

**Oregon State Bar**  
**Meeting of the Board of Governors**

November 15, 2008

**Open Session Minutes**

Revised June 25, 2009

The meeting was called to order by President Rick Yugler at 12:45 p.m. on Saturday, November 15, 2008, and was adjourned at 5:15 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, Karen Lord, Audrey Matsumonji, Stephen Piucci, Carol Skerjanec, Bette Worcester, Terry Wright, and Rick Yugler. Board members-elect present were Steve Larson, Mitzi Naucler and Karen Lord. OSB staff present was Karen Garst, Teresa Schmid, Sylvia Stevens, Jeff Sapiro, Rod Wegener, Susan Grabe, Danielle Edwards, and Teresa Wenzel. Present from the PLF were Jeff Crawford, Ira Zarov, and Ron Bryant. Also present were Ross Williamson and Willard Chi from the ONLD.

**1. Work Session - Finance and Operations**

Mr. Wegener, Oregon State Bar CFO, present information concerning the bar's Finance and Operations Department, including a listing of F&O staff members, and a review of the department's responsibility for accounting, information technology and design, and facilities management. Mr. Wegener reminded the BOG that the OSB is now a landlord, with attendant opportunities and obligations. He also identified issues for F&O in, which include selection of auditors, creating a five-year forecast, reviewing the investment portfolio, and reviewing the bar's reserve and policies.

**2. Report of Officers**

**A. Nominating Committee**

**1. Nomination of Kathy Evans as President-elect**

**Motion:** The Nominating Committee presented Kathy Evans as its recommendation for President-elect and the board unanimously approved the recommendation.

**B. Swearing in of New Board Members**

Mitzi Naucler, Karen Lord and Steve Larson were sworn in as new board members. Ms. Lord's term commenced immediately, as she is replacing Mr. Lehner. The terms of Ms. Naucler and Mr. Larson will begin on January 1, 2009.

**C. Report of the President**

Mr. Yugler thanked the board for moving forward on the House of Delegates meeting, which was a success. Activities in which he had participated included speaking at investitures, meeting with students. He will be Master of Ceremonies at the awards banquet in December.

1. Meeting with Chief Justice Paul J. De Muniz

Discussion with the Chief Justice on October 30, 2008, included the Admissions Task Force Report and reciprocity admission; the suggestion of creating a water court, which is not presently supported by the Chief Justice; public funding for judicial elections, which the Chief Justice opposes; the Chief Justice's continued concern about how judges are selected; and possible legislative changes such as lengthening judicial terms.

D. Report of the President-elect

1. Miscellaneous

Mr. Gaydos encouraged the board to review the Chief Justice's strategic plan. He informed the board that Frank Garcia is doing a great job with the Affirmative Action Program and he encouraged board members to attend the Urban League Luncheon, which occurs yearly. He thanked board members who attended the law school events supporting the Affirmative Action Program and Ms. Fisher for attending the PLF practical skills luncheon. He informed the board that he is pleased to follow Mr. Yugler as president of the bar.

E. Report of the Executive Director

1. Miscellaneous

Ms. Garst reported on a letter submitted by Mr. Danny Lang asking the board to reconsider the quorum requirements for the HOD, but the board took no action on the ground that the question was resolved by the vote at the HOD meeting on November 7. Ms. Garst asked the board members to submit their committee preferences before the retreat ended.

F. Oregon New Lawyers Division

1. Report of Chair

Mr. Chi added the following information to his written report: He attended the HOD meeting; the ONLD attended the PLF's Learning the Ropes seminar; ONLD had its annual meeting; and participated in BOWLIO. Mr. Chi thanked the board for making him feel welcome and thanked Ms. Fisher for her time as BOG liaison to the ONLD.

Ross Williamson, the chair-elect of the ONLD, introduced himself and gave the board a summary of proposed activities in 2009 including meeting with the BOG in Salem and Ashland; working with Frank Garcia to link public groups to the Affirmative Action Program and the ONLD; working with Multnomah Bar Association's young lawyers; meeting with Washington's state bar, Clark

County's bar, Washington state's executive committees, and Washington's young lawyers; participating in the Access to Justice Advisory Committee through its new seat in that group; and planning a second rafting trip.

### 3. Board Members' Reports

The board members reported that this is a slow time of year and many of the sections and other groups are not meeting. Activities in which the board members participated included section meetings, dinners/receptions, the House of Delegates meeting, BOWLIO, PLF Learning the Ropes, Ms. Garst's retirement party, local bar meetings, fund raising for Campaign for Equal Justice, PLF Board of Directors meeting, a national women lawyer's conference (Kellie Johnson was a speaker), the Chief Justice's advisory committee, the Futures Conference, and Affirmative Action Committee meeting.

### 4. Professional Liability Fund

Mr. Bryant reported that the PLF paid more than 900 claims in 2008 and, although the number of claims is high, the severity of the claims remained low and the PLF budget remains on target for 2008, with sufficient reserves to cover any revenue shortfall. Other PLF development reported by Mr. Bryant: a new lawyer was hired and is doing well; in the third quarter, the OAAP was accessed by 220 attorneys and the number is 500 which is up from 2007; new officers for 2009 are Jim Rice chair-elect, Ron Bryant vice-chair, and Kandis Nunn secretary/treasurer. Finally, Mr. Bryant explained that the PLF submitted only one name to the Board of Governors for appointment to the PLF board because (a) the person is highly qualified and (b) the other two candidates, also highly qualified, had conflicts.

Mr. Crawford presented information concerning the PLF Excess, Pro Bono, and Claims Made Plans. He also informed the board that reinsurance renewal rates for the 2009 have not been set yet, but are expected to remain about the same as 2008. The PLF will approve the excess rates at its December meeting, but requests the BOG approve them now because the BOG will not meet again before the end of 2008.

- A. Approval of Revisions to PLF Claims Made Plan
- B. Approval of Revisions to PLF Excess Plan
- C. Approval of Revisions to PLF Pro Bono Plan

**Motion:** Ms. Skerjanec moved, Ms. Johnson second, and the board unanimously passed the motion to approve the PLF Excess, Pro Bono, and Claims Made Plans.

- D. Approval of PLF Excess Rates

**Motion:** Ms. Worcester moved. Ms. Johnson seconded, and the board unanimously passed the motion to approve the excess rates subject to their approval by the PLF Board of Directors.

## 5. Special Appearances

### A. Admissions Task Force Report

The board continued its consideration of the Admissions Task Force Report, which had been tabled at its last meeting. The board discussed whether to accept the report or send it back to the task force for further study of how the different parts of the bar exam should be weighted and the role of the Board of Bar Examiners, the Supreme Court, and Board of Governors in the process.

**Motion:** Ms. Skerjanec moved, Ms. Wright seconded and the board passed the motion to forward the report to the Policy and Governance Committee with directions to look into the issue further and come back to the board with a recommendation. Ms. Johnson opposed the motion.

Mr. Yugler will send a letter to the task force members thanking them for their time and effort.

## 6. OSB Committees, Task Forces, and Study Groups

### A. Ethics Opinion

#### 1. Propose Formal Ethics Opinion

Ms. Stevens presented information and answered questions concerning the proposed formal ethics opinion on employment negotiations by government lawyers and judges with the DOJ.

**Motion:** Mr. Gaydos moved and Ms. Johnson seconded a motion to accept the formal ethics opinion. After discussion, the motion was withdrawn.

Discussion focused on whether the term “negotiate” was sufficiently defined in the opinion and whether there should be some reference to any constitutional or other limitations on a judge’s employment negotiations during the term of office.

**Motion:** Mr. Gaydos moved, Ms. Johnson seconded, and the board unanimously passed the motion to send the proposed ethics opinion back to the committee with comments and asking for more clarity.

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

### A. Access to Justice Committee

#### 1. Update

Ms. Wright reported that bar members will receive an e-mail encouraging them to report 2008 *pro bono* hours and that the 2009 dues statement will include a form for attorneys to report their *pro bono* hours. There will be a place on the

2009 form to report donations to low-income legal services organizations, but not the amount. This will provide data on organizations, in addition to the Campaign for Equal Justice, receiving support from the legal community.

B. Budget and Finance Committee

1. 2009 OSB Budget

Mr. Wegener reported that due to the downturn in the financial markets; the bar's financial situation is not where it was predicted to be at this point. The cost of the new building and the tenant leases are right on target, but investments have taken a big hit. He presented the proposed 2009 Budget to the board, together with options for reducing the anticipated deficit: seeking a dues increase in 2010 instead of 2011; removing \$250,000 in expenses through reductions to various line items; increasing dues in 2011 *and* adjusting the 2009 budget downward; seeking a \$50 increase in 2010 and a smaller amount each year thereafter until the budget is balanced; or any combination of those options. The board had a lively discussion of various ways to bring the budget into line for 2009 and beyond, emphasizing the need to assure members that every possible cost saving had been implemented before asking them for more money.

**Motion:** Mr. Kent moved, Mr. Gaydos seconded, and the board unanimously passed a motion instructing Ms. Garst to identify \$236,000 in adjustments to the 2009 budget for the board to consider at a special meeting in December at a time and date to be determined.

2. 2009 Membership Fee Due Date

Mr. Wegener directed the board's attention to the exhibit regarding the 2009 membership fee due date.

C. Policy and Governance Committee

1. CLE Policies

Mr. Gerking reported on proposed changes to the MCLE Rules and Regulations and OSB Bylaws. Under the proposal, the court would be asked to amend MCLE Rule 5.7 to shorten from five to three years the age of a program for which credit can be claimed, and to allow members to claim credit only once for any program. The proposal also includes revision of the OSB bylaw on CLE to make being "self-sustaining" an aspirational rather than mandatory goal, and to limit the use of CLE seminars products only to members who have acquired a certificate of use either as the initial purchaser or an additional user. The cost for an additional user certificate will be determined by CLE seminars staff, additional users may not claim credit unless they obtain a certificate from the Bar, and members must declare they have not violated MCLE viewing policies when they file their compliance reports.

**Motion:** Ms. Wright moved, Ms. Evans seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for bylaw change consideration.

**Motion:** The board unanimously passed the committee motion to approve the change to MCLE Rule 5.7 as shown in the agenda and to amend the MCLE Regulations and OSB Bylaws as follows:

a. MCLE Regulation 5.700 – Violation of Use Policy

Members may earn credit for screening accredited audio and video presentations, including but not limited to audiocassettes and CDs, VHS tapes, DVDs, and streaming media. Declaration must be made on the MCLE Compliance Report that the member did not violate any use policy for all programs for which credit is claimed.

b. OSB Bylaws Subsection 16.202 – Product Use

Because of the self-supporting policy outlined in Article 16.1, only the individual who has received permission from the Oregon State Bar CLE Seminars Department to view or listen to the OSB CLE Seminars sponsored audio or video product, including but not limited to streaming media, live webcasts, teleseminars, and any other means, may claim credit for the purposes of MCLE. Any violation of this policy will

be considered a violation of the use policy of the OSB CLE Seminars product.

2. Change to Bylaws 6.100 and 6.101

Mr. Gerking presented information concerning changes to bylaws 6.100 and 6.101, which will eliminate the active *emeritus* category of membership and broaden eligibility for active *pro bono* membership.

**Motion:** Ms. Wright moved, Ms. Evans seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for bylaw change consideration.

**Motion:** The board unanimously passed the committee motion to change Bar Bylaw 6.100 and 6.101.

3. SLAC/OAAP

Mr. Gerking presented information concerning the committee recommendation to change the bylaws to implement the Joint SLAC/OAAP Task Force recommendations.

**Motion:** Ms. Worcester moved, Ms. Skerjanec seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for bylaw change consideration.

**Motion:** The board unanimously passed the committee motion to amend Bar Bylaws Article 24 regarding Attorney Assistance.

4. Committee Charges

Mr. Gerking presented information concerning recommended changes to charges as requested by the Judicial Administration and Uniform Criminal Jury Instruction Committee.

**Motion:** The board unanimously passed the committee motion to approve the changes to the Judicial Administration and Uniform Criminal Jury Instruction Committee assignments as requested.

5. Task Force on Sustainability

Mr. Gerking presented the committee recommendation that the board establish a task force on sustainability.

**Motion:** The board passed the committee motion to establish a task force on sustainability and its charge as set forth below. Ms. Fisher and Mr. Kent opposed the motion.

## Task Force on Sustainability

### Charge

1. A task force on sustainability will be established to review and make recommendations relating to sustainability:
  - a. With respect to the internal operations of the bar, review current policies, recommend a sustainability policy to be adopted by the Board of Governors, consider whether the bar should assign responsibility to coordinate sustainability to staff, and review and make recommendations regarding a carbon footprint analysis for the bar;
  - b. With respect to Oregon lawyers, consider how sustainability considerations should be encouraged, CLE credit for training and education on sustainability and ecological principles, and consider whether the Board of Governors should create an annual award to recognize sustainability efforts within the bar;
  - c. With respect to the bar's organization, consider what ways sustainability should be integrated in the bar's section/committee structure, consider whether a permanent Sustainability Committee should be appointed, and if so, its ongoing charge, and consider whether the bar should be concerned about rights and opportunities for future generations, and if so, the appropriate institutional means for incorporating that concern;
  - d. Review the use of energy and resources with respect to judicial and administrative proceedings and make recommendations for reducing energy and resources and implementing sustainability standards; and
  - e. Develop a proposal for ways to promote sustainable practices within the law office.
2. The Appointments Committee will appoint members of the task force who are knowledgeable and/or interested in sustainability and will seek nominations from the Environmental and Natural Resources Section, Government Law Section, Business Law Section, Quality of Life Committee and Energy, Telecommunications and Utilities Section, and other interested persons, striving for a geographic balance.
3. The task force will provide periodic updates to the Board of Governors no later than October 31, 2009; however, because of the scope of the work is intentionally broad, specific topics may require work beyond the

6. Access to Justice Advisory Committee

Mr. Gerking presented the committee's motion to create the Access to Justice Advisory Committee, which was part of the compromise reached as part of the resolution of the elimination of bias MCLE issue.

**Motion:** The board unanimously approved the committee's motion to establish the Access to Justice Advisory Committee to be comprised of the following:

The Diversity Section will put forth four (4) recommended candidates from these candidates, two (2) will be appointed.

The Affirmative Action Committee will put forth two (2) recommended candidates. From these candidates one (1) will be appointed.

The Petitioners will put forth six (6) recommended candidates. From these, three (3) will be appointed.

The Oregon New Lawyers Division will put forth two (2) recommendations. From these, one (1) will be appointed.

The Board of Governors will be represented by the member currently serving as the liaison to the Diversity Section.

The staff member from the bar will be the Diversity Coordinator.

In the event that one of the above-appointed members cannot continue to serve on the committee, an alternate candidate from their respective interest group will be appointed by the Board of Governors.

The board also approved the following charge for the committee:

**Access to Justice Advisory Committee**

Charge

General: Work to improve the quality of programming for the Access to Justice mandatory MCLE requirement.

Specific:

Articulate broad Access to Justice programming goals.

Define the fundamentals of a quality Access to Justice Program and help identify best practices.

Work with the OSB CLE Seminars Department to assure a quality Access to Justice new admittee mandatory course.

Work with those sections, which show an interest in incorporating Access to Justice credit into their CLE program offerings.

Brainstorm new and creative ideas for Access to Justice programs and share with CLE program providers.

D. Public Affairs Committee

1. Election Results

Five new lawyer legislators were added, bringing the total to thirteen. Huge budget cuts for the next biennium are anticipated due to the state of the economy.

2. Civil Rights Section

a. Resolution Against Torture

Mr. Kent presented request from the Civil Rights Section and the Public Affairs Committee that the BOG adopt a resolution opposing torture. The board felt that this matter was more of a federal or state issue and a letter of opposition to torture should come from the OSB president.

**Motion:** Mr. Kent moved, Ms. Johnson seconded, and the board unanimously passed the motion to approve the resolution against torture. Mr. Yugler will send a letter.

E. Out-of-State Lawyer Study Group

1. Ratification of Project

The Out-of-State Lawyers Study Group was formed in response to the increasing number of out-of-state lawyers who have established a permanent presence in Oregon.

**Motion:** Ms. Wright moved, Mr. Gaydos seconded, and the board unanimously passed the motion to approve the continued meeting of the Out-of-State Lawyers Study Group.

F. Standing Committee on Ethics and Professional Responsibility

1. Co-sponsor ABA Model Rule Changes

Ms. Stevens presented a request from the ABA Standing Committee on Ethics and Professional Responsibility that the OSB continue its co-sponsorship of the Committee's proposal for the adoption of an ABA Model Rule of Professional Conduct on screening. The Board previously agreed to co-sponsor the proposal submitted to the ABA House in August, which was tabled. The ABA SCEPR has revised the proposal and will submit it to the ABA House again in February 2009.

**Motion:** Mr. Kent moved, Mr. Piucci seconded, and the board unanimously passed a motion to support generally the rule as presented in its draft form.

8. Consent Agenda

**Motion:** Ms. Evans moved, Mr. Gaydos seconded, and the board unanimously approved the Consent Agenda.

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

- A. Ms. Wright suggested the board consider a way to honor Bruce Rubin for the *pro bono* hours he has given doing legal work for the bar. She thought there might be an OSB award for which he would be eligible in 2009.
- B. Ms. Garst approved participation in National Client Protection Organization workshop to be held in Portland on September 24-25, 2009. NCPO is a national organization of administrators and trustees of client security funds and the OSB has been a member for several years. The CSF Committee will be planning the event and may have some assistance from CLE Seminars staff, but the event will not require any money from the OSB.
- C. The board tentatively set a special meeting for 9:00 a.m. Saturday, December 6, 2009, to go over the 2009 budget.