

Oregon State Bar
Meeting of the Board of Governors
July 18, 2008
Open Session Minutes

The meeting was called to order by President Rick Yugler at 1:10 p.m. on Friday, July 18, 2008 and adjourned at 5:30 p.m. Members present from the Board of Governors were Kathleen Evans, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, 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, Susan Grabe, Linda Kruschke, Catherine Petrecca, Jeff Sapiro, Sylvia Stevens, Rod Wegener, and Teresa Wenzel. Present from the PLF were Ron Bryant, Jeff Crawford, Tom Cave, and Ira Zarov. Others present were Willard Chi (ONLD), Judge Adrienne Nelson (ABA Delegate), and Maya Crawford.

1. **Work Session - Legal Publications**

Ms. Kruschke, Manager of the bar's Legal Publications Department, presented information regarding the Legal Publications Department, its financial objectives, its mission, and its publications.

2. **Report of Officers**

A. **Report of the President**

1. **Meeting with Chief Justice Paul J. De Muniz July 10, 2008**

As written.

2. **Other Activities**

Mr. Yugler updated his report to include his participation in the St. Andrew's Legal Services' run, elaboration of the Eastern and Southern Oregon tours of local bars, encouragement to future presidents to continue to include the tribal courts in the bar's visitations, observation that sustainability will be part of the bar's future, and reminders of upcoming events:

- HOD conference call August 1
- Awards nomination deadline August 8
- BOG Committee meetings August 15
- Interview of candidates for the position of Executive Director August 16
- Deadline for letters of interest for president-elect September 1

B. Report of the President-elect

Mr. Gaydos indicated the Eastern Oregon Tour and the meeting with the Chief Justice went well. He thanked the board for the opportunity to serve.

C. Report of the Executive Director

Ms. Garst informed the board that the punch list for the new building is almost complete; scanning is complete except for Discipline which will probably take another year to bring current; summaries of historical issues are being placed online for easy storage and access; the 2009 president's notebook is complete; and the Executive Director's notebook will be completed by August 15.

D. Oregon New Lawyers Division

1. ONLD Report

Mr. Chi highlighted events included in his written report. He thanked the board for including the ONLD in its committee and board meetings.

3. Board Members' Reports

Board members reported that although things had slowed substantially for the summer they had attended meetings, bar events, and investitures, and participated in task forces. Ms. Wright advised the board that the Diversity Committee has concerns regarding the way the elimination of bias issue was resolved. Mr. Yugler will follow up.

4. Special Appearances

A. ABA Update

1. August Meeting and Resolutions Overview

Judge Adrienne Nelson presented information concerning the ABA's upcoming HOD meeting and the Oregon delegation. She did not believe that any of the pending agenda items were of great concern to the OSB, other than the ABA Standing Committee on Ethics and Professional Responsibility's request that the Oregon State Bar cosponsor a proposed amendment to Model Rule 1.10 to allow screening of lateral hires. Ms. Stevens reminded the board that Oregon has had such a rule for more than 20 years with no negative consequences. Judge Nelson informed the board that even though this rule is not extremely controversial, it would likely receive opposition. Judge Nelson thanked the board for its direction and informed the board that the ABA delegates will return in September to update the board on the ABA's August meeting.

Motion: The Public Affairs Committee's motion to cosponsor the ABA Model Rule of Professional Conduct 1.10 passed with Kent opposed and Greene abstaining.

5. Professional Liability Fund

A. Update

Mr. Zarov met recently with the Arizona bar regarding implementation of a PLF-like program in Arizona. Like most states making inquiry about the PLF and its functions, the representatives were a little apprehensive, but very interested all the same.

B. Financial Report and PLF Audit

Notwithstanding the current financial climate, the PLF's investments are diverse and the PLF expects to break even for 2008. As in other years where the economy has slowed, the claims for 2008 have increased, but the severity appears to be remaining at a lesser level. The 2009 PLF budget and assessment will come before its board of directors in August with a final recommendation to the Board of Governors at its September meeting. The assessment is expected to remain the same as it is now.

C. Change to PLF Policy 7.700(E)

Mr. Crawford presented information concerning proposed PLF Policy 7.700(E), which deals with excess coverage for firms with non-Oregon lawyers and out-of-state offices.

Motion: Ms. Evans moved, Ms. Worcester seconded, and the board passed the motion to adopt PLF Policy 7.700(E) with Mr. Yugler abstaining.

D. Change to PLF Policy 7.700(Q)

Mr. Crawford presented information concerning proposed PLF Policy 7.700(Q), which provides for non-standard excess coverage for firms that do not meet the underwriting criteria established by the PLF.

Motion: Ms. Evans moved, Ms. Skerjanec seconded, and the board unanimously passed the motion to adopt PLF Policy 7.700(Q).

E. Report on Potential Increase to PLF Primary Limit

Because there has been no change to the primary limit of some time, Mr. Yugler asked Mr. Zarov to look into the matter and see if the limit should be raised. Mr. Zarov found that 90% of the claims fell below the \$300,000 mark and that the few that fall outside the criteria are covered by other excess programs. His conclusion is that there is no real need to increase the primary coverage limits.

F. Report on the PLF Communication Plan

Mr. Zarov reported this is the 30th year of NABRICO and it will be having its conference August 20 – 23 in Portland. The PLF will be assisting with marketing through ads in area newspapers, articles in *The Business Journal*, and with board members speaking to area service organizations.

6. Rules and Ethics Opinions

A. Proposed Formal Ethics Opinion

1. Revision of Formal Ethics Opinion on Arbitration by Out-of-State Lawyers

Ms. Stevens presented the Legal Ethics Committee's proposal to footnote to this formal opinion that the board approved in February. Upon further review of the entire opinion, the board asked to have more time to review the information, reevaluate its February approval, and receive additional information.

Motion: Mr. Kent moved, Mr. Gerking seconded and the board unanimously passed a motion not to publish the ethics opinion and to review it more closely at its September meeting to determine if it will rescind its original approval.

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

A. Access to Justice Committee

1. ABA Model Rule 6.1

Maya Crawford presented the Pro Bono Committee's desire to amend the Oregon RPCs by adding ABA Model Rule 6.1, which is an aspirational standard that attorneys provide yearly pro bono hours *and* financial support for low-income legal services. There was concern about the wisdom of adding an unenforceable aspirational standard to the disciplinary code. There was also concern that some members may see this as the beginning of a mandatory requirement.

Motion: The committee motion to add ABA Model Rule 6.1 to the Oregon RCPs failed (yes – Gaydos, Vieira, Wright, Yugler; no – Evans, Fisher, Gerking, Greene, Johnnie, Kent, Lehner, Piucci, Skerjanec, and Worcester; abstain – Matsumonji; absent – Johnson).

2. Proposed New Admissions Rule

Motion: The board unanimously passed the committee motion to support the Board of Bar Examiners' recommendation to the Supreme Court to adopt an out-of-state active pro bono attorney status – Admissions Rule 17.05.

B. Budget and Finance Committee

1. Update on New Bar Center

OPUS has again raised the issue of concluding the sale of the building, but nothing concrete has been proposed.

C. Executive Director Search Committee

1. Update

The board met in Executive Session. The Executive Director Search Committee will extend invitations to several candidates for additional interviews.

D. Policy and Governance Committee

1. Definition of Who May Practice Law in Oregon

Mr. Gerking presented the committee's motion to seek amendments to ORS 9.160 and 9.162 based on the recommendation of the Out-of-State Lawyers Study Group. The proposed change is necessitated by the increased phenomenon of out-of-state lawyers who establish a permanent presence in Oregon, but who do not seek admission to the OSB. The amendments would clarify that the person practices law in Oregon if the person is physically present in Oregon while providing legal services.

Motion: The board unanimously passed the committee motion to propose amendments to ORS 9.160 and 9.162 to clarify what it means to practice law "in Oregon."

2. Lawyer/Client Exception to Confidentiality

Mr. Gerking presented the committee's motion to amend Oregon RCP 1.6(b) to create an exception to the duty of confidentiality to enable effective monitoring of lawyers who have been conditionally admitted or reinstated, or who are on disciplinary diversion or probation.

Motion: The board unanimously passed the committee motion to approve the proposed amendment to Oregon RPC 1.6(b).

E. Public Affairs Committee

1. Political Update

Ms. Fisher reported that the E-filing Task Force is moving forward and the court facilities inventory continues. For future consideration, Mr. Piucci told

the board though Initiatives 51 and 53 had failed, they would most likely be back in 2010.

F. Public Member Selection Committee

1. Update

Ms. Evans informed the board that the committee has four candidates for appointments to various positions. It also has six candidates for the public position on the board, all of which have a financial background. The committee will be reviewing its choices at its August 26 meeting.

8. Consent Agenda

Motion: Ms. Wright moved, Ms. Worcester seconded and the board unanimously passed the motion to waive the one meeting notice requirement to consider bylaw changes.

Motion: Ms. Evans moved, Ms. Wright seconded, and the board unanimously passed the motion to approve the Consent Agenda.