

Oregon State Bar
Meeting of the Board of Governors
May 9, 2008
Open Session Minutes

The meeting was called to order by President Rick Yugler at 12:30 p.m. on Friday, May 9, 2008 and adjourned at 5:15 p.m. Members present from the Board of Governors were Ann Fisher, Gerry Gaydos, Tim Gerking, Kellie Johnson, Gina Johnnie, Christopher Kent, Robert Lehner, Audrey Matsumonji, Stephen Piucci, Carol Skerjanec, Robert Vieira, Bette Worcester, Terry Wright, and Rick Yugler. OSB staff present was Karen Garst, Sylvia Stevens, Jeff Sapiro, Rod Wegener, Judith Baker, Susan Grabe, Kay Pulju, Danielle Edwards, and Teresa Wenzel. Present from the PLF were Jeff Crawford, Ira Zarov, James Rice, Tom Cave, Bob Cannon, Tim Martinez, Kandis Brewer Nunn, Ron Bryant, Fred Ruby, Bruce Schafer, and Bill Carter. Others present were Dr. John Enbom, Jessica Cousineau (ONLD), and Willard Chi (ONLD).

1. Call to Order/Finalization of the Agenda

The agenda was accepted by consensus without change.

2. Joint Meeting with Professional Liability Fund

A. Update

Mr. Zarov presented general information concerning the PLF's move into its new offices at the bar center, an open house anticipated for August, the annual NABRICO conference scheduled for August 20-23 hosted by the PLF, and the retirement of Linda Peterson, whose replacement is expected to be hired by August.

Mr. Cave presented information concerning the PLF's finances. Due to the current economic downturn, the PLF is seeing a change from previous years. As of May, more than 100 claims have been filed in 2008, following a traditional pattern in difficult economic times. Investment income is expected to be substantially less than in 2007, but even so, the fund is expected to break even. The fund's reserves are at \$6.1 million, and the PLF believes it will reach the goal of having \$9 million in reserves by 2012.

3. Work Session - Communications Department

Kay Pulju, Communications Manager, presented information regarding the programs and activities of the Communications Department: the *Bulletin*, media relations, public education, special events, marketing, referral and information services, and customer service (reception).

4. Report of Officers

A. Report of the President

1. Meeting with Chief Justice Paul J. De Muniz May 1, 2008

Mr. Yugler reported on his meeting with the Chief Justice, where the topics included the E-court™ program, court security and access cards, the Chief Justice' Compensation Commission, and the Court Facilities Commission Report.

2. ABA Lobby Day

Mr. Yugler indicated the visit to Washington, D.C. was successful and that those attending from Oregon were able to meet with most of Oregon's congressional delegation.

3. President's Report

Mr. Yugler reported that Frank Garcia has been hired as the bar's Diversity Administrator and that he had accompanied Mr. Garcia to a meeting of the Hispanic Bar's Chamber of Commerce. Mr. Yugler believes that Mr. Garcia has a great vision for the bar, has a great deal of work ahead of him, and is the right person for the job. Mr. Garcia will be introduced to the board in June.

Mr. Yugler thanked Ms. Pulju for her work in putting together the Rule of Law Conference. There were approximately 100 attendees from diverse areas of the community including business, churches, government, education, and the military. The program will be streamed on the bar's website and run on cable television. Participants included the Chief Justice and the moderator for the Q and A was April Bauer, a Northwest radio personality.

B. Report of the President-elect

1. Report on Meetings and Events Attended

Mr. Gaydos attended several events/meetings. He commended Ms. Garst on her presentation at the ABA Bar Leaders Institute in Chicago. He commended Ms. Wright on the UPL information she provided at the Western States Bar Conference and observed that it was a good place to network and share experiences with the western bars and to affirm what a great job the Oregon bar does by comparison. The Pro Bono Challenge showed that the ONLD and Oregon really shine in the pro bono arena. He also complimented Mr. Yugler and Willard Chi, ONLD Chair, for their presentations at the April swearing-in ceremony.

2. Northwest State Bars Meeting

Mr. Gaydos attended the Northwest State Bars meeting in Seattle with Mr. Yugler, Ms. Garst, and Ms. Stevens. States participating were Utah, Washington, Oregon, Nevada, and Montana. Montana will be getting a new Chief Justice, which may pave the way for it to join the other northwest states in reciprocity.

3. Miscellaneous

Mr. Gaydos expressed his optimism for the Affirmative Action Program under Mr. Garcia.

C. Report of the Executive Director

1. 2007 Program Measures

Ms. Garst gave a PowerPoint presentation of the 2007 Performance Measures for each of the bar's departments.

5. Board Members' Reports

Board members reported on events and meetings in which they had participated since the last board meeting. Mentioned were : various local bar and section meetings; CEJ fundraiser in Medford where \$10,000 was raised; Leaders' Conference at the bar center where community leaders got together for discussion; Classroom Law Project dinner; CEJ annual luncheon; LRAP Advisory Board meeting; and fifty-year members' luncheon. Of special note was Ms. Skerjanec's encouragement to BOG members to attend the Western States Bar Conference in 2009, Ms. Wright's observation that the Diversity Section is satisfied with the selection process used to fill positions in the Affirmative Action Program, and Mr. Piucci's information about David Sugarman of the OTLA who is starting a "new lawyers" academy to assist new lawyers with the fundamentals of life as a lawyer.

6. Special Appearances

A. SLAC/OAAP Task Force Report

Dr. John Enbom, former BOG public member, presented the report of SLAC/OAAP Task Force. The task force studied how the two entities might cooperate to protect the public while keeping the aspect of client confidentiality in the forefront. Dr. Enbom emphasized that the report should be viewed as a framework and not as literal rules to be followed. The report encourages SLAC to notify OAAP of new referrals and to allow OAAP a reasonable amount of time to alert SLAC of any risks in contacting the lawyer. The report also recommends that outreach include information about the consequences of not cooperating with SLAC . It also suggested that changing the name of SLAC would eliminate some of the confusion about the two programs.

Greg Hazarabedian appeared by telephone on behalf of SLAC and commended Dr. Enbom on his good work chairing the Task Force. Mr. Hazarabedian gave a brief description of how SLAC works, emphasizing that SLAC determines if lawyers are impaired and if they are a risk to the public. If not, SLAC steps away. The consensus of the committee was that the fragile lawyer was problematic and waiting to report to SLAC is dangerous to the lawyer, the bar, and the public.

Motion: Ms. Johnson moved, Ms. Skerjanec seconded and the board unanimously passed the motion to accept the task force report.

B. Limited Admission of Foreign Lawyers as House Counsel

Ms. Stevens presented a request that the BOG support expansion of the House Counsel to allow admission of foreign licensed lawyers. Some board members expressed concern that there might be public protection issues because house counsels are permitted to engage in pro bono services. There was also some concern about whether the Corporate Counsel and other interested sections have an opportunity to comment on any expansion in house counsel admission.

Motion: Ms. Wright moved, Mr. Piucci seconded, and the board unanimously approved forwarding the proposal to the BBX for its consideration, along with an explanation of the board's concerns.

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

A. Access to Justice Committee

1. Distribution of General Fund Appropriation

Ms. Wright presented the committee motion to distribute half of the General Fund appropriation as determined by the Association of Legal Services Programs, with the remainder held by the OSB pending the Association's recommendation for 2009.

Motion: The board unanimously passed the committee motion.

B. Budget and Finance Committee

1. Ratification for the Second Amendment to the Lease Agreement

Mr. Wegener explained that an amendment to the lease with OPUS was necessitated by Washington County's denial of the OSB's property tax exemption unless certain specific language was added to the lease. The Second Amendment also includes the correct amounts of Basic Rent. Because of the need to submit the amendment to the county by May 1, Mr. Yugler signed it on behalf of the bar.

Motion: The board unanimously passed the committee motion to ratify the Second Amendment to the Lease Agreement.

2. Audit Report for OSB for 2006 and 2007

Mr. Wegener reported that the audit went well and the report confirms that the OSB's accounting practices are sound. The auditor recommended only minor changes to eliminate the risk of fraud in connection with checks received.

Motion: The board unanimously passed the committee motion to accept the audit report.

3. Update on New Bar Center

A Lazik eye surgery clinic will likely be a new tenant and is expected to move in by August. The building next door to the bar center was sold to an investment company. The bar center's conference facilities are becoming popular and the public is asking to use them. Staff is working on procedures for public use of the facility.

C. Executive Director Search Committee

1. Status Report

Ms. Skerjanec reported that many resumes have been submitted. The resumes have been sorted, reviewed, and forwarded to the committee. The committee will have a conference call May 13, 2008, to select candidates for telephone interviews.

D. Member Services Committee

1. Update on Committee Activities

Mr. Gaydos reported that the Diversity Program Administrator has been hired; a task force has been appointed to consider whether to contract with a competitor of Casemaker™, which was sold in September; and that plans are going well for the Futures Conference.

E. Policy and Governance Committee

1. Redistricting of BOG Regions

Motion: The board unanimously passed the committee motion to stagger the terms of the two new board members by having the second Region 4 member elected to a two-year term. In the event the legislature does not approve the enabling legislation in time for the 2010 BOG elections, the plan will be implemented for the 2011 board year.

2. House of Delegates – Alternates

Motion: The board unanimously passed the committee motion to allow alternate delegates to the House of Delegates when the section chair or local bar president cannot attend provided the alternate is duly authorized to so act in the section or local bar's bylaws or otherwise.

3. Board's Borrowing Authority

Motion: Ms. Skerjanec moved, Ms. Wright seconded, and the board unanimous passed the motion to waive the one meeting notice requirement for amending Bar Bylaw 7.102.

Motion: The board unanimously passed the committee motion to amend Bar Bylaw 7.102, to clarify the borrowing authority of the President, Executive Director, or the Chief Financial Officer with respect to financial transactions that have been authorized by the Board of Governors.

4. Judicial Endorsements

Motion: The board unanimously passed the committee motion to changed Section 3 of the Standard Section Bylaws to provide that sections may not participate in or take a position in respect to the election or appointment of a candidate for any public office.

F. Public Affairs Committee

1. e-Court™ Implementation Task Force

Motion: The board unanimously passed the committee motion to accept the committee's proposed task force charge and appointments.

2. 2009 Law Improvement Package

Motion: The board unanimously passed the committee motion to approve the 2009 OSB package of law improvement proposals for introduction to the legislature.

G. Public Member Selection

1. Review of the Public Member Recruitment and Selection Process

Ms. Worcester reviewed the public member recruitment and selection process with the board and encouraged the members to contact qualified individuals personally.

8. Special Appearances

A. Oregon New Lawyers Division

Mr. Chi updated the board on activities of the ONLD including: the CLE subcommittee is actively working to increase CLE attendance throughout the state; the high school essay contest concludes May 10 and the winner will receive a monetary award accompanied by a letter from the Chief Justice; on Constitution Day attorneys, working with the teachers, will go to schools and speak with the students about the law and what it means to practice law; the Pro Bono Challenge was attended by 120 members; the ONLD is excited about participating in the Futures Conference and will have breakout sessions; and the Communications Task Force is involved in a multiyear re-branding project and hopes to finalize a new logo very soon. Mr. Chi reminded the board that the ONLD would be doing a beach clean up May 10 and invited board members to participate.

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

A. Client Security Fund [Ms. Evans]

1. Review Denial of CSF Claims

a. 07-10 *Rothenfluch v. Knapp* \$73,381.00

Motion: Ms. Wright moved, Mr. Gerking seconded, and the board unanimously passed the motion to uphold the CSF Committee’s denial of the claim.

b. 07-03 *Jones v. Judy* \$40,000.00

Motion: Ms. Wright moved, Mr. Piucci seconded, and the board passed a motion to reverse the decision of the CSF Committee and approved payment of the claim. Mr. Gaydos, Mr. Gerking, Ms. Skerjanec, Mr. Vieira, Ms. Worcester, and Mr. Yugler opposed the motion and Mr. Kent abstained.

c. 07-07 *Douglas v. Dunn* \$7,731.00

Motion: Ms. Johnson moved, Mr. Gerking seconded, and the board passed a motion to uphold the CSF Committee’s denial of the claim. Mr. Yugler opposed the motion.

d. 07-22 *Scharn v. Mason* \$45,428.20

Motion: Mr. Gerking moved, Ms. Wright seconded, and the board unanimously passed a motion to uphold the CSF Committee’s denial of the claim.

10. Consent Agenda

Motion: The board approved the agenda by consent with one change to Page 9 of the February 22, 2008, minutes.

11. 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)