that he had chosen to give this award to two trial lawyers who exemplify the best of the practice and who are generous in sharing their expertise with others—David Markowitz and Peter Richter.

3. Gaelic Procedures

The board was reminded of the importance of eloquence and brevity; Mr. Enbom passed the shillelagh to Theresa Wright.

4. Miscellaneous

a. Local Bar Reception

Mr. Rawlinson thanked Mr. Gaydos for his participation and planning of the Thursday evening reception at which the BOG met with members of the Lane and Douglas County bars.

b. Outreach

Mr. Rawlinson described his plan to speak to Rotary, the Portland Business Alliance, the Arlington Club, and other civic groups. He wants the business community to know how proud he is of the OSB and the unique contribution it makes. He believes it is particularly important to spread the word about the Client Security Fund, the Client Assistance Office, and other public protection programs.

B. Report of the President-elect

1. National Conference of Bar Presidents

Mr. Menashe reported that disclosing malpractice coverage was a big topic of conversation at the NCBP meeting in Hawaii and he noted that the OSB continues to be a leader in the area as the only state with mandatory coverage. He also was struck by the relative rarity of the good bench/bar/law school relationships that exist in Oregon.

2. November Retreat

The retreat will begin Thursday evening November 16 with a reception at Dry Hollow Vineyards in The Dalles. Friday morning the board will discuss emerging issues; in the afternoon, there will be interactive exercises to facilitate board members getting to know each other. Friday dinner will be at Three Rivers Grill in Hood River. The BOG meeting will be on Saturday, followed by a dinner honoring the outgoing board members. The board meetings will be at the Columbia Gorge Hotel, where the board will stay.

3. Miscellaneous

Mr. Menashe gave the keynote address at Willamette Law School's Professionalism Program for new law students in August and more recently he spoke at Judge Riggs' retirement ceremony. He reported that the Leadership College is doing very well. The faculty and programs have been outstanding and all of the fellows indicate they find it a positive experience. Mr. Menashe also reported that he is preparing a list of issues and projects for 2007 and invited board members to submit ideas.

C. Report of the Executive Director

1. ASAE Conference

In Ms. Garst's absence, this item will be carried over to the November meeting.

2. BOG Evaluation

Board members were reminded of Ms. Garst's request that they complete and return the evaluation forms in the board packet. She will compile the results for the November meeting.

D. Oregon New Lawyers Division

John Marandas reported on the ONLD's August meeting in Ashland, where it co-sponsored an ethics CLE with Rogue Women Lawyers. Mr. Gerking was one of the presenters. The recent reciprocity CLE, co-sponsored with Washington New Lawyers, was a huge success. ONLD is planning its annual Super Saturday CLE, which will be October 21, 2006, and has resumed the brown-bag lunch programs. Ongoing projects include improving communication. The ONLD has engaged a consultant to help with "branding" the ONLD and strategizing on how best to serve the members.

3. **Professional Liability Fund**

A. General Update

Mr. Zarov reported although the complexity and difficulty of claims is increasing, along with the cost of litigation, the number of claims is down. Claims activity is affected, to some degree, by Oregon's improving economy. The OAAP has initiated three new programs to address gambling addiction, balancing life with career, and divorce issues. Mr. Shafer will return from his sabbatical in October. Mr. Crow resigned from the PLF Board because of unreconcilable conflict issues involving his firm's policies and a replacement appointment is in the works. Two other board members' terms will expire at the end of the year and Mr. Zarov will have recommendations for the Board to consider in November.

B. Report on London Meetings with Reinsurers

The meetings went well. Mr. Zarov is hopeful that a large pending excess claim will not affect the rates significantly.

C. Financial Report

Mr. Zarov and Mr. Cave reported that the PLF will show a net loss in 2006 because of claim estimates that the actuaries put at a higher than anticipated level. Defense costs have been on the increase for the last 18-24 months and the PLF is working to identify efficiencies and cost savings in the way cases are handled. One idea is to reduce outside defense costs, using the defense panel more as consultants and having staff lawyers handle more of the cases. The 2007 budget includes an additional claims attorney and support staff to implement that idea.

D. Special Underwriting Assessment (SUA) Appeal

Mr. Zarov indicated that a special underwriting assessment has been assessed in a case because the defense or indemnity costs exceeded \$75,000. The lawyer has appealed the SUA to the BOG, in conformance with the bylaws. Mr. Rawlinson appointed Carol Skerjanec, Rick Yugler, and Tim Gerking to review the matter. Mr. Zarov will provide the necessary material to Ms. Stevens who will coordinate the subcommittee's review.

E. Approve PLF 2007 Budget and Assessment

Mr. Zarov reported that the PLF is proposing to increase the assessment in 2007 in a relatively small amount. If deferred until 2008, the increase might have to be greater; the PLF also did not want an increase to coincide with moving into the new bar building.

Motion: Ms. Skerjanec moved, Mr. Enbom seconded, and the board unanimously approved the motion to accept the 2007 budget and assessment.

F. Report of PLF and BOG Liaisons

Mr. Menashe expressed his enjoyment at serving as the PLF liaison in 2006 and said it has helped him to have a fuller understanding of the depth and complexity of the PLF's work.

4. HOD Agenda

1. Board Position on HOD Resolutions

The board took positions on delegate resolutions as indicated and designated a board member to speak on the issues only as deemed necessary:

a. BOG Resolution No. 1 – Continue Affirmative Action Program

Chief Justice De Muniz is the presenter for this resolution for the board; since he is not a delegate he cannot move its adoption. Unless someone else does, Mr. Gaydos will move the adoption of the resolution and Mr. Gerking will second the motion.

b. HOD Resolution No. 1 – Mileage Reimbursement for Attending Annual HOD Meeting

Motion: Mr. Yugler moved, Ms. Wright seconded, and the board voted unanimously to take no position on this resolution. Mr. Greene volunteered to provide an explanation of the board's position and the financial impact.

- c. HOD Resolution No. 6 – Termination of OSB Leadership College

Motion: Mr. Greene moved, Mr. Comstock seconded, and the board unanimously approved the motion to oppose this resolution. Mr. Yugler volunteered to present the board's position to the assembly.

- d. HOD Resolution No. 9 – Direct the Board of Governors to Establish a Requirement for Special Assessments above Normal Bar Dues

Motion: Ms. Eyerman moved, Mr. Gaydos seconded, and the board unanimously voted to oppose the resolution. Mr. Hill agreed to present the board's position and move to amend the resolution to exclude the CSF and PLF assessments from the resolution.

- e. HOD Resolution No. 15 – Adopt Fairness in Compensation for Those Practicing Public Defense Law

Motion: Ms. Wright moved, Ms. Eyerman seconded, and the Board unanimously voted to support this resolution. Ms. Wright agreed to speak to it.

- f. BOG Resolution No. 2 – In Memoriam

Ms. Eyerman will present the resolution for the board and read the names.

- g. BOG Resolution No. 3 – Proposed Amendments to Oregon Rules of Professional Conduct

Ms. Stevens will present the resolution for the board.

- h. BOG Resolution No. 4 – Proposed Revised Statement of Professionalism

Mr. Menashe will present the resolution for the board.

- i. BOG Resolution No. 5 – Opposes Judicial Districting Ballot Initiative

Mr. Gaydos will present the resolution for the board.

- j. HOD Resolution No. 2 – Elimination of Rule Prohibiting Post-trial Contact with Jurors

The board agreed by consensus to take no position on this resolution.

- k. HOD Resolution No. 3 – Encourage and Recommend Availability of Optional Form Pleadings

The board agreed by consensus to take no position on this resolution.

- l. HOD Resolution No. 4 – Amend ORCP 7A to Eliminate “True Copy” Certification

The board agreed by consensus to take no position on this resolution.

- m. HOD Resolution No. 5 – Direct the Board of Governors to Restore Armed Forces Advertising to the Oregon State Bar *Bulletin*

Motion: Mr. Gerking moved, Ms. Wright seconded and the board voted to oppose this resolution (yes, 9 [Enbom, Eyerman, Fabien, Gaydos, Gerking, Greene, Hill, Menashe, and Wright]; no, 6 [Comstock, Minson, Rawlinson, Skerjanec, Worcester, and Yugler]; absent, 1 [Vieira]). Mr. Comstock agreed to report the board’s position to the HOD, including that it was a split vote.

- n. HOD Resolution No. 7 – Adopt ABA Formal Opinion 06-441 as Position of Oregon State Bar

Motion: The board was unclear on the intent of the resolution as it related to working with the Oregon Public Defense Services Commission and Oregon Criminal Defense Lawyers Association to encourage legislative action. Mr. Enbom moved, Mr. Greene seconded, and the board unanimously voted to support the amended resolution to the extent it requires adopting the ABA opinion. Ms. Eyerman volunteered to present the board’s position at the HOD.

- o. HOD Resolution No. 8 – Direct the Board of Governors to Establish an Equal Fee Structure for Voluntary Online Continuing Legal Education Publication Subscription Service

Motion: Ms. Skerjanec moved, Mr. Menashe seconded, and the board unanimously voted to oppose this motion. Mr. Yugler agreed to present the board’s position to the HOD.

- p. HOD Resolution No. 10 – Direct the Board of Governors to Recommend Renumbering the Oregon Rules of Civil Procedure

Motion: Ms. Eyerman explained that Oregon’s civil procedure rules are unique in not being tied to the Federal Rules. Ms. Eyerman moved, Mr. Comstock seconded, and the board voted to oppose this resolution (yes, 11 [Comstock, Enbom, Eyerman, Fabien, Gaydos, Gerking, Hill, Minson, Rawlinson, Skerjanec, and Worcester]; no, 2 [Menashe, Wright]; abstain, 2 [Greene, Yugler]; absent, 1 [Vieira]). Ms. Eyerman agreed to present the board’s position.

- q. HOD Resolution No. 11 – Amend Rule 2 of the House of Delegates Procedures

Motion: Mr. Menashe moved, Mr. Gerking seconded, and the board unanimously voted to support this resolution. Ms. Fabien volunteered to present the board’s position at the HOD.

- r. HOD Resolution No. 12 – Direct the Board of Governors to Amend Article 26 of the Bar Bylaws

Motion: Mr. Gerking moved, Ms. Fabien seconded, and the board unanimously voted to oppose this resolution. Mr. Gerking volunteered to present the board's position to the HOD.

- s. HOD Resolution No. 13 – Direct the Board of Governors to Amend Article 10 of the Bar Bylaws

Motion: Mr. Greene moved, Mr. Gerking seconded, and the board voted to oppose this resolution (yes, 14 [Comstock, Enbom, Eyerman, Fabien, Gaydos, Gerking, Greene, Hill, Menashe, Minson, Rawlinson, Worcester, Wright, and Yugler]; no, 1 [Skerjanec]; absent, 1 [Vieira]). Mr. Comstock agreed to present the board's position to the HOD.

- t. HOD Resolution No. 14 – Support of Adequate Funding for Legal Services for Low-income Oregonians

Motion: Mr. Gerking moved, Mr. Greene seconded, and the board unanimously voted to support this resolution. Ms. Skerjanec volunteered to present the board's position to the HOD.

- u. HOD Resolution No. 16 – Oppose Taxpayer Bill of Rights Ballot Initiative

Motion: Ms. Eyerman moved, Mr. Gaydos seconded, and the board unanimously voted to support this resolution. Mr. Gaydos agreed to present the board's position to the HOD.

2. Board Position on Potential HOD Resolutions

- a. HOD Resolution to Sunset LRAP

Motion: Mr. Gerking moved, Mr. Enbom seconded, and the board unanimously voted to oppose the anticipated motion to suspend the rules to include this resolution on the agenda. The board also voted to oppose the resolution if it were to be added to the agenda. Mr. Gerking volunteered to present the board's position to the HOD.

3. Exclusion of Resolutions No. 9, 25 and 26

The board reviewed General Counsel's memo opining that HOD resolutions 9, 25, and 26 are improper since the HOD has no statutory authority to adopt or amend bylaws. There was discussion about why the items were not excluded when the preliminary agenda was approved by the board in August and the impression it will give to the HOD if they are excluded now.

Motion: After discussion, Mr. Gaydos moved, Mr. Gerking seconded, and the board unanimously voted not to exclude these items from the preliminary agenda, but to inform the HOD that the board has serious questions about whether the resolutions can be implemented if approved by the HOD. Mr. Rawlinson agreed to give a general explanation of the BOG's position at the beginning of the meeting and the designated board members volunteered to explain further as necessary as the items are presented for HOD consideration (Mr. Gerking agreed to present the BOG's position for HOD Resolution #25; Mr. Comstock agreed to present the BOG's position for HOD Resolution #26; and Mr. Greene agreed to present the BOG's position for HOD Resolution #9).

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

A. Budget and Finance Committee

1. New Bar Center

Mr. Menashe reported that progress has been delayed because Tru Green is unable to move to its new location until some environmental issues are resolved. Opus has 30 days after Tru Green vacates to cancel the contract due to cost of materials, with a “drop dead” date of December 31, 2006. Interest rates have declined over the past several weeks, making financing more attractive. Interest in the existing bar center continues strong, with offers in the \$7 million range.

2. 2007 Executive Summary Budget

The Budget & Finance Committee directed the CFO to include \$15,000 in the 2007 budget for an economic survey. The Budget & Finance Committee also had preliminary discussions about whether and how much funds should be allocated to the Classroom Law Project and similar law-related contributions. The 2007 budget will be on the November agenda for the board’s approval.

B. Member Services Committee

1. OSB Awards

Mr. Yugler reported that the committee has not yet made its final decision on all the awards and will have recommendations for the board in November.

2. CLE Online Publications’ Early Bird Discount

The committee recommends an “early-bird” discount on the online CLE publications (called “BarBooks™”) of \$100 per subscription. That will result in individual subscribers having a larger discount than individual members of law firms do.

Motion: The board voted unanimously to accept the committee’s recommendation. Mr. Yugler agreed to announce the board’s decision to the HOD on Saturday.

C. Policy and Governance Committee

1. Standard Section Bylaws

Motion: The board voted unanimously to approve the committee’s recommendation to amend the Standard Section Bylaws to include language encouraging sections to allow complimentary membership and CLE registration to 50-year members, and to judges and their lawyer staff. The proposed bylaw change was before the board in July to satisfy the one-meeting notice requirement.

General Counsel reported that she had received a call inquiring whether the board considered that judges and their staff who accept complimentary section benefits might violate the Government Standards & Practices. Several board members commented that they were aware that many groups have traditionally offered complimentary admission to events to judges for years without any problem and that they do not see this as a problem. No action was authorized.

2. Revision of Bar Bylaw 5.1 Regarding Election of ABA Delegates

Motion: The board voted unanimously to waive the one-meeting notice rule and adopt the revision to Bylaw 5.1 to clarify that election for ABA delegates is held in conjunction with the OSB HOD elections, but not the BOG elections.

D. Public Affairs Committee

1. Update on Political Activities Related to Upcoming Election Cycle

Mr. Gaydos reported that the board's statement regarding Constitutional Amendment 40 had been included in the Voters' Pamphlet. There are a variety of speaking opportunities coming up and committee members will be contacting editorial boards to offer information about the measure. Position statements will be distributed to the board members to assist them in responding to questions. Information about all upcoming election issues will be on the bar's website within the next week. Mr. Gaydos reported that the bar will actively work to defeat the TABOR amendment, but will not take a formal position opposing it.

2. Metro Recycling Initiative

Motion: The board unanimously approved the Public Affairs Committee recommendation to endorse Metro's Recycle at Work Partnership to increase recycling rates in the Portland Metro Area and to show that metropolitan area businesses care about the environment and using resources efficiently.

E. Public Member Selection

1. New Public Member

Mr. Enbom explained the committee's recommendation to appoint Eugene Police Chief Robert Lehner to the public member position that Mr. Enbom will be vacating at the end of 2006. It was noted that if Mr. Lehner is approved, all the public members will be current or former public employees. Mr. Enbom acknowledged that concern, but the committee found that the pool of qualified candidates was heavily weighted to the public sector. In the face of that, the committee felt that geographic diversity was equally important and all the continuing public members are from the Portland metropolitan area.

Motion: The board voted unanimously to approve Mr. Lehner as the new public member for a four-year term beginning January 1, 2007.

6. Consent Agenda

Mr. Yugler pointed out that the minutes of the August 4, 2006 meeting incorrectly show him as absent. Mr. Gerking noted that the Appointments Committee recommendations should include appointments to the Ninth Circuit Judicial Conference, as shown on the supplemental exhibit. There being no objections, the consent agenda was adopted with the foregoing corrections.

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

None.