

Oregon State Bar
Meeting of the Board of Governors
February 22-23, 2008
Open Session Minutes

The meeting was called to order by President Rick Yugler at 12:25 p.m. on Friday, February 22, 2008 and adjourned at 5:55 p.m. The meeting reconvened at 9:00 a.m. Saturday, February 23, 2008, and adjourned at 10:10 a.m. Members present from the Board of Governors were Kathleen Evans, Ann Fisher, Gerry Gaydos, Tim Gerking (Friday), Kellie Johnson, Gina Johnnie, Christopher Kent, Robert Lehner, Audrey Matsumonji, Stephen Piucci (Friday), Carol Skerjanec, Bette Worcester, Terry Wright, and Rick Yugler. Members of OSB staff present were Karen Garst, Susan Grabe, Jeff Sapiro (Friday), Sylvia Stevens, Rod Wegener, and Teresa Wenzel. Members present from the PLF on Friday were Robert Cannon, Tom Cave, and Ira Zarov. Others present Friday were Willard Chi (ONLD by phone), Gary Georgeff, Marilyn Harbur (ABA Delegate), and Judge Adrienne Nelson (ABA Delegate by phone).

February 22, 2008

1. Work Session - Regulatory Services

Mr. Sapiro gave an informative presentation concerning Regulatory Services and the Disciplinary Counsel Office explaining the function of those departments within the bar.

2. Oath of Office

Kellie Johnson was sworn in as a new Board of Governors member from Region 5. Ms. Johnson introduced herself to the board and discussed her background and goals.

3. Report of Officers

A. Report of the President

1. President's Report

Mr. Yugler reported on the status of the courthouse access task force. The Chief Justice supports the idea of issuing lawyers a bar card that would allow access to all courthouses without the need to go through security. The bar has offered to provide the cards to lawyers and card readers at each courthouse. The courthouses are owned and operated by the counties and some counties have expressed concern that the cards could be easily forged and might allow security breaches. Mr. Gerking and Mr. Piucci have been appointed to the task force chaired by Judge Paul Lipscomb, which will try to develop a model that will work for all counties. Ms. Garst reported that the bar is currently in the process of providing bar members with new bar cards containing the new six-digit bar numbers. They do not have any security features.

Mr. Yugler attended the Affirmative Action retreat. He commended Ms. Garst and Margaret Robinson for their work on AAP issues, which has opened communications, improved confidence, and allowed for better understanding among the stakeholders. Matters in this area are improving and when the Diversity Program Administrator is hired, there is every expectation that the program will move forward in a positive fashion. Mr. Yugler emphasized that the board and the bar are very committed to the program.

Mr. Yugler directed board members to his written report for a full review of his recent activities.

2. Meeting with Chief Justice Paul J. De Muniz, January 31, 2008

The Chief Justice expressed appreciation for the bar's support of the May 2, 2008 Rule of Law Conference that Judge Ellen Rosenblum is organizing. The bar will provide meeting space and refreshments.

B. Report of the President-elect

1. Miscellaneous

Mr. Gaydos also attended the Affirmative Action Program retreat and thanked Mr. Yugler and Ms. Wright for being a part of it. He also commented on the work of Phyllis Lee in bringing the various sides together for additional communication and understanding. Margaret Robinson was commended for doing a great job – she had a full time job as Member Services Manager and took on what is another full time job with the Affirmative Action Program. The hiring group for the new Diversity Program Administrator is beginning to review applications and evaluate candidates.

Mr. Gaydos attended the recent National Conference of Bar Presidents in Los Angeles and emphasized the respect members of that group have for the Oregon bar and its Executive Director, Karen Garst. He reported on the successful BOWLIO event in early February, reminded the board that OLIO is coming up in the summer, and encouraged other members of the board to get involved in the fun. He also attended the Polk and Marion Counties Judges Reception and Awards Dinner where Senator Kate Brown received an award.

C. Report of the Executive Director

1. Retirement Letter

Ms. Garst submitted her formal retirement letter to the board. She will retire December 31, 2008.

2. Miscellaneous

Ms. Garst informed the board that she had attended the Los Angeles meeting of the National Association of Bar Executives. She has informed her colleagues around the country of her retirement and encouraged them to apply for the Executive Director's position. Ms. Garst updated the board on the new building and the moving process. The move went well, although there is still furniture coming for the lobby and staff continues to get settled. All should be well prepared for the February 29 open house. The architects did a great job: The building is well built and should last the bar for many years. OPUS is negotiating with possible tenants for the empty space in the OSB building.

D. Oregon New Lawyers Division

Mr. Chi discussed events in which the Division participated including the Law School Outreach Subcommittee's sponsorship of a panel focusing on "Surviving Law School" and "Studying for the Bar;" the Law Related Education Subcommittee's essay contest and plans for Constitution Day (September 18), in which they are asking attorneys to participate; SuperSaturday CLEs; the Pro Bono Subcommittee's creation of a new pro bono reporting form that was given to new lawyers at the swearing in ceremony; the Member Services and Satisfaction Subcommittees' commencement of the Mentoring Program; participation in the Young Lawyers Division of the ABA with a focus to the future of the profession; and development of the ONLD's brand "ONLD PRO," which will help avoid confusion with other bar groups. The ONLD is also participating in the search for the Diversity Program Administrator.

Upcoming ONLD events include a seminar featuring Judge Eric Bloch speaking to mistakes new lawyers make; planning session for the Oregon State Fair; planning for the Pro Bono Challenge, which will be held April 15 with Gerry Gaydos as Master of Ceremonies; and participation in the OSB Futures Conference in September.

4. Board Members' Reports

Board members and staff introduced themselves to Ms. Johnson and informed the board of events they had attended since the last meeting of the board, including an investiture, section/committee/division meetings, dinners, special events, and appearances before the legislature. The board was encouraged to begin looking for public members to participate in bar groups and boards.

Board members commented on the good turnout at the Conference of Bar Leaders and the desire of sections, committees, and local bars to know their board liaisons. Board members were reminded they do not need to attend every meeting of groups to which they are liaisons, but are encouraged to attend when possible and to maintain contact with the chair of the committee/section/division. It was reported that the Multnomah Bar Association's Equality Committee is bringing national speakers to Portland in July and will look to the Diversity Section for funding. Some Board members reported on comments from bar members that their dues are high. Ms. Johnson suggested that staff put together a brief handout with information that board members can distribute at meetings and will look into adding the information to the bar's website.

5. Professional Liability Fund

A. PLF Update

The PLF move is going well and staff likes its new space. There will be an open house in the future. It was noted that the new location of the bar is more accessible to mass transit. Mr. Zarov reported that the OAAP/SLAC Task Force has made tremendous progress; a report will be presented to the BOG in May that will include protocols and understandings for cooperation between the groups.

B. Financial Report

The PLF had net income for 2007 of \$5.6 million. It is not likely to be repeated, as it was largely a function of good investments and reduced claim frequency and size. Future investment income is expected to decline because of the global economic downturn; poor financial times also tend to result in more and larger claims. A recent survey shows a high level of satisfaction with claims handling.

C. Report on OAAP/Practice Management 2007 Contacts

The OAAP/Practice Management Advisors have been very busy and their work is believed to be at least partly responsible for the reduction in claims. The OAAP closed 17 practices in 2007 due to deaths, retirements, disciplinary suspensions, and career changes.

D. Goals for 2008

Goals for 2008 include conclusion of the move to the new building, looking into increasing primary coverage from \$300,000 to \$500,000, and continuing to move toward a paperless office. This year is the 30-year anniversary of the PLF and it will be celebrated by hosting the NABRICO (National Association of Bar Related Insurance Companies) conference in Portland. OSB President Rick Yugler will speak to the group. The PLF continues to look at succession planning and ways to fill the gap as 70%-80% of the staff attorneys with over 100 years of knowledge will be retiring in the near future.

E. Revision of PLF Bylaw 6.200-300

Action: Ms. Wright moved, Ms. Skerjanec seconded, and the board unanimously passed the motion to approve the changes to the PLF Bylaws 6.200-300 as proposed by the PLF Board of Directors.

6. Special Appearances

A. ABA House of Delegates Mid-Year Meeting

Marilyn Harbur and Judge Adrienne Nelson presented a report on the ABA House of Delegates Mid-Year meeting. The resolutions passed at the meeting fell into several categories. The public welfare resolutions encouraged federal, state, and local governments to develop better access to long-term health care; established programs for victims of identity theft; established a Model Act Governing Reproductive Technology; urged Congress to enact programs to train attorneys to assist veterans in obtaining health benefits and services; and approved a uniform jurisdiction act for adult guardianships and protective proceedings for elderly individuals. The environmental resolutions provided for the preservation and enhancement of ecosystem benefits and urged Congress to enact legislation assuring that the U.S. takes a leadership role in international legal, policy, financial, and educational discussions. The Rule of Law resolutions assigned the redistricting process for Congress and the legislature to an independent commission; encouraged school officials to obtain a better understanding of the religion clause in the U.S. Constitution; supported the Pakistani bar and bench urging immediate release of all judges and lawyers and asking the President to restore its Constitution. The criminal law resolutions amended Model Rule 3.8 to establish a prosecutor's obligations when there is information or evidence that a defendant was wrongly convicted and approved the ABA Criminal Justice Standards for Prosecutorial Investigations. The courts resolutions passed related to Uniform Rules of Discovery of Electronically Stored Information; Uniform Interstate Depositions and Discovery Act; retention of ten-day time limit in Federal Bankruptcy Rules for filing notice of appeal; and encouraged appropriate treatment of "dual jurisdiction" youth in juvenile justice systems. The business resolution passed was the Uniform Limited Cooperative Associations Act. Law practice resolutions that passed adopted a Model Rule on Conditional Admission

to Practice Law and concurred in the adoption of Interpretation 301-6 of the Standards for Approval of Law Schools concerning sufficiency of law schools' bar passage rate.

The Model Rule on conditional admission was quite controversial, because it provides for confidentiality of the fact that a lawyer with mental health or substance abuse issues is conditionally admitted to practice. Mr. Sapiro pointed out that Oregon has had a similar rule for some time, although it has been used only rarely and only when the applicant's problem is clearly under control. Moreover, while the applicant's medical and treatment records are confidential, the fact of the conditional admission is not. Mr. Harbor and Judge Nelson requested a meeting between the BOG and the ABA delegation to discuss this matter and the direction the BOG would like the delegates to pursue concerning this matter.

The other resolution drawing controversy was the issue of making bar passage rates a factor in whether a law school is accredited. The resolution passed, but not without discussion of the fact that the new standard will likely have an adverse affect on minority law schools.

7. Rules and Ethics Opinions

A. Proposed Formal Ethics Opinion

Mr. Piucci and Ms. Stevens presented the recommendation of the Legal Ethics Committee for adoption of a formal ethics opinion that interprets Oregon RPC 5.5 and defines the scope of "temporary practice" by out-of-state lawyers. The board acknowledges that the mobility of lawyers is a problem and there are other issues in this area.

Action: Mr. Piucci moved, Ms. Matsumonji seconded, and the board passed the motion to approve the proposed Formal Ethics Opinion regarding temporary practice by out-of-state attorneys in arbitration or mediation in Oregon and the assisting of an out-of-state attorney in proceedings by an Oregon attorney. Mr. Kent, Ms. Fisher, and Mr. Yugler were opposed. Ms. Skerjanec abstained.

B. Proposed Amendments to the Bar Rules of Procedure

Mr. Sapiro presented information concerning the amendments to the Bar Rules of Procedure. The changes are mainly housekeeping changes and will not go into effect until they are approved by the Supreme Court.

Action: Ms. Evans moved, Ms. Wright seconded, and the board unanimously passed the motion to approve the amendments to the Bar Rules of Procedure and forward them to the Supreme Court with a recommendation to approve.

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

A. Client Security Fund

1. CSF Claim No. 07-19 *Kaa v. Dunn*

Ms. Evans presented information concerning Ms. Kaa's request for review of the Client Security Fund Committee's denial of her claim for reimbursement.

Action: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously approved the motion to uphold the CSF Committee's recommendation to deny CSF Claim No. 07-19 *Kaa v. Dunn*.

B. CSF Claim Recommended for Payment

1. No. 07-15 *Jones v. Dunn* - \$900

The board removed CSF claim No. 07-15 *Jones v. Dunn* from the Consent Agenda for discussion. Though Mr. Jones was asking for \$1,800, the board felt that Mr. Dunn had done some work on the case and concurred with the CSF Committee that Mr. Jones should receive \$900.

Action: Mr. Gaydos moved, Ms. Evans seconded, and the board unanimously passed the motion to pay \$900 for CSF Claim No. 07-15 *Jones v. Dunn*.

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

A. Access to Justice Committee

Ms Wright distributed a spreadsheet reflecting contributions to the Campaign for Equal Justice by HOD members, which is well below the 100% level to which the HOD committed itself by resolution in 2005. She encouraged board members to contact HOD delegates who have not contributed and to remind them of the HOD's commitment. Ms. Skerjanec reminded the board that support for access

to justice can be accomplished in ways other than direct financial contributions and that those other contributions should be recognized.

Ms. Wright explained that the LRAP Advisory Board is requesting that the board budget an additional \$12,000 for 2009, which will allow one more member to participate in the LRAP.

The committee is looking for ways to expand pro bono participation among the bar and will look to enclosing the pro bono forms with dues statements.

B. Appointments Committee

Ms. Evans reported that this is the first time in a long time that the committee has more volunteers than it has positions that need to be filled. She encouraged the board to see that volunteers from the Leadership College be given first consideration for volunteer positions.

C. Budget and Finance Committee

1. New Bar Center

Mr. Wegener reported that the bar has closed on a "bridge loan" of \$13 million which is on deposit at Wells Fargo to purchase the bar building later this year. He also presented a document to be approved by the board for authorized signers on the bar's bank accounts.

Action: The board passed the committee motion to ratify the execution of the \$13 million loan documents with Ms. Wright abstaining.

Ms. Stevens informed the board that it is within the board's authority to engage in borrowing to finance the new bar center, although neither the Bar Act nor the Bylaws are crystal clear on that point. She recommended that the Policy and Governance Committee consider a revision to Bar Bylaw 7.102 in the future.

Action: The board unanimously passed the committee motion to designate certain signers for the bar's bank accounts.

D. Executive Director Evaluation Committee

Ms. Skerjanec presented the committee's recommendation for the Executive Director Search Committee and the board discussed the make up of the proposed committee. One concern centered on the absence of a non-lawyer member of the committee.

Action: Ms. Worcester moved, Ms. Wright seconded, and the board passed the motion to amend the committee motion to include the appointment of Mr. Lehner as a

public member to the Executive Director Search Committee. Mr. Lehner abstained.

Action: The committee motion passed unanimously as amended.

E. Member Services Committee

Action: The board unanimously passed the committee motion to reduce the Law Student membership fees from \$25 to \$10.

The Futures Conference will take place September 12 in Bend. HOD recruitment is underway and the committee asks the board to encourage members in their region to run for the HOD. The Affirmative Action Program is doing well; BOWLIO was a success; recruitment for the AAP Administrator is moving forward; and Margaret is doing a great job. Legal Publications may be looking to change pricing on BarBooks™ to enhance receipts. The Leadership College's first event, the ONLD meetings, and the first open house all went well.

F. Policy and Governance Committee

1. Redistricting of BOG Regions

Mr. Gerking presented the committee's recommendation for redistricting. He reminded the board that if it approved the committee's recommendation, it would take a legislative change to implement the redistricting and bar staff would prepare the draft bill to be submitted to the legislature. The final draft needs to be approved by the BOG by April 1 to be included in the 2009 legislative session. Continued discussion included a concern that there is no representation for out-of-state members.

Action: The board unanimously approved the committee motion to (1) add two new lawyer members to the board; (2) remove Clackamas County from Region 6 and establish it as a new district with the two new lawyer members; (3) move Lincoln and Yamhill Counties to Region 4; (4) move Linn and Benton Counties to Region 6; and (5) move Klamath County to Region 3.

2. Access to Justice of Bias MCLE Rule

Mr. Gerking presented the committee's recommendation explaining the compromise that was agreed to by proponents of the membership petition as well as members of the Diversity Section who favor retention of the requirement. Mr. Gerking reminded the board that the proposed changes must be approved by the Supreme Court. Mr. Georgeff participated by phone and indicated that although not everyone is happy, the proposed rule change is a good compromise and one with which he could live. He

thanked Messrs. Yugler and Gerking, and Judge Baldwin, commenting that they were instrumental in finding a good compromise and thanking them for their efforts. Comments from the board included a “thank you” to Mary Crawford for her efforts; opposition to the rule, but willingness to live with the compromise; thanks to Mr. Gerking for his efforts; and optimism that the Supreme Court would be willing to accept the compromise.

Action: The board passed the committee motion to approve the compromise, which changes the requirement name to Access to Justice; requires members to complete three credits in alternate reporting periods; requires new admittees to take a prescribed introductory course approved by the bar; and allows excess or unneeded credits to be used or carried over only as general credits. The motion passed with Ms. Fisher abstaining.

G. Public Affairs Committee

1. Update on Special Session

Ms. Fisher gave an update on the functions and concerns of the Public Affairs Committee for the benefit of newer board members. The committee asked the board for \$30,000 from the contingency fund to oppose ballot measures 51 and 53 as directed by the HOD for such things as polling, pages in voters’ pamphlet, and public awareness ads, but no TV ads. There was also concern regarding Initiative #17 concerning controversial jury instructions. If the board chooses to oppose this initiative, it will be addressed in the 2009 budget.

Action: The board unanimously passed the committee motion to use \$30,000 from the bar’s contingency fund to oppose ballot measures 51 and 53.

The board agreed by consensus that Mr. Yugler should file a petition with the Supreme Court challenging the certified ballot title for Initiative 17.

10. Consent Agenda

Action: Ms. Evans moved, Mr. Lehner seconded, and the board unanimously approved the Consent Agenda with CSF Claim No. 07-15 removed. (See 8.B.1 of this document for action taken concerning CSF Claim No. 07-15.)

11. **Default Agenda**

Concern was expressed that the president and others should exercise care in representing their personal views in correspondence in ways that may suggest the communication is on behalf of the board.

12. **Closed Session Agenda**

Saturday, February 23, 2008

A. Reinstatements (Judicial proceeding pursuant to ORS 192.690(1) – separate packet) Discuss/
lavender Action agenda

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

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