

**Oregon State Bar**  
**Meeting of the Board of Governors**  
September 11, 2008  
Open Session Minutes

The meeting was called to order by President Rick Yugler at 10:00 a.m. on Thursday, September 11, 2008 and was adjourned at 5:00 p.m. Members present from the Board of Governors were Kathy Evans, Ann Fisher, Gerry Gaydos, Tim Gerking, Ward Greene, Kellie Johnson, Gina Johnnie, Christopher Kent, Robert Lehner, Audrey Matsumonji, Stephen Piucci, Carol Skerjanec, Robert Vieira, Bette Worcester, and Rick Yugler. OSB staff present was Karen Garst, Sylvia Stevens, Jeff Sapiro (by phone), Rod Wegener, Susan Grabe, Danielle Edwards, and Teresa Wenzel. Present from the PLF were Jeff Crawford, Tom Cave, and Ron Bryant. Also present were Mary Crawford, Harry Auerbach, Pete Heuser (by phone), and Willard Chi (ONLD).

1. Call to Order/Finalization of the Agenda

The agenda was accepted by consensus without change.

2. Work Session - Public Affairs

Ms. Grabe presented information regarding the Public Affairs Department, its staff, and its role in the governance and function of the bar. The program functions include advocating for the legal profession, advocating as a partner with the Judiciary to ensure an independent, and adequately funded judicial system, advocating for civil and legal services for the public, and submitting law improvement legislation to the legislature to benefit the public. All this is supported and enhanced by communications and relationship building between the legislative, judicial, and executive branches of government.

3. Report of Officers

A. Report of the President

1. President's Report

Mr. Yugler gave a brief summary of his written report. He mentioned that the Affirmative Action Program OLIO event in August was very successful. In addition, he stated that the BOG and PLF continue to work together well. He also reminded BOG members of the September 12 Future of the Law Conference and notified them that there will be a retirement party for Karen Garst November 5, 2008, from 3:00 p.m. – 5:00 p.m. at the bar center.

2. Meeting with Chief Justice Paul J. De Muniz August 28, 2008

Mr. Yugler reported that there will be no bill for public funding of appellate elections presented to the legislature.

3. Approve Executive Director Contract

Mr. Yugler presented a revised contract for the new executive director, Teresa Schmid, which included four additional paid holidays to coincide with her current contract in Arizona.

**Motion:** Ms. Skerjanec moved, Ms. Johnson seconded, and the board unanimously approved the motion to accept Ms. Schmid's revised employment contract as submitted to the board.

B. Report of the President-elect

1. Discussion of 2008 BOG Retreat

Plans for the retreat are still in progress and Mr. Gaydos informed the board there will be time to spend away from the meetings and they should be prepared to dress appropriately for the coast.

2. Miscellaneous

Mr. Gaydos reminded the board that BOWLIO will take place October 25 and he encouraged them to participate. He attended the NABE annual meeting, where Rod Wegener was sworn in as the new president. He observed that NABE and other conferences are good places to learn about other bars as well as let them know what the Oregon State Bar is doing. He encouraged the board to participate in the Future of the Law Conference, which will be attended by attorneys from the ONLD and the Leadership College, to share ideas and information from multiple generations of lawyers.

C. Report of the Executive Director

Ms. Garst has completed the Executive Director's Notebook and sent it to Ms. Schmid. To assist in Ms. Schmid's transition, she will attend the board retreat on November 13, meet with each bar staff, and be introduced to various bar groups by Ms. Garst. There is only one major issue left on the punch list for the new building and Ms. Garst continues to work toward resolution.

D. Report of Oregon New Lawyers Division

Mr. Chi presented the board with samples of the ONLD's new business cards and summarized his written report.

4. Board Members' Reports

Activities of the board members included participation in the Court Security Task Force, the Campaign for Equal Justice, SPRB, sections and committees, OLIO,

various conferences, Public Member interviews, PLF board, SLAC, House of Delegates regional meetings, and events at the law schools.

**5. Professional Liability Fund [Mr. Cave]**

**A. PLF Update**

Mr. Bryant presented the PLF report and reported that Mr. Zarov is on sabbatical. The PLF hosted a successful NABRICO conference on August 20-23. Claims for 2008 are up slightly over 2007, at the same time, none is out of the ordinary. Sarah Trout has been hired as the new claims attorney. The Practice Management team closed ten offices and had requests for service from 159 lawyers. The PLF is holding its own financially with a decrease in investments of 3.8%. The 2008 PLF budget includes a 5% increase to the salary pool made in consultation with Ms. Garst. The PLF assessment will remain at \$3,200 for 2009.

**B. Approve PLF Assessment and Budget**

**Motion:** Mr. Greene moved, Mr. Kent seconded, and the board unanimously passed the motion to approve the 2008 PLF budget and continue the PLF assessment at \$3,200 for 2009.

**C. Approve Changes to PLF Coverage Plan**

**1. Section I.8 Damages**

**Motion:** Ms. Skerjanec moved, Ms. Evans seconded, and the board unanimously passed the motion to approve the change to Section I.8.

**2. Section V.4.b. Exclusion for Bad Faith/Sanctions**

**Motion:** Ms. Johnson moved, Ms. Evans seconded, and the board unanimously passed the motion to approve the change to Section V.4.b.

**3. Section V.20.a. - Special Capacity/Voluntarily Assumed Obligations**

**Motion:** Ms. Worcester moved, Mr. Kent seconded, and the board unanimously passed the motion to approve the change to Section V.20.a.

**4. Section IX.1.h – Assistance, Cooperation and Duties of Covered Party**

**Motion:** Mr. Pucci moved, Mr. Vieira seconded, and the board unanimously passed the motion to approve the change to Section IX.1.h.

D. Approve Changes PLF Excess Plan

1. Section XIV

**Motion:** Ms. Johnson moved, Ms. Worcester seconded, and the board unanimously passed the motion to approve the change to Section XIV.

E. Joint Salary Study – PLF CEO – OSB ED

The board discussed authorizing the employment of a consultant to review the salaries of the PLF CEO and the OSB Executive Director. Ms. Garst reminded the board that for several years it has been the policy that the two positions should have parity. The PLF proposed a joint committee of the PLF and BOG to review this matter. The PLF has appointed Ron Bryant, Kandis Brewer Nunn, and Jim Rice to represent the PLF.

**Motion:** Ms. Fisher moved, Ms. Johnson seconded, and the board unanimously passed the motion to appoint a committee with three PLF members and three BOG to review this matter and bring the results back to the board. Mr. Yugler appointed Gerry Gaydos, Audrey Matsumonji, and Ward Greene to represent the Oregon State Bar. The committee will return to the board with a specific plan prior to expending any funds for a consultant.

6. Special Appearances

A. Admissions Task Force Report

Albert Menashe presented the Admissions Task Force Report and entertained questions from the board. The task force considered the following options for admission:

- Diploma Privilege – anyone who graduates from an in-state law school can be admitted to the bar and can practice law. This option was rejected because it would remove the function of gatekeeper from the bar and transfer it to the law schools.
- Apprenticeship – this option was not workable in Oregon because there are not enough lawyers to mentor new graduates.
- Public Service – this approach allows students to perform public service in lieu of the bar exam. Because there are a limited number of programs that provide this option, it would limit the number of attorneys admitted to the bar each year.
- Examination – with certain changes recommended by the Task Force, the examination model appears to be the best alternative for persons wishing admission to the Oregon State Bar.

Concerns about the current exam included how the information is or is not taught to the students, whether the exam has a cultural bias, and whether the test questions are state-appropriate. The task force concluded that those concerns were not borne out by evidence. After lengthy consideration, the task force made the following recommendation:

1. Continue the Multistate Bar Exam, weighted at 50%.
2. Replace questions prepared by the Board of Bar Examiners with six Multistate Essay Exam questions, weighted at 30%.
3. Continue to use the Multistate Performance Test, using two questions rather than one, weighted at 20%.
4. Revise the cut score to increase Oregon's pass rate from 69% to 80%.
5. Implement the new exam structure in 2011.

Board members indicated lingering concerns about the value of the MBE, which is considered by many to be an unnecessarily difficult and "tricky" exam that does not accurately test for the skills required to be a good lawyer.

**Motion:** Ms. Johnson moved and Mr. Greene seconded the motion to approve the task force' recommendation.

**Motion:** Ms. Skerjanec moved, Mr. Gerking seconded, and the board unanimously passed the motion to table the motion to approve the task force' recommendation. The board will review the matter at its retreat in November.

## 7. Rules and Ethics Opinions

### A. Proposed Formal Ethics Opinion

Harry Auerbach, chair of the Legal Ethics Committee, explained the committee's analysis and conclusions regarding out-of-state lawyers handling securities arbitrations in Oregon. The board continued to be concerned about the opinion and about the scope of Oregon RPC 5.5. It was suggested that the rule should be reviewed to assure it adequately protects Oregon clients. The board thanked Harry Auerbach, chair of the Legal Ethic Committee, for his input.

**Motion:** Ms. Evans moved, Mr. Kent seconded, and the board passed the motion to withdraw its prior approval opinion and to direct the Legal Ethics Committee to study the rule further with Mr. Piucci abstaining.

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

A. **Budget and Finance Committee**

1. **New Bar Center Purchase**

**Motion:** The committee motion to ratify the third amendment to the OPUS contract passed unanimously.

2. **2009 Executive Summary Budget**

The board reviewed the 2009 Executive Summary Budget.

3. **Addition of One Managerial Position**

The board discussed the options of using consultants to oversee the bar's IT functions, including migration from the Universe database or to hire a regular staff member.

**Motion:** The board unanimously passed the committee motion to authorize the executive director to hire a Business and Information Services Manager.

B. **Member Services Committee**

1. **Add Bar Bylaw 4.8 – President's Public Leadership Award**

In discussion, the board expressed concern about the award being given to someone who had assisted the bar as part of their regular employment. Some board members felt that even if it were excellent service to the bar, it was still part of the person's job and the awards traditionally have been for volunteer activities.

**Motion:** Mr. Gaydos moved, Ms. Fisher seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for changing the Bar Bylaws.

**Motion:** The committee motion to add the following new bylaw was passed unanimously:

**Section 4.8 President's Public Leadership Award**

The criteria for the President's Public Leadership Award is as follows: The nominee must not be an active or inactive member of the Oregon State Bar and the nominee must have made significant contributions in any of the areas described in the President's Awards (Section 4.2-4.4 above).

2. OSB Awards

**Motion:** The committee motion to present the following individuals with President's Awards passed unanimously.

Award of Merit	Hardy Meyer
Wallace P. Carson Award	The Honorable Elizabeth Perris
President's Affirmative Action Award	The Honorable Darleen Ortega, Trang Tu, and The Honorable Janice Wilson
President's Member Services Award	Evohl Malagon and Libby Schwartz
President's Public Service Award	Greg Macpherson and Steve Todd
President's Public Leadership Award	Marilyn Cover and Phyllis Lee

C. Public Affairs Committee

1. Political Update

Ms. Grabe informed the board that ballot measures 51 and 53 are not on the ballot, things are winding down on the state side, and that the national elections will have an impact on state issues. She encouraged board members to stay involved and engaged in legislative issues.

2. Measure 59

**Motion:** Mr. Kent moved, Ms. Johnson seconded, and the board unanimously passed a motion to table the matter until later in the day.

The board discussed the committee's motion to oppose Measure 59, which would allow federal taxes to be fully deducted from Oregon income. If it passes, the measure is expected to have a significant negative effect on the state's budget, including judicial and public defense funding. Some board members expressed concern that the measure may not be germane to the bar's purposes and formal opposition would expose the bar to challenges and dues reimbursement for objectors.

**Motion:** The board passed the committee motion to oppose Measure 59 (yes, 8 [Evans, Fisher, Gaydos, Johnnie, Johnson, Piucci, Vieira, Yügler]; no, 6 [Gerking, Kent, Lehner, Matsumonji, Skerjanec, Worcester]; abstain, 1 [Greene]; absent, 1 [Wright]).

3. Appellate Process Review Committee Report Revisited

Ms. Fisher indicated that though the issue was politically sensitive, the report abates past controversy and the Chief Justice is satisfied with the report.

**Motion:** The committee motion to accept the Appellate Process Review Committee Report passed.

4. Multnomah County Court Facility Resolution

Discussion included observation that Multnomah is not the only county with a courthouse which needs repair. The board would like to see statewide support for repair/upgrade of court facilities.

**Motion:** The committee motion to approve the following language supporting the Multnomah County Court Facility Resolution passed unanimously:

The Oregon State Bar supports efforts to develop a statewide solution to address court facilities in Oregon. The Oregon State Bar recognizes that Multnomah County resolution #08-075 furthers this effort.

D. Public Member Selection

1. 2009 BOG Public Member Recommendation

**Motion:** The board unanimously passed the committee motion to appoint Michelle Garcia to the open position as public member to the BOG for a four-year term and to appoint Karen Lord to the next open position for public member on the Board of Governors.

9. HOD Agenda

The board considered resolutions on the House of Delegates agenda and whether to take a position on resolutions it did not submit. The board also discussed an amendment to one of its resolutions.

1. Adoption of Oregon RPC 1.6(b)(7) (Item 11)

**Motion:** Mr. Gerking moved, Ms. Worcester seconded and the board unanimously passed the motion to adopt the revised language (see below) regarding Item 11. Handouts will be distributed to the House of Delegates at its annual meeting.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.



2. Encouraging Sustainability (Item 12)

**Motion:** Ms. Skerjanec moved, Ms. Johnson seconded, and the board passed the motion to take no position on Item 12 with Evans, Greene, and Kent opposing.

3. OSB Paralegal Certification (Item 13)

**Motion:** Ms. Skerjanec moved, Mr. Piucci seconded, and the board passed the motion to take no position on Item 13 with Johnnie, Evans, Yugler, and Greene opposing.

4. Sentencing Fiscal Impact Statements (Item 14)

**Motion:** Ms. Johnson moved, Mr. Gaydos seconded, and the board unanimously passed the motion to oppose Item 14. Ms. Johnson will present the board's opposition to the House of Delegates at its annual meeting.

5. Creation of House of Delegates Executive Committee (Item 15)

**Motion:** Mr. Gerking moved, Ms. Skerjanec seconded, and the board unanimously passed the motion to take no position on Item 15.

6. Amendment to House of Delegates Quorum Requirement (Item 16)

**Motion:** Mr. Gerking moved, Mr. Piucci seconded, and the board passed the motion to oppose Item 16 with Ms. Fisher abstaining. Mr. Gerking will present the board's opposition to the House of Delegates at its annual meeting.

7. Fair Compensation for Those Practicing Public Defense Law in Oregon (Item 17)

**Motion:** Ms. Fisher moved, Ms. Johnson seconded, and the board passed the motion to support Item 17 with Greene, Johnson, and Vieira abstaining. Ms. Fisher will present the board's position to the House of Delegates at its annual meeting.

8. Adequate Funding of Legal Services for All Citizens (Item 18)

**Motion:** Mr. Greene moved, Ms. Johnson seconded, and the board unanimously passed the motion to support Item 18. Mr. Greene will present the board's position to the House of Delegates at its annual meeting.

9. Adequate Funding of Legal Services for Low Income Oregonians (Item 19)

**Motion:** Mr. Greene moved, Mr. Kent seconded, and the board passed the motion to support Item 19 with Evans abstaining and Fisher opposing. Mr. Kent will present the board's position to the House of Delegates at its annual meeting.

10. **Consent Agenda**

**Motion:** Mr. Lehner moved, Mr. Piucci seconded, and the board unanimously passed the motion to approve the Consent Agenda without change.

11. **Closed Sessions**

- 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)

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