

Oregon State Bar
Meeting of the Board of Governors
November 18, 2006
(revised March 13, 2007)
Open Session Minutes

The Oregon State Bar Board of Governors met in open session beginning at 12:00 p.m. on November 18, 2006 in Hood River, Oregon. The following minutes reflect the order in which items appeared on the Board's agenda.

The regularly scheduled meeting of the Oregon State Bar Board of Governors was called to order Saturday, November 18, 2006, at 12:35 p.m. by President Dennis Rawlinson and adjourned at 4:30 p.m. Present were board members Theresa Wright, Tim Gerking, Albert Menashe, John Enbom, Gerry Gaydos, Ward Greene, Linda Eyerman, Dennis Rawlinson, Rick Yugler, Bette Worcester, Mark Comstock, Jon Hill, Carol Skerjanec, Marva Fabien, and new board members Robert Lehner, Robert Newel, and Ann Fisher. Staff members present were Karen Garst, Sylvia Stevens, Susan Grabe, and Teresa Wenzel. Present from the PLF were Louis Santiago and Ira Zarov. Also present was John Marandas (outgoing ONLD Chair). Attending via telephone were Josh Newton (incoming ONLD Chair), Leslie Kay, and Mark Williams.

1. Election of President-Elect and Swearing in of New Members.

The board cast written ballots for three candidates: Tim Gerking, Carol Skerjanec, and Rick Yugler. Rick Yugler was elected as president-elect after two rounds of voting.

On the first ballot Mr. Gerking received five votes [Gaydos, Menashe, Gerking, Worcester, Rawlinson], Ms. Skerjanec received two votes [Skerjanec, Greene], and Mr. Yugler received seven [Eyerman, Enbom, Fabien, Hill, Comstock, Yugler, Wright]. No candidate having received a majority, a run-off was held between the two candidates with the highest number of votes. Mr. Yugler was elected president-elect on the second ballot. Mr. Yugler received eight votes [Hill, Fabien, Eyerman, Enbom, Greene, Yugler, Comstock, Wright] and Mr. Gerking received six votes [Rawlinson, Gerking, Skerjanec, Worcester, Menashe, Gaydos]. Two board members were absent [Minson, Vieira].

Following the election of the president-elect, new board members Robert Newell, Ann Fisher, and Robert Lehner were sworn in.

2. Report of Officers

A. Report of the President

Mr. Rawlinson reported on his meeting with the Chief Justice. Among topics discussed were the bar's offer of complimentary CLE registration for judges and the Policy and Governance Committee's recommendation to expand the eligibility. Chief Justice De Muniz noted that accepting free registration might present ethical issues for judges, but the issue was being researched and the judges will have to decide the appropriate course of action. The Chief Justice indicated his support for the concept of a statewide identification system for lawyers based on cards issued by the bar.

Mr. Rawlinson complimented the board and staff on the success of the HOD meeting in

September. He encouraged the BOG to continue working on member participation and improved communication. Mr. Rawlinson reiterated his pride in the Oregon State Bar for having the only mandatory malpractice program in the United States, for maintaining a healthy Client Security Fund, and for its support of the Campaign for Equal Justice. He plans to continue speaking to civic groups and touting Oregon's great lawyers. Mr. Rawlinson reminded BOG members of the December 7 Awards Dinner; he also announced that the Wallace P. Carson, Jr. Award for Judicial Excellence will be awarded to Justice Carson in the spring of 2007.

Mr. Rawlinson thanked the board and staff for their efforts in opposition to Initiative Measure #40. He also reminded board members to be careful not to refer to their board positions when speaking out on political issues except where the statement has been approved by the board or the president.

Gaelic procedures were explained, the Connemara stone was circulated and Ms. Wright passed responsibility for the shillelagh to Ms. Eyerman.

B. Report of the President-elect

Mr. Menashe attended several law-related events, including the Lincoln County Bar dinner with Chief Justice De Muniz. Mr. Menashe is working with staff to plan the 2007 Bar Leader Conference; his goal is to make it "pithier" and to have presentations by successful leaders of sections and other groups. Mr. Menashe also reported on the successful first year of the Leadership College. He has been talking to Judge Aiken about getting a contribution to the College from the U.S. District Court's fund for lawyer training. He will be meeting with her on December 8 and expects to have a report for the next Board meeting.

C. Report of the Executive Director

Ms. Garst reported on the ASAE Conference that she attended in August. She was impressed by the number of associations represented that are very active and have good volunteer participation. She was also intrigued with ASAE's Innovation Council, which offers funding for new ideas and pilot projects. Ms. Garst recommended a book she is reading, *7 Measures of Success*, which identifies what makes some associations great. She believes the OSB does many of the right things through our performance measures.

Ms. Garst asked Ms. Stevens to review briefly the two memos relating to board service that were included in the agenda packet. Among the highlights mentioned were the public nature of board meetings and minutes and the importance of being aware of the bar's reputation as a credible source of information. BOG members were also asked to confirm the accuracy of their contact information for the BOG Handbook.

D. Oregon New Lawyers Division

John Marandas reported on the ONLD's successful Super Saturday program. It was held at the bar center this year, which resulted in considerable cost saving. There was a record number of attendees. The ONLD Communications Task Force continues to develop methods

for better communication with membership, the public, and the bar. Recently, the group met with a “branding” consultant to create a logo and identify the ONLD’s message. The ONLD brand is “peace of mind,” through advocacy, access, leadership, and education. The ONLD recently had elections for new officers and the chair-elect is a fellow of the Leadership College.

Mr. Marandas introduced the incoming ONLD chair, Josh Newton from Bend. Mr. Newton thanked Mr. Marandas for his service to the ONLD and especially commended him for the success of the ABA YLD Conference in May. Mr. Newton reiterated the ONLD’s frustration with the membership’s lack of knowledge of what the ONLD is and what it has to offer and explained that communication and outreach will continue to be a focus in the coming year.

3. Professional Liability Fund

A. PLF Update

Mr. Zarov began with a general update. He noted that the number of claims this year continues to be lower than expected and that the smaller claim count, if it continues, will be financially beneficial to the PLF. He noted that investments were doing well also. Mr. Zarov then said that although those two developments were positive, the cost of defending cases continued to increase and those costs, combined with the overall severity for the year, will be the largest component of the PLF's financial performance. Mr. Zarov informed the Board that strategies to lower defense costs are in the process of being developed. Mr. Santiago then thanked the BOG and the BOG liaisons for their work during his term as chair of the PLF. He said he thought that the relationship between the BOG and BOD was excellent and that it was in large part to the attention that the boards of both organizations had given to communication and cooperation.

B. Revision of PLF Policy 4.500

Mr. Zarov explained the proposal to revise PLF Policy 4.500 to require that all defense panel members carry excess insurance. Mr. Greene moved, Ms. Worcester seconded, and the motion passed unanimously.

C. Primary, Excess, and Pro Bono Coverage Plans

Mr. Zarov outlined the primary, excess, and pro-bono coverage plans for 2007 and explained that little was changed. Mr. Comstock moved, Mr. Gaydos seconded, and the board unanimously approved the plans as presented.

D. Excess Insurance Rates

Mr. Zarov reviewed the proposed rates for excess coverage in 2007, and noted that the coverage limit is \$700,000 and not \$7 million as indicated in the agenda materials. Ms. Worcester moved, Mr. Gaydos seconded, and the board unanimously approved the 2007 excess coverage rates.

4. Special Appearances

A. OSB Elder Law Section

Mark Williams and Leslie Kay appeared by telephone to explain the Elder Law Section's request for permission to join in the National Health Law Project's *amicus curiae* brief to the US Supreme Court in the case of *Watson v. Goldberg*. Ms. Stevens questioned whether the issue satisfies the requirements of Bylaw 2.105, but Mr. Williams assured the board that the legal issues are of great importance to the section.

Mr. Greene moved, Ms. Wright seconded, and the board unanimously approved the Section's *amicus* appearance. Mr. Comstock indicated he may have a potential conflict of interest; therefore, he did not participate in discussion, but did vote.

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

A. Access to Justice Committee

On behalf of the Access to Justice Committee, Ms. Eyerman moved approval of the Loan Repayment Assistance Program Policies and Guidelines. A nine-member advisory committee comprised of a prosecutor, a defense lawyer, representatives from the ONLD, representatives from the three Oregon law schools, and three at-large members will be appointed by the BOG. Applications are due April 15, 2007, and the first four assistance loans will be disbursed on July 1, 2007. Ms. Eyerman commended the members of the committee and Debra Maryanov for their hard work putting the program together. The board passed the motion unanimously and thanked Ms. Eyerman for her work on the program.

B. Budget and Finance Committee

1. New Bar Center

Mr. Menashe reported that the bar center project is moving forward. OPUS has issued two press releases recently mentioning the OSB as the principal tenant. Interest rates continue to fall and the committee is exploring the ability to "lock-in" a rate. Interest in purchasing the Meadows Road building continues to be strong. Mr. Menashe expressed gratitude to Ward Greene, Rod Wegener, and Karen Garst for their efforts in making this project a success. He also announced that Mr. Greene will chair the Budget and Finance Committee in 2007.

2. 2007 OSB Budget

On behalf of the Committee, Mr. Menashe moved adoption of the 2007 Budget as presented in the agenda materials. The proposed budget continues the Classroom Law Project grant at the 2005 level. Mr. Yugler suggested that board members might be willing to make contributions to make up the difference and emphasized the value of the CLP programs. The board approved the budget unanimously.

C. Committee on the Judiciary

Mr. Hill reported that the committee has identified a list of issues that should be pursued in the future. In the meantime, however, many of the matters are already in the hands of other

groups and the committee will sunset. The committee continues to believe that judicial evaluations are a good idea, but recognizes that this is not the time to pursue them. The committee is also concerned about the public's lack of knowledge about the judiciary and the judicial system and hopes that public education and judicial outreach will continue to be high priorities for the bar. Mr. Hill expressed his hope that the committee can be revived as needed in the future.

Mr. Hill also noted that there will be a vacancy on the Court of Appeals, due to Judge Linder being elected to the Supreme Court. The committee is working on a timeline for applications and interviews in order to meet the Governor's schedule. A special meeting will be needed in January for the BOG to approve the committee's recommendations. Efforts are underway to update the questions since so many of the candidates have recently been through the process.

D. SUA Review

Mr. Yugler, Ms. Skerjanec, and Mr. Gerking were appointed pursuant to OSB Bylaw 23.601(b) to review the covered parties' request for review of the PLF's assessment of a Special Underwriting Assessment. Mr. Yugler presented the committee's report. The principal argument of the covered parties is that a SUA is waived under the PLF policy if the liability is purely vicarious. The committee agreed with the PLF that the issue of liability was never formally determined because the case was settled. Therefore, the covered parties' right to waiver of the SUA is not established. The committee also agreed with the PLF that the SUA was not released by agreement of the parties because it is not reimbursement for past claim expense. Mr. Yugler moved, Mr. Enbom seconded, and the board voted unanimously to uphold the decision of the PLF.

E. Executive Director Evaluation and Contract Renewal

An Executive Session was announced at 4:00 p.m. Ms. Skerjanec presented the report of the Executive Director Evaluation Special Committee concerning the Executive Director's performance in 2006. The board returned to open session at 4:15 p.m.

Ms. Skerjanec presented the committee motion and the board unanimously voted to renew the Executive Director's contract for 2007 with a 5% salary increase over 2006.

F. Policy and Governance Committee

1. Revision of Bar Bylaw 4.5

Mr. Comstock explained the committee's motion on this housekeeping amendment to clarify that the President's Special Award of Appreciation will be given during the OSB Annual Awards Dinner, rather than at the former Annual Meeting. Ms. Wright moved, Mr. Gaydos seconded, and the board voted unanimously to waive the one-meeting notice requirement of Bylaw 26. The board then voted unanimously to amend Bylaw 4.5 as proposed.

2. Changes to Bar Committee Charges

Mr. Comstock reviewed the changes that the Joint Bar/CPA, Pro Bono, and Judicial Administration Committees are requesting in their committee charges. The Policy and Governance Committee recommended approving the requested changes and so moved. The board approved the changes unanimously.

3. Wallace P. Carson, Jr. Award for Judicial Excellence

Mr. Comstock presented the Policy and Governance Committee's recommendation for a new Bylaw 4.7 to enable the Wallace P. Carson, Jr. Award for Judicial Excellence that was suggested by the Member Services Committee. During the board's discussion, it was suggested that the phrase "is designed to" be deleted and the word "honor" be changed to "honors." Mr. Comstock moved, Ms. Wright seconded, and the board voted unanimously to waive the one-meeting notice requirement of Bylaw 26. The board then voted unanimously to adopt new Bylaw 4.7 as amended during discussion.

The new Bylaw 4.7 reads as follows:

The Wallace P. Carson, Jr. Award for Judicial Excellence honors a member of the state's judiciary. The criteria for the award are as follows: 1) a current or retired state court judge or federal judge, 2) who has made significant contributions to the judicial system, and 3) who is a model of professionalism, integrity, and judicial independence.

4. Complimentary CLE for Judges

The Policy and Governance Committee recommended a further amendment to Bylaw 16.200 to extend the offer for complimentary CLE attendance to tribal and federal judges. Ms. Garst explained that she had received inquiries from members of those groups questioning the board's rationale for limiting the offer to state court judges. Several board members remarked that the purpose of offering free CLE to state judges was in recognition of their relatively low pay and that extending the offer would have financial consequences. Others commented that even if expanded as suggested, the offer should be limited to judges who are members of the Oregon State Bar. Staff was asked to revise the bylaw in accordance with this discussion for the Policy and Governance Committee's review in January.

G. Public Affairs Committee

1. Update on November 2006 Elections

Mr. Gaydos updated the board on the bar's participation in the November election, including the resounding defeat of Constitutional Amendment 40 regarding the election of judges by geographical district. He also mentioned the overwhelming defeat of Jail 4 Judge in South Dakota. The Committee continues to discuss the appropriate involvement of the bar in political campaigns.

On a local level, state elections followed the national trend and most initiatives intended to limit government failed. The Oregon Senate stayed democratic with 17 Democrats, 11 Republicans, and two Independents. Leadership in the Senate will likely stay the same. Democrats took control of the house with a narrow margin of 31 Democrats and 29 Republicans. Jeff Merkley will be Speaker of the House and Dave Hunt, Majority Leader. It looks like Greg Macpherson will probably chair the House Judiciary Committee.

2. E-Filing Task Force

Mr. Comstock reported on the completion of the E-Filing Task Force Report, which was distributed to board members. The task force concluded that e-filing is feasible and may even pay for itself. The Chief Justice is strongly supportive of moving forward with e-filing as soon as possible. On behalf of the task force, Mr. Comstock moved and the board unanimously adopted the E-Filing Task Force Report.

3. State Court Facilities Task Force

The task force's last meeting is scheduled for December 4, 2007. It is completing a vision statement and recommending strategies for financing the construction of new facilities.

4. New Ballot Measures

Mr. Gaydos reported on three ballot measures for which the Attorney General has certified ballot titles for the November 2008 election. Two of the measures attempt to limit attorney fees in contingent fee cases and the third would require courts to sanction lawyers who file frivolous claims. The bar did not participate in challenging the draft ballot titles, but may be involved in the opposition campaigns if any of the measures makes it to the ballot. Mr. Yugler pointed out that the bar should have a process in place to ensure timely opportunity to challenge ballot titles in the future. Ms. Grabe commented that the initiative process is continuing to be heavily used; the bar has joined with other groups to oppose challenges to judicial independence; and we need to be prepared to respond quickly and appropriately.

6. **Consent Agenda**

Mr. Rawlinson noted that additional names have been added to the Appointments Committee report. With those additions, Mr. Hill moved, Ms. Skerjanec seconded, and the board unanimously approved all consent agenda items.

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

Nothing was presented.