

Oregon State Bar
Meeting of the Board of Governors
November 3, 2007
Open Session Minutes

The meeting was called to order by President Albert Menashe, Saturday, November 3, 2007, at 1:05 p.m. at Tu Tu' Tun Lodge, Gold Beach. The meeting adjourned at 5:17 p.m. Those present from the Board of Governors were Kathy Evans, Linda Eyeran, Marva Fabien, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, Jon Hill, Robert Lehner, Albert Menashe, Carol Skerjanec, Robert Vieira, Bette Worcester, Terry Wright, and Rick Yugler. Staff members present were Karen Garst, Rod Wegener, Jeff Sapiro (by phone), Helen Hierschbiel, and Teresa Wenzel. PLF member present was Bob Cannon. New board members present were Audrey Matsumonji, Gina Johnnie, Steve Piucci, and Chris Kent.

Saturday, November 3, 2007

1. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Paul J. De Muniz October 22, 2007

Mr. Menashe directed the board's attention to his written reports of his visit with the Chief Justice and other meetings he had attended since the September board meeting.

2. President's Report

Mr. Menashe advised the board of the progress of the Admissions Task Force. It will be adding legislators and will continue to meet in 2008, bringing a report to the board in late 2008. Mr. Menashe and Mr. Hill, though no longer on the board for 2008, will continue to represent the board on the task force.

Mr. Menashe informed the board that bar members still would like a universal bar card that would give them access to all courthouses in the state. Mr. Yugler will continue the efforts to bring this to fruition.

B. Swearing in of New Officers

Mr. Menashe administered the oath of office to Christopher Kent, Gina Johnnie, Stephen Piucci, and Audrey Matsumonji as the newest members of the board.

C. Nominating Committee

1. Nomination of Gerry Gaydos as President-elect

Motion: The Nominating Committee presented Gerry Gaydos as its recommendation for President-elect. The board unanimously approved the committee motion.

Mr. Gaydos accepted and indicated he is looking forward to a successful year.

D. Report of the President-elect

Mr. Yugler thanked the 4th year class for its vision for the future and the work it did during its four years. He acknowledged that much of what would come to fruition during his term in 2008 began with the 4th year class, including the Futures Conference and completion of the new building. Mr. Yugler reiterated to the board that he feels the emerging issues are (1) connecting with the membership through CLE programs, sections, the *Bulletin*, and other member services; (2) providing access to justice by supporting the judiciary and court facilities and opposing adverse initiatives in the legislature; and (3) reevaluating the admissions process.

E. Report of the Executive Director

None.

F. Report from the Oregon New Lawyers Division

None.

G. Reports from Board members.

None.

2. **Professional Liability Fund**

A. General Update

Mr. Cannon presented a financial update of the PLF to the board. The actuarial projections and investments are doing well. The frequency rate, which drives the process, is 13%. There will not be an assessment increase for 2008, but 2009 looks problematic. Defense costs are up, but the PLF is looking at ways to lower these costs. The PLF members to the special committee, which can be invoked to resolve issues between the bar and PLF, are Bill Carter, Tim Martinez, Ron Bryan, Bob Cannon, and Ira Zarov. There has been no need to utilize this committee in the recent past and it appears that trend will continue. Mr. Cannon thanked the BOG liaisons to the PLF and the executive director for their support and participation.

B. Financial Report

1. Approve PLF Primary, Excess, and Pro Bono Coverage Plans For 2008

Motion: Mr. Hill moved, Ms. Worcester seconded, and the board unanimously passed the motion to approve the PLF 2008 Primary Coverage Plan.

Motion: Mr. Hill moved, Ms. Skerjanec seconded, and the board unanimously passed the motion to approve the PLF 2008 Excess Coverage Plan.

Motion: Ms. Wright moved, Mr. Gerking seconded, and the board unanimously passed the motion to approve the PLF 2008 Pro Bono Coverage Plan.

3. Rules and Ethics Opinions

A. Proposed New Formal Ethics Opinion – Internet Advertising: Payment of Referral Fees

Ms. Hirschbiel presented information concerning the proposed formal ethics opinion regarding internet advertising.

Motion: Mr. Yugler moved, Ms. Evans seconded, and the board unanimously passed the motion to adopt the formal ethics opinion on internet advertising.

B. Proposed Amendments to Workers' Compensation Administrative Rules

Ms. Hirschbiel presented information concerning the Workers' Compensation Board's proposed changes to administrative rules as they pertain to attorney fees. Although approval from the board was not required, Ms. Eyerman and others spoke in support of the amendments as improving access to justice for injured workers.

Motion: Ms. Eyerman moved, Ms. Fabien seconded, and the board unanimously passed a motion to send a letter in support of the amendments to the Workers' Compensation Board. Ms. Hirschbiel agreed to draft the letter.

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

A. UPL Committee

1. UPL Webpage

Ms. Wright presented information concerning the UPL Committee's newly adopted webpage and its plans to expand the page to include information on injunctions and cease and desist agreements obtained by the bar.

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

A. Access to Justice Committee

1. Modification of the House Counsel Rule

Motion: Ms. Eyerman presented information regarding the committee's motion to forward a recommendation to the Supreme Court that Admissions Rule 16.05 be amended to include a provision that attorneys admitted under the House Counsel rule may provide pro bono services through a certified pro bono program. The board unanimously passed the motion.

B. Budget and Finance Committee

1. 2008 OSB Budget

Mr. Greene presented information concerning the proposed 2008 OSB Budget. Some board members questioned why there was no increase to the Leadership College or Campaign for Equal Justice line items. Others suggested that a change in the bylaws may be appropriate since the budget for CLE Publications and CLE Seminars show a deficit, even though these programs are intended to be self-supporting.

Motion: Ms. Eyerman moved, Ms. Wright seconded, and the board passed a motion to amend the budget to include an increase to the expenses for the Leadership College from \$35,000 to \$55,000 (yes, 9 [Eyerman, Fabien, Fisher, Gaydos, Gerking, Menashe, Vieira, Wright, Yugler]; no, 6 [Evans, Greene, Hill, Lehner, Skerjanec, Worcester]).

Motion: The board passed the amended 2008 OSB Budget with Ms. Skerjanec dissenting.

In Executive Session, the board discussed issues concerning the Master Lease.

Motion: The board passed a committee motion to allow the Budget and Finance Committee to enter into negotiations with a lender to borrow up to \$13 million for purchase of and tenant build-outs to the new bar center. The motion passed with Ms. Eyerman dissenting.

C. Executive Director Evaluation Committee

Executive Session

1. Executive Session Pursuant to ORS 192.660(1)(i)- Executive Director Performance Review

The board retired to Executive Session to consider Ms. Garst's 2008 contract.

Open Session

2. Executive Director Contract and Salary Decision Action

Motion: The board unanimously passed the committee motion to extend Ms. Garst's contract through 2008 with an increase of 4%.

Ms. Garst thanked the board for its support throughout the year.

D. Policy and Governance Committee

1. Recommendation to Repeal Bar Rule 9.5

Mr. Gerking presented information concerning the committee's recommendation to the Supreme Court that BR 9.5 be repealed.

Motion: The board unanimously approved the committee's motion to recommend repeal of BR 9.5 to the Supreme Court.

2. Redistricting of BOG Regions

Mr. Gerking reported that the board is required by statute to review the BOG districts every ten years. He indicated that the committee does not have a definitive recommendation for redistricting at this time, but has looked at several options, including: 1) adding 4 new lawyer members to the board and restructuring the districts accordingly; 2) adding 1 or more members who represent "under-represented" groups; and, 3) adding no new members, but restructuring the current districts. Any changes to the current BOG structure would require legislative action and cannot be considered until the 2009 legislative session. However, any proposed legislative change would need to be approved by the board and submitted to Public Affairs no later than April 1, 2008. The committee is recommending the board consider a statutory change to the board structure. Board members suggested that the committee review the fiscal impact of adding members to the board and define "under represented." The committee will poll board members for their ideas and to get a sense of direction and draft additional options for the board to consider at its next meeting.

Motion: The board passed the committee motion to consider a more fundamental change of the BOG structure at a later date with Ms. Evans and Ms. Fisher dissenting.

3. Elimination of Bias MCLE Rule

Mr. Gerking advised the board of the history of the EOB MCLE requirement and presented information regarding the committee's recommendation for an amended EOB requirement. The board discussed the ramifications of what an amended EOB rule to the bar membership as a whole and to the minority lawyer community in particular. Some board members noted that the membership voted to discontinue the EOB requirement, while the minority community wants the EOB requirement

to remain as is and already feels disenfranchised. Other board members noted that leaders in the minority community have been included in the process of revising the EOB requirement, and seem willing to accept the proposed compromise, though they know it is not perfect. There was discussion about the board's role as representative of the entire bar membership and, as such, its responsibility to seek compromise among divergent views, versus the board's role as leader and its authority to set policy on issues such as the EOB. Some board members commented that the membership's opposition seemed focused on the content and quality of the EOB programs. Finally, concerns were expressed that the proposed changes required more EOB credits from some members than others.

Motion: Mr. Yugler moved, Mr. Gaydos seconded, and the board passed a motion to amend the committee's proposal to include language ensuring that all active members admitted prior to January 1, 2007 complete six reporting hours of EOB within two reporting cycles. (yes, 10 [Eyerman, Fabien, Fisher, Gaydos, Hill, Lehner, Menashe, Vieira, Wright, Yugler]; no, 5 [Evans, Gerking, Greene, Skerjanec, Worcester]).

Motion: The amended committee motion for a one time EOB CLE requirement of 6 hours for those bar members admitted after January 1, 2007 failed (yes, 7 [Evans, Fisher, Gerking, Greene, Lehner, Worcester, Yugler]; no, 8 [Eyerman, Fabien, Gaydos, Hill, Menashe, Skerjanec, Vieira, Wright]).

6. Consent Agenda

Ms. Wright noted that #3 on page 287 should read "unlawful practice of law committee" rather than "unauthorized practice of law committee."

Motion: Mr. Gerking moved, Mr. Greene seconded, and the board unanimous passed the motion to waive the one meeting notice requirement for changing Bar Bylaw 14.4.

Motion: The board unanimously passed the committee motion to change Bar Bylaw 14.4, which more accurately describes the BOG's role in appointing advisory and public committee members.

Motion: Mr. Greene moved, Ms. Evans seconded, and the board passed the motion to waive the one meeting notice requirement for changing Bar Bylaw 3.4.

Motion: The board passed the committee motion to change Bar Bylaw 3.4 to require distribution of the House of Delegates agenda to both active and inactive members of the bar. Mr. Yugler dissented.

Motion: Mr. Hill moved, Ms. Wright seconded, and the board unanimously passed the motion to approve the remainder of the Consent Agenda.