

**Oregon State Bar**  
**Meeting of the Board of Governors**

February 23-24, 2007

*Revised April 25, 2007*

**Open Session Minutes**

*The Oregon State Bar Board of Governors met on February 23 and 24, 2007 in Salem, 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 Friday, February 23, 2007, at 1:20 p.m. by President Albert Menashe and adjourned at 5:30 p.m. Present from the Board of Governors were Linda Eyerman, Marva Fabien, Albert Menashe, Bette Worcester, Carol Skerjanec, Rick Yugler, Tim Gerking, Gerry Gaydos, Ward Greene, Bob Vieira, Terry Wright, Bob Lehner, Kathy Evans, Bob Newell, and Ann Fisher. Present from the Oregon State Bar staff were Karen Garst, Sylvia Stevens, Rod Wegener, Susan Grabe, Jeff Sapiro, and Teresa Wenzel. Present from the Professional Liability Fund were Ira Zarov, Tom Cave, and Bob Cannon. Also present were Kevin VandenBrink and Jim Hand (Macadam Fores), Cal Henry (President, Oregon Association for Black Affairs), and Josh Newton (Oregon's New Lawyers Division).

**Friday, February 23, 2007**

**1. Purchase of OSB Center**

At 1:20 p.m., the President announced an executive session pursuant to ORS 192.660(2)(f) and (h) for the board to consider offers to purchase the OSB Center in Lake Oswego. After discussion, the president declared the executive session concluded and the board continued in open session.

**Motion:** The board approved a Budget and Finance Committee motion to sell the Oregon State Bar Center to Mike Kelley for \$8 million (yes, 14 [Eyerman, Fabien, Menashe, Gerking, Skerjanec, Worcester, Yugler, Gaydos, Greene, Vieira, Wright, Newell, Fisher, Lehner]; abstain, 1 [Evans]; absent, 1 [Hill]).

**2. Report of Officers**

A. Report of the President

Mr. Menashe welcomed the new members of the BOG. He expressed his desire that the Board continue its practice of engaging in collegial and productive discussion of issues. He also indicated that he would like to allow sufficient time for thorough discussion, which may result in longer meetings.

B. Report of the President

1. Investitures

Mr. Menashe attended several investitures including those of Justice Virginia Linder, Judge Judith Matarazzo, Judge Cheryl Albrecht, and Judge Leslie Roberts. He encouraged other board members to attend investitures in their regions, as they were able.

2. Meetings with Chief Justice Paul R. De Muniz

Mr. Menashe met with the Chief Justice three times and would like to keep communications open by weekly contact. The Chief Justice's number one concern is judicial salaries and the bar has agreed to do what it can to assist him. To that end, Mr. Menashe made judicial salaries his focus during recent media interviews. The Chief Justice is also concerned about the HOD resolution regarding Elimination of Bias and is interested in reviewing additional options from the board. Mr. Menashe stated the Policy and Governance Committee would be dealing with that issue at its March 2007 meeting.

3. Meetings and Speaking Engagements

a. Speaking Engagements

Mr. Menashe had several recent speaking engagements which included Lewis and Clark College, Classroom Law Project, the Oregon State Bar staff, Washington and Marion County Bars, and the Bar Leader Conference. Mr. Menashe also met with Cal Henry, president of Oregon Association for Black Affairs. Mr. Henry attended the board meeting and Mr. Menashe introduced him to the board.

b. Leadership College Grant

Mr. Menashe met with Judge Aiken, who reported that the federal courts have an appellate grant program for which the Leadership College may qualify. Ed Harnden is in the process of writing the grant application.

c. CLE Seminar at Sea

Mr. Menashe reminded the board of the CLE Seminar at Sea program and indicated he will be attending. He encouraged other board members who are interested to sign up for the cruise and CLE.

d. Editorial Visits

During his meetings with the editors of the Portland Business Journal and The Oregonian, Mr. Menashe focused the discussion on judicial salaries.

e. OAAP/SLAC Study

Mr. Menashe met recently with Barbara Fishleder to discuss her concerns about conflict between the roles of the OAAP and SLAC. Mr. Menashe has appointed Dr. John Enbom, former BOG member, to chair a task force consisting of individuals from the OAAP, the BOG, SLAC, and the PLF to study the issues and report with recommendations to the BOG later in the year.

4. ABA Mid-Year Meeting

Mr. Menashe attended the mid-year meeting of the National Conference of Bar Presidents during the ABA Mid-year meeting in Miami. He reported his view that Oregon is ahead of many other states in its handling of malpractice insurance and other issues. He attended a reception of the Hispanic National Bar Association and met its president, Jimmie Reyana. Mr. Menashe congratulated Mr. Wegener on being chosen as President-elect of the National Association of Bar Executives.

5. Ground Breaking Ceremony for New Bar Center

Mr. Menashe reminded the board of the groundbreaking ceremonies for the new Bar Center to be held February 27, 2007 at 11:30 a.m. He encouraged BOG members to attend, as they are able.

6. Posting Discipline History on the Web

Several members have expressed concern regarding the posting of discipline information on the bar's website. Ms. Garst asked all such correspondence be forwarded to her and she will have staff compose an appropriate response.

7. Miscellaneous

a. Reciprocity with Alaska

The Alaska Bar has indicated interest in having admission reciprocity with Oregon. Ms. Garst will discuss the issue with Executive Directors of other states to see if there is additional interest before we move forward.

b. Resolution Thanking Michael Sweeny

**Motion:** Mr. Sweeny is retiring from the PLF. Mr. Gaydos moved, Ms. Worcester seconded, and the board unanimously approved and signed a resolution thanking Michael Sweeny for his years of service.

C. Report of the President-elect

1. 2007 NCBP Mid-year meeting

Mr. Yugler echoed Mr. Menashe's observations regarding Oregon's position as a leader in many areas. Oregon has mandatory malpractice insurance, the Classroom Law Project, the Leadership College, and a good relationship with the judiciary. He also observed that other states face some of the same problems as Oregon, such as judicial salaries and funding for court facilities.

2. National Caucus of State Bar Associations

Discussion included the view that the 9<sup>th</sup> Circuit will not be split, that the Durban Bill (a loan assistance program) will be passed, that there will be funding for 50 new federal judgeships, and that judicial pay for federal judges will be addressed by Congress.

3. Other Meetings

Mr. Yugler reported that he had successful meetings with the Bar Leader Conference, Leadership College Advisory Board and fellows, and the Portland Business Journal.

4. Investitures

Mr. Yugler congratulated Mr. Menashe on his comments at the investitures and reiterated that the board members should either try to attend and/or inform Mr. Menashe of any investitures of which they know.

5. Miscellaneous

Mr. Yugler informed the board that the tentative meeting locations for 2008 are Salem, Salishan, Klamath Falls, and Cannon Beach and there will most likely be a futures conference in Bend in September 2008 in conjunction with the HOD meeting.

D. Report of the Executive Director

1. NABE Conference

Ms. Garst reported that the NABE Conference allowed her to meet with other Executive Directors and get a sense of future trends in the legal profession.

### 3. Professional Liability Fund

#### A. General Update

Mr. Zarov introduced Tom Cave and Bob Cannon to the new members of the BOG. Mr. Cave and he updated the board on the PLF's 2007 claims liabilities, the excess program's preliminary results, and general issues at the PLF. The primary program is well within its budget and the overall budget for the two programs is close to breaking even. Issues that affect the costs are the number of new claims, the size of the claims, and what is happening to pending claims. During the last five years, claim size and defense costs have been going up, at the same time, the number of new claims is down substantially to lower costs. The PLF is going to keep cases in-house longer and create a task force to review how cases are handled. The PLF is also looking to the new building and ascertaining what new technology it can utilize there.

#### 1. Approve Change to PLF Policy 4.400

Mr. Zarov explained the PLF's proposal to amend Policy 4.400 to require notice to the Board of Directors when a claim settlement involves the acquisition of real property. There was discussion about the need to ensure that the Board of Governors also is notified of any settlement involving the acquisition of real property since the true titleholder is the OSB. Mr. Zarov will work with Ms. Stevens to develop a procedure to ensure timely notice of such settlements.

**Motion:** Mr. Greene moved, Ms. Wright seconded, and the board voted unanimously to approve changes to PLF Policy 4.400 relating to the procedures for claim settlements that involve the PLF's acquisition of real property.

#### 2. Approve Changes Relating to Board Member Conflicts and Removal Procedures from PLF Board -- Articles 3 and 11 of PLF Bylaws

Mr. Zarov explained the PLF's proposal to amend Article 11 of its bylaws to allow a 30-day period to PLF board member's firm to withdraw from an inadvertently accepted legal malpractice case; and to amend Article 3 to clearly express the authority of the PLF Board to remove a board member who fails to resign if the member's firm is not in compliance with Article 11.

**Motion:** Mr. Gerking moved, Ms. Wright seconded, and the board voted unanimously to approve the changes to PLF Bylaws Article 3 and 11.

#### 4. Rules and Ethics Opinions

##### A. Proposed Formal Ethics Opinions

###### 1. Issues Conflicts/Positional Conflicts No. 2005-144 and 2007-XXX

Ms. Stevens presented information and answered questions concerning the proposed formal ethic opinions. The new opinion will provide needed guidance on positional conflicts; the revision of the existing opinion will serve to give lawyers notice that there are statutory as well as ethical implications to seeking public records from a represented public body.

**Motion:** Mr. Yugler moved, Ms. Wright seconded, and the board voted unanimously to approve Formal Ethics Opinion 2007-XXX.

**Motion:** Ms. Wright moved, Mr. Gaydos seconded, and the board voted unanimously to approve the revisions to Formal Ethics Opinion 2005-144.

##### B. Proposed Amendments to Bar Rules of Procedure

Mr. Sapiro presented information and answered questions concerning the proposed amendments to the Bar Rules of Procedures. Most changes were housekeeping issues, including changes to make citations in the rules consistent with the Oregon RPCs. With regard to BR 1.12, the Board expressed agreement with Mr. Sapiro's view that requiring out-of-state members to designate an in-state agent for service of process was unnecessarily burdensome. At the same time, several board members questioned whether the Bar is affording accused lawyers adequate due process if the only requirement for service is by first class mail. It was suggested that first class mail should be an acceptable method of service only if personal service or service by certified mail, return receipt requested, is not effective.

**Motion:** Mr. Yugler moved to adopt the changes suggested by Mr. Sapiro. Ms. Wright seconded the motion. Mr. Menashe then made a friendly amendment to consider each rule separately. The board voted unanimously to approve the recommended changes to BR 1.4, BR 1.10, BR 2.1(f)(2), BR 2.4(b)(2), BR 4.2, BR 4.9, BR 5.3(a), BR 8.2(c)(iii), and BR 10.7.

**Motion:** Mr. Gerking moved, Ms. Skerjanec seconded, and the board passed the motion to amend changes to BR 1.12 to provide notice by personal service or certified return receipt mail; or by regular U.S. mail (yes, 14 [Eyerman, Fabien, Menashe, Worcester, Skerjanec, Yugler, Gerking, Gaydos, Greene, Vieira, Wright, Evans, Lehner, and Fisher]; no, 1 [Newell]; absent, 1 [Hill]). The board then approved the proposed change to BR 1.12 as amended (yes, 14 [Eyerman, Fabien, Menashe, Worcester, Skerjanec, Yugler, Gerking, Gaydos, Newell, Vieira, Wright, Evans, Lehner, and Fisher]; no, 1 [Greene]; absent, 1 [Hill]).

**Motion:** Ms. Wright moved and Ms. Evans seconded the motion to remove the final paragraph from revised BR 12.2. The motion failed (yes, 2 [Wright, Evans]; no, 13 [Eyerman, Fabien, Menashe, Worcester, Skerjanec, Yugler, Gerking, Gaydos, Newell, Vieira, Lehner, Greene and Fisher]; absent, 1 [Hill]). The board voted unanimously to approve the changes to BR 12.2 as presented.

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

### A. Access to Justice Committee

#### 1. Approval of the Loan Repayment Assistance Program's Advisory Committee

The board reviewed the Access to Justice Committee's recommendations for appointment to the LRAP Advisory Committee.

**Motion:** The board voted unanimously to approve the AJC's recommendations to the LRAP Advisory Committee.

#### 2. Miscellaneous

##### a. HOD Resolution to Support Campaign for Equal Justice

Sandy Hansberger, Executive Director of the CEJ, has reported to the Access to Justice Committee that HOD members are not close to meeting their resolution goal of 100% participation in the CEJ. The board agreed by consensus that one BOG member from each region would obtain a list of noncontributing HOD members and contact them. Ms. Eyerman volunteered to coordinate contacting HOD members in Region 5 and Ms. Fabien agreed to coordinate contacting HOD members in Region 6.

##### b. Lobby Day

Mr. Gerking will be going to Washington, D.C. in April to meet with our congressional delegation to discuss support of indigent defense and to lobby for passage of the Durban-Smith Bill, which is similar to the bar's LRAP Program.

**Motion:** Mr. Yugler moved, Mr. Greene seconded, and the board unanimously approved having Mr. Menashe sign a letter, to be drafted by the Access to Justice Committee, in support of the Durban-Smith bill.

### B. Budget and Finance Committee

#### 1. Approval of Changes to the 2007 Budget

**Motion:** The committee presented a motion to approve certain changes to the 2007 OSB Budget as set forth in the exhibits.

**Motion:** Mr. Yugler moved to amend the committee motion to restore \$10,000 to the Classroom Law Project. Ms. Eyerman seconded the motion. After discussion the board approved the motion (yes, 8 [Eyerman, Fabien, Fisher, Gaydos, Gerking, Menashe, Vieira, Yugler]; no, 7 [Evans, Greene, Lehner, Newell, Skerjanec, Worcester, Wright]; absent, 1 [Hill]).

During the discussion, Mr. Greene reminded the board that the Budget and Finance Committee believes that the board should have a policy regarding charitable contributions

and that a subcommittee has been created to study the issue. There was debate among the board about whether it was appropriate to make *ad hoc* decisions in the absence of a formal policy. Some members suggested this was a special circumstance since the contributions approved in the 2007 budget were reduced from prior years due to concerns about the availability of funds, which now appears not to be a problem.

**Motion:** The committee motion to approve the 2007 Budget as amended failed (yes, 6 [Eyerman, Fabien, Fisher, Gerking, Vieira, Yugler]; no, 9 [Evans, Gaydos, Greene, Lehner, Menashe, Newell, Skerjanec, Worcester, Wright]; absent, 1 [Hill]).

**Motion:** Ms. Wright moved, Ms. Worcester seconded, and the board approved the Budget and Finance Committee's budget changes as originally presented (yes, 8 [Evans, Greene, Lehner, Menashe, Newell, Skerjanec, Vieira, Worcester]; no, 7 [Eyerman, Fabien, Fisher, Gaydos, Gerking, Wright, Yugler]; absent, 1 [Hill]).

The board continued to discuss methods for setting and revising the budget to allow for input from all board members rather than just input from the Budget and Finance Committee until the budget finally appears completed at a board meeting. It was decided that whenever possible the Budget and Finance Committee meetings will be scheduled in such a way that all board members can attend if they so desire. The subcommittee will move forward on its guidelines regarding grants and donations from the Oregon State Bar.

2. Revision to Bylaw 7.401

Mr. Greene explained the proposal to amend Bylaw 7.401 to have the Budget and Finance Committee, rather than the Board, review the investment portfolio, and to have the reviews at least annually instead of at least quarterly.

**Motion:** Ms. Wright moved, Ms. Skerjanec seconded, and the board voted unanimously to waive the one meeting notice requirements pursuant to Article 26 of the Bar Bylaws.

**Motion:** The committee motion to approve the revisions to Bylaw 7.401 was passed unanimously.

3. Miscellaneous

a. Commitment Letter

Mr. Greene explained that the bar will need to enter into a loan commitment letter to borrow for the new building prior to the next board meeting.

**Motion:** Mr. Greene moved, Ms. Skerjanec seconded, and the board voted unanimously to authorize the president to sign a commitment letter to borrow \$13,500,000 for the new building.

b. Bonus for Rod Wegener

**Motion:** The committee moved and the board voted unanimously to give Rod Wegener a bonus of \$1,500 as a thank you for the special efforts he put forth to bring about the purchase of the new bar center and the sale of the current bar center. The money will come from the contingency fund.

**6. Special Appearances**

A. Oregon New Lawyers Division

1. Update

Josh Newton, Chair of Oregon's New Lawyers Division introduced himself to the board and presented information about the division's goals for the future. The main thrust for 2007 will be to focus on the division's strengths, to develop ways to communicate better with its members, and to distinguish itself from similar organizations throughout the state.

**7. Closed Session Agenda**

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

B. General Counsel/UPL Report (Executive Session pursuant to ORS 192.660(1)(f) and (h) - separate packet)

## Saturday, February 24, 2007

The regularly scheduled meeting of the Oregon State Bar Board of Governors continued on Saturday, February 24, 2007, beginning at 9:00 a.m. and adjourned at 11:15 a.m. Present from the Board of Governors were Linda Eyerman, Marva Fabien, Albert A. Menashe, Bette Worcester, Carol Skerjanec, Rick Yugler, Tim Gerking, Gerry Gaydos, Ward, Greene, Bob Vieira, Terry Wright, Bob Lehner, Bob Newell, and Ann Fisher. Present from the Oregon State Bar staff were Karen Garst, Sylvia Stevens, Rod Wegener, Susan Grabe, and Teresa Wenzel.

### **8. BOG Committees, Special Committees, Task Forces and Study Groups (continued)**

#### A. Policy and Governance Committee

##### 1. Revision of Bar Bylaw 16.200

Mr. Gerking reviewed the board's discussion from November regarding expanding the offer of free CLE attendance to federal court judges and tribal judges who are members of the OSB. He also pointed out that staff recommends adding language to the bylaw to clarify the number of "judges' legal staff" who are eligible.

**Motion:** Mr. Yugler moved, Ms. Wright seconded, and the board voted unanimously to waive the one meeting notice requirement pursuant to Article 26 of the Bar Bylaws.

**Motion:** The board unanimously passed the committee motion to approve revision to Bar Bylaw 16.200.

##### 2. Creation of UPL Contested Admonition

The committee removed this item from the agenda for further study. There was a brief discussion about whether the OSB has authority to issue admonitions and, since they are not binding in any event, whether they are of any real value. It was noted that the UPL process appears to mirror the disciplinary process, which is probably not the right model. The board suggested that the UPL Committee take some time to evaluate the scope of its statutory authority and consider revisions to its process consistent with that authority. Ms. Wright will relay the board's thoughts to the UPL Committee.

##### 3. Membership Vote on Military Ad Issue

Mr. Gerking reviewed the process for submitting the military ads issue to the membership for a vote, as required by the member petition that was submitted with the requisite number of signatures. The committee proposed sending the ballot by e-mail to as many members as possible and by regular mail to the others in conjunction with the HOD elections. Ballots would be distributed on March 29, due on April 13, and the results will be announced April 16. The "voter's pamphlet" information will be posted on the OSB website.

**Motion:** The board unanimously approved the committee motion to forward a vote of the military ad issue to the full membership.

4. Officer Election Process

**Motion:** The committee submitted a motion to revise the board's officer election process. The impetus behind the motion was a suggestion that the process should be "more humane." It was suggested that a nominating committee could assure that the candidate is chosen based on what is best for the organization rather than purely personal preference. Some members indicated disfavor with being disenfranchised and wondered how the new process would ensure input from all board members.

**Motion:** Mr. Newell moved to waive the one meeting notice requirement for bylaw changes. Ms. Worcester seconded the motion. The motion failed (yes, 2 [Evans, Newell]; no, 13 [Eyerman, Fabien, Menashe, Worcester, Skerjanec, Yugler, Gerking, Gaydos, Greene, Vieira, Wright, Lehner, Fisher]; absent, 1 [Hill])

The Policy and Governance Committee will review the process and return to the board with another recommendation.

B. Public Affairs Committee

1. HOD Public Defender Task Force Report

The board discussed the issue of indigent defense and funding. Between the HOD resolution and the unanticipated availability of greater state funding, it appears likely that additional monies will be allotted to indigent defense in the next biennial budget. Most of the money will go toward salary equity, however, rather than to increasing the number of lawyers to handle the caseloads. Without additional lawyers, there is continuing risk that cases will fall through the cracks or that lawyers will be disciplined for not providing competent and diligent representation. Ms. Stevens reported that the Legal Ethics Committee has concerns about the proposed opinion on excessive caseloads based on the ABA Ethics Opinion, but will likely have something for the BOG to consider in April.

**Motion:** The committee motion to approve the HOD Public Defender Task Force Report passed unanimously.

2. Court Facilities Task Force Report

Mr. Gaydos gave a brief overview of the Court Facilities Task Force Report.

**Motion:** The committee motion to approve the Court Facilities Task Force Report passed unanimously.

3. Update

Mr. Gaydos updated the board on Public Affairs Committee matters, including that there will be no action taken in the *habeas corpus* matter; the client privilege and media discovery proposals pending before the legislature; a bill before the legislature that would offer tax credits similar to the bar's LRAP Program; continuing concern about judicial salaries; and planning for the "futures conference" tentatively scheduled for September 2008 in Bend.

**9. Consent Agenda**

**Motion:** Ms. Eyerman moved, Mr. Yugler seconded, but the board failed to approve a correction to the January 18, 2007 BOG Special Meeting Minutes to indicate that the board approved a motion to forward the names of all candidates "to the Governor for consideration for the appellate court vacancy" rather than "as qualified" for the vacancy. The motion failed (yes, 4 [Eyerman, Fabien, Yugler, Fisher]; no, 11 [Menashe, Worcester, Skerjanec, Gerking, Gaydos, Greene, Vieira, Wright, Evans, Lehner, Newell]; absent, 1 [Hill]).

**Motion:** Mr. Yugler moved, Ms. Wright seconded, and the board voted unanimously to add to the January 18, 2007 minutes that Kathleen Evans was sworn in on that date.

**Motion:** Mr. Yugler moved, Mr. Greene seconded, and the board voted unanimously to correct the November 18, 2006 Open Session Minutes to reflect that Mr. Yugler, not Mr. Menashe, moved that individual board members contribute to the Classroom Law Project to make up the difference between the 2007 budgeted contribution and the pre-2005 contribution level.

**Motion:** Mr. Gerking moved and Ms. Wright seconded that the Consent Agenda be approved as amended, including the additional appointment recommendations presented by the Appointments Committee on February 23, 2007.

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

Ms. Stevens encouraged the board to read the letters from members on various topics included in the Default Agenda. She also reported that the Supreme Court has responded affirmatively to her request for an informal meeting to discuss how the bar should be dealing with out-of-state lawyers who practice in Oregon without admission and not within the scope of RPC 5.5's temporary practice authorization. All of the board will be invited to this meeting.