

Oregon State Bar
Meeting of the Board of Governors
June 22-23, 2007
Open Session Minutes

The meeting was called to order by President Albert Menashe on Friday, June 22, 2007, at 1:00 p.m. at the Cannery Pier Hotel in Astoria. The meeting adjourned at 4:55 p.m.; the board reconvened at 9:00 a.m. on Saturday, June 23, 2007, at the same location and adjourned at 12:00 p.m. Present from the Board of Governors were Albert Menashe, Rick Yugler, Kathy Evans, Jon Hill, Bette Worcester, Bob Vieira, Terry Wright, Bob Lehner, Ann Fisher, Gerry Gaydos, Bob Newell, Carol Skerjanec, Linda Eyerman, and Ward Greene. Staff members present were Karen Garst, Sylvia Stevens, Jeff Sapiro (Friday only), Rod Wegener, Susan Grabe, and Teresa Wenzel. Present from the PLF (Friday only) were Jim Rice, Rodney Lewis, Jeff Crawford, Bob Cannon, Suzanne Chanti, Jim Schafer, Ronald Bryant, Lisa Almay Miller, and Cindy Hill. Also present, Friday only, was Josh Newton (ONLD).

Friday, June 22, 2007

1. Report of Officers

Mr. Menashe welcomed the PLF board members and staff to the joint meeting.

A. Report of the President

1. Meeting with Chief Justice Paul J. De Muniz - June 8, 2007

The Chief Justice appreciated the efforts and results of the board and bar's participation in the legislative session. The Chief Justice and the Supreme Court want to see the Elimination of Bias requirement continue; the Chief Justice has appointed Justices Walters and Linder to work with representatives of the bar to develop a proposal. An Admissions Task Force is being created to study how qualification to practice is determined. The task force will consist of two Supreme Court justices, two members of the Board of Governors members, two representatives from the Board of Bar Examiners, and a professor from each of the three law schools. Mr. Menashe will be one of the members from the BOG and Ms. Wright and Mr. Hill volunteered to be considered for the other BOG position. The Supreme Court has not yet determined how it will respond to the DOJ's request that the OSB collect social security numbers of bar members to aid in child support enforcement.

The bar is continuing to study the creation of a new bar card, which would allow lawyers to bypass regular courthouse security. This is complicated because courthouse security is under the jurisdiction of the various county sheriffs, not the courts. With the current level of technology, however, it appears there should be a resolution to this matter in the foreseeable future.

2. OSB President's Schedule of Events

Mr. Menashe directed the board's attention to the agenda memo showing events he had attending since the last board meeting. Former OSB President Nena Cook stood in for him at one of the judicial investitures. His attendance at the Northwest Bar Association meeting reinforced his belief that the OSB does things better than most bars. He also mentioned that because of low pay for judges in Oregon, there is a concern that in the near future many judges may be leaving the bench to pursue private practice.

B. Report of the President-elect

Mr. Yugler thanked Ms. Garst for hosting the House Judiciary Committee dinner at her home and encouraged board members to attend as many local bar social events as they can to make themselves known to bar members.

1. Northwest Bars meeting in Seattle

Mr. Yugler commented favorably on the Washington State Bar Association's disciplinary courtroom in its new space. He suggested that the Oregon State Bar should do the same, as it makes the disciplinary process more formal and more dignified. Ms. Garst said there would be hearing rooms available in the new bar building for this purpose, although special fixtures for a "bench" might have to wait.

2. Eugene Register-Guard Editorial Meeting

Mr. Yugler praised Mr. Menashe on various editorial visits. It is a helpful way of presenting the bar's views and helping with issues during the legislative session.

3. New Bar Admittee Ceremony

Mr. Yugler encouraged the board to attend the new admittees' ceremony as the admittees appreciate the board being there.

4. Klamath Falls Legal Aid Opening

Mr. Yugler attended the opening of the Klamath Falls Legal Aid Office. He observed that it reinforces the bar's connection to the Campaign for Equal Justice. It was noted that because much of the money for legal aid comes through the Oregon Law Foundation, the board should find ways of encouraging law firms to use the "leadership banks" from which the OLF gets a great deal of its interest income. A list of leadership banks is available in the OLF brochure and on its website at oregonlawfoundation.org.

C. Report of the Executive Director

1. Results of Second Year of Five-year Longitudinal Study of 2005 New Admittees

Ms. Garst highlighted the information about the study, which was included in the agenda.

2. New Bar Logo

Ms. Garst introduced concepts for a new bar logo. The board did not favor any of the proposed designs; the consensus was to continue having trees in the logo but that modernizing the overall look of the logo would be acceptable.

D. Oregon New Lawyers Division

1. Update

Josh Newton presented the ONLD report. Since the ONLD's last report it has held an ethics CLE in Bend, presented by Helen Hierschbiel; a social event in Bend, which was well attended; and provided a public information booth at the Pole Pedal Paddle in Bend. The ONLD has completed reviewing submissions from the high school essay contest and was very impressed with the participation level and the content of the essays. The ONLD will have booths at the Lane and Clackamas County fairs.

2. Joint Meeting with Professional Liability Fund

A. Professional Liability Fund

1. Update

a. Financial Status

The PLF's financial status is better than expected with an income at \$3 million for the first five months of 2007. The rate of new claims is down and the administrative costs are below budget. The actuarial report is expected in June. Recently the report has been more negative than positive and the claims' costs are expected to remain high, with the expectation that June will be mildly bad. The PLF board will review the assessment and make its recommendation in late August. Its recommendation will to be presented to the BOG in September.

b. Claims Update

The frequency of claims was at an all time high in 2005 and is much lower this year. Claims seem to be consistent with the 1990s, with frequency down and severity up. Trial results and recoveries this year have been good. The biennial Defense Panel training will be held this year at Salishan.

c. OAAP and Practice Management

Mike Sweeney has retired and Doug Querin will take over his duties.

d. Excess Program Developments

The excess program is at 5% penetration this year. There are more firms but fewer solo practitioners participating.

e. PLF Audit

The PLF is pleased with the audit report. The PLF is “in the black” and there were no major exceptions noted.

f. Evaluation of Non-Traditional Assets

Mr. Zarov directed the board’s attention to the exhibit explaining the valuation of the PLF’s non-traditional assets, but noted that most observers do not find it as interesting as he does.

g. Miscellaneous

In the next five to seven years, the PLF expects to lose one-half of its employees to retirement and 75% of those leaving will be from management, which will result in a loss of considerable historical and traditional knowledge. Mr. Zarov noted that national statistics indicate that 80% of attorneys have no plan for someone to take over their practice on death or retirement; there is concern that this will be a serious issue as baby-boomer lawyers reach retirement age.

3. Board Member Reports

Ms. Skerjanec reported on her participation in the President’s Eastern Oregon tour in Union, Wallowa, Baker, and Malheur Counties; she has attended executive committee meetings of the sections she is assigned, as well as hosted the HOD Region 1 meeting. While attendance was low, she believes the HOD regional meetings were a good idea. She also relayed a story about a new Oregon Law Center attorney who spent two nights sleeping at the Law Center because she could only afford the community’s cheapest hotel, which was completely inadequate.

Mr. Gaydos attended the Lane County Bar’s spring meeting and indicated it was well attended. He praised Messrs. Menashe and Yugler for their interview with the Register Guard. Mr. Gaydos hosted the HOD meeting for Region 6 and was concerned that some of its members had not heard about the bar’s new building or did not know the bar would be moving to its new location in the near future. Additionally, Mr. Gaydos reported that the Futures Committee is moving forward with spirited discussions. It has a date and place and is now lining up speakers.

Ms. Fisher reported she had attended local bar meetings in Columbia and Washington Counties and her section’s meeting. She joined Mr. Menashe’s meeting with the local newspaper for an interview. She participated in her region’s HOD meetings, which were hosted by John Tyner, and added that some in Region 4 also were not aware of the new bar center.

Ms. Eyerman reported on activities of the LRAP Advisory Board. Although it was intending to make only four grants each year, because there were funds available from 2006 and 2007, the board was able to select seven recipients for 2007 from 64 very qualified applicants.

Ms. Wright attended her sections' meetings. The Consumer Law Section purchased a library, which it found online, that it will provide at no cost to its members. The UPL Committee is doing great and each member gives a great deal of effort to the group. She also attended her region's HOD meeting and indicated a new member was appreciative of the information provided through the meetings and written materials.

Mr. Newell attended his section's meeting and met with Multnomah Bar's Managing Partners' Roundtable where he noted that several firms had moved their IOLTA accounts to OLF leadership banks. Mr. Newell encouraged more notice to bar members regarding the new building and indicated the message needs to be repeated over and over and over.

Mr. Greene attended the MBA annual meeting and again, noted some were not aware of the new building.

Ms. Evans reported that her sections are doing well and members communicate regularly via the internet. In July, she will be meeting with women lawyers from the Ukraine who will be visiting Salem. Ms. Evans also noted that more than one Region 6 lawyer has indicated interest in running for Ms. Fabien's position this fall.

Mr. Menashe commended the public members for the time and energy they give to the bar because they really do not have "a horse in the race."

Mr. Lehner reiterated Ms. Evans' comment that his sections also do a great deal of communications via the internet. It has been a great way for him to become more acquainted with the sections and their concerns.

Mr. Vieira is reacquainting himself with his groups and also finds the e-mail communications helpful.

4. 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)

5. Rules and Ethics Opinions

- A. Legal Ethics Committee
 - 1. Revision of OSB Formal Ethics Opinion No. 2005-120

Ms. Stevens presented information concerning the revision of OSB Formal Ethics Opinion No. 2005-120. The opinion needs correcting to eliminate the suggestion that lawyers in a government office are subject to imputed disqualification.

Action: The board unanimous approved the committee motion to approve the revision to Legal Ethics Opinion No. 2005-120.

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

- A. Unlawful Practice of Law Committee
 - 1. Changes to Article 20 of the Bar Bylaws

Action: Ms. Worcester moved, Ms. Wright seconded, and the board unanimous passed a motion to waive the one meeting notice requirement for bylaw change.

Ms. Wright presented information concerning a proposed change to OSB Bylaw Article 20 to create a “demand letter” instead of the current “admonition.” The UPL Committee is concerned that an admonition might give rise to due process concerns if not accepted by the affected nonlawyer. The board discussed whether the demand letter may have less “teeth” than the admonition and that unless the bar is willing to take action, it should walk away rather than just demand the party cease action. Another thought was that at least the demand letter provided a paper trail in the event the bar takes action at a later date.

Action: Ms. Eyerman moved, Mr. Vieira seconded, and the board passed a motion to table the matter until its September meeting (yes, 12 [Yugler, Evans, Hill, Worcester, Vieira, Wright, Menashe, Fisher, Gaydos, Newell, Skerjanec, Eyerman]; no, 2 [Greene, Lehner]; absent, 2 [Fabien, Gerking]).

B. Appellate Practice Section

1. Request for *Amicus Curiae* Appearance

The Appellate Section requested that the board authorize it to submit an *amicus* memorandum in *State v. Ortiz* as requested by the Court of Appeals. The board felt it did not have enough information concerning the issues and the stance the section desires to take.

Action: Mr. Yugler moved, Mr. Greene seconded, and the board passed a motion to seek an extension of time for filing the *amicus* memorandum and that the section provide the board with more information so it can take final action at a special meeting on July 20, 2007. The motion included determining whether the Criminal Law or other interested sections have a position on the issues. (yes, 13 [Yugler, Evans, Hill, Greene, Vieira, Wright, Menashe, Fisher, Gaydos, Newell, Skerjanec, Eyerman, Lehner]; no, 1 [Worcester]; absent, 2 [Fabien, Gerking]).

Mr. Menashe directed the Policy & Governance Committee to look at Bar Bylaw 2.105 and ensure it clearly expresses the requirements for getting authority to file *amicus* briefs.

C. Client Security Fund

Ms. Stevens presented information concerning the CSF Committee's denial of the *Jensen v. Carroll* claim (No. 04-10). The Jensens are in negotiations with the PLF and Mr. Carroll's former law firm, which might provide them with more than the amount of money misappropriated by Mr. Carroll. The committee felt the fund was intended as a recovery of last resort and should only provide payment in cases where the claimant could not obtain funds from other sources.

Action: The board voted unanimously to affirm the CSF committee's denial of the claim.

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

A. Budget and Finance Committee

1. New Bar Center

Construction of the new bar center is moving ahead smoothly and the projected move-in date is now December 22. The total cost of the building will be closer to \$21 million, more than the earlier estimate of \$18 million, when consultant fees, furniture, and equipment are included. Staff is continuing to make careful decisions on tenant improvements. Mr. Wegener provided the board with a balance sheet of the projected building and loan costs over the next fifteen years. At the end of that period, the cost of the new building will be the same as the projected cost of maintaining and upgrading the current building. At the six-year mark there appears to be a shortfall because (a) the bar may need to expand the space it is using or (b) leases for new lessees will be expiring. The shortfall should be covered by the \$600,000 reserve fund. Through prudent decisions the bar and consultants have been able to save approximate \$9.5 million over the life of the new building cost by selling the current bar building for more than expected and obtaining a favorable interest rate on the new loan. Budget

& Finance will continue to update the balance sheet and provide the board with an updated version at its July 20, 2007, special meeting.

Saturday, June 23, 2007

B. Member Services Committee

1. Episodic Volunteerism

To increase participation by volunteers, Member Services has printed a new volunteer form brochure, which provides for episodic volunteerism rather than volunteerism for long periods of time. Board members are encouraged to take the brochures to meetings they attend and explain the new volunteer method to boost volunteerism. The committee will observe the results for a year and report back to the board.

2. Past Bar Presidents' Involvement and Recognition

The committee recommended that the board create a President's Council to utilize the expertise and experience of past presidents. Several past bar presidents (Cook, Rawlinson, Harnden, Menashe) have indicated their willingness to participate in the council. Each year the council will be asked to choose a project and bring it to fruition. The committee suggested that the first project for the Council could be a tent show for 2008. The board felt that the President's Council should choose its own project and did not want to assign a project to the new council. The first meeting of the council would take place prior to the BOG retreat and the project for the coming year would be submitted for BOG approval at the retreat.

Action: The committee presented a motion to create a President's Council consisting of past bar presidents and to have the council make preparations for a tent show for 2008. By consensus, the motion was revised to include only the creation of the council. The motion passed unanimously.

3. 2008 Volunteer Recruitment Brochure

Action: The board unanimously passed the committee motion to send the 2008 Volunteer Recruitment Brochure to all active bar members.

C. Policy and Governance Committee

1. Clarification of CAO Standard

Action: The board unanimously approved the committee recommendation to forward Bar Rule of Procedure 2.5 (Client Assistance Office) to the Supreme Court for approval.

2. Grants to Classroom Law Project and Campaign for Equal Justice

Action: Mr. Gaydos moved, Mr. Vieira seconded, and the board unanimously passed a motion to waive the one meeting notice requirement for bylaw change.

Action: The board unanimously passed the committee motion to change the bylaw as indicated in the agenda.

3. Mileage Reimbursement for HOD Members

Action: Mr. Yugler moved, Ms. Eyerman seconded, and the board unanimously passed a motion to waive the one meeting notice requirement for bylaw change.

The committee motion was to adopt a new bylaw allowing for reimbursement of up to 400 miles for HOD delegates attending the annual HOD meeting. Discussion points include whether it is inappropriate for the BOG to implement this change when the HOD voted against a similar policy in 2006; the \$35,000 projected cost for reimbursement was not realistic; there is lack of evidence that reimbursement would lead to more volunteerism; adoption of this policy would have a substantial financial impact; and it may open the door for other volunteers to seek reimbursement.

Action: Mr. Greene moved, Ms. Wright seconded, and the board passed a motion to submit a proposal as a BOG resolution to the HOD (yes, 12 [Yugler, Evans, Hill, Greene, Vieira, Wright, Menashe, Fisher, Gaydos, Worcester, Skerjanec, Lehner]; no, 2 [Newell, Eyerman]; absent, 2 [Fabien, Gerking]).

4. Change to Alcohol Policy

Action: Ms. Fisher moved, Ms. Worcester seconded, but there was not a 2/3 vote to waive the one meeting notice for a bylaw change (yes, 7 [Fisher, Gaydos, Lehner, Menashe, Skerjanec, Vieira, Worcester]; no, 7 [Evans, Eyerman, Greene, Hill, Newell, Wright, Yugler]; absent, 2 [Fabien, Gerking]).

Discussion ensued and included the following observations and questions: Morals and mores change throughout the years; is this a matter of morality or finance? Many sections, individual lawyers, etc. are in favor of allowing the use of bar funds to purchase alcoholic beverages. Social events are important to the bar as means of communicating with its members and alcohol is the customary element of hospitality in our society; making guests pay for their own drinks is “chintzy.” Making drinks free may cause some to abuse alcohol, but it was also observed that this does not appear to be a problem at official bar functions. Is this a wise use of bar funds? Law firms and other organizations could be asked to underwrite alcohol at official bar events.

Different treatment might be appropriate for sections, since no one is required to be a member of a section; while bar members do not have that option. The Indian Law Section does not want to impose its ban on alcohol on the entire bar and supports the policy for the bar as a whole. This is an issue that should be brought to the HOD for its input. Sponsoring drinks is a way of saying thank you to those who give a great deal of time and energy to the bar through volunteerism.

5. Update on Policy Issues

The committee is working on redistricting, including whether the size of the board should be increased. The committee is also focusing on the EOB matter with Chief Justice DeMuniz, Justices Walters and Linder, Mr. Menashe, Mr. Yugler, Mr. Gerking, and Ms. Garst to find a solution that will be acceptable to bar members and the Supreme Court. Input from the board and other bar members is appreciated. Suggestions included: Meeting prior to the BOG meeting of July 20; meeting with HOD members who originally objected to EOB; revising the requirements; and revising the programs presented.

D. Public Affairs Committee

1. Political Update

Mr. Gaydos highlighted the following issues for the board: Bar bills are doing well and there has been a \$32 million increase to the judicial budget with the Public Official Salary Commission projected to look at judicial salaries; Senator Kate Brown and Representative Greg McPherson are to be commended for their work with the bar; the lack of lawyer-legislators makes it more difficult for the bar to get its issues through the legislature; bar staff is greatly respected by the legislators; funding for court facilities continues to be an important issue ; public defenders did not receive a salary increase and Mr. Gaydos asked board members to call Representative Jeff Merkley at 503-986-1200 and encourage his committee to implement an increase; board members also were encouraged to attend as many legislative events as they can to help forward the bar's agenda in the legislature; currently the money for court facilities comes from filing fees and motion fees will be added for more funding; there will be a HOD resolution recognizing Senator Brown, Representative McPherson, and others from the legislature; and Mr. Menashe will send a letter, drafted by Ms. Grabe to Senator Brown and Representative McPherson, thanking them for their assistance.

8. Consent Agenda

The quorum requirement for board committees on Page 115 was removed from the Consent Agenda by request of Mr. Yugler. This item will appear on the board September 2007 agenda after the staff has determined whether standing committee leaders have any concerns.

Action: Ms. Wright moved, Mr. Yugler seconded, and the board unanimously passed the motion to accept the Consent Agenda with the removal of the quorum requirement.

9. Default Agenda

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

None