

Oregon State Bar
Meeting of the Board of Governors
February 6, 2009
Open Session Minutes

The meeting was called to order by President Gerry Gaydos at 1:00 p.m. on Friday, February 6, 2009 and adjourned at 4:50 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Michelle Garcia, Gerry Gaydos, Ward Greene, Gina Johnnie, Kellie Johnson, Chris Kent, Steve Larson, Audrey Matsumonji, Mitzi Naucler, and Steve Piucci. Members of staff present were Teresa Schmid, Sylvia Stevens, Susan Grabe, Danielle Edwards, Margaret Robinson, Frank Garcia, Judith Baker, and Teresa Wenzel. Others present were Ira Zarov, Tom Cave, Bill Carter, Marilyn Harbur, Christine Meadows, Ross Williamson, Lauren Paulson, Mark Comstock, and Judge Adrienne Nelson.

Friday, February 6, 2009

1. Work Session - Member Services

Margaret Robinson, Danielle Edwards, and Frank Garcia introduced the board to the Member Services staff and explained the functions of the Member Services department.

2. Swearing in of Officers

A. President Gerry Gaydos swore in Michelle C. Garcia and Barbara M. DiIaconi as members of the Board of Governors.

3. Report of Officers

A. Report of the President

Mr. Gaydos informed the board that the February 5 reception with the legislators, Leadership College, and local bar members went very well and reminded them that diversity is a high priority with the bar. He reported on his participation in several events in January and indicated that the next few months will be very busy with the Eastern Oregon Tour in May and various local bar visits through the spring.

B. Report of the Executive Director

Ms. Schmid informed the board of the methods she will use to report back to them.

C. Oregon New Lawyers Division

1. ONLD Report

Mr. Ross introduced himself as the new chair and presented his report as written.

4. Board Members' Reports

Board members informed the board of meetings and events they have attended since the last board meeting.

5. Professional Liability Fund

A. General Update

The PLF has hired two new claims attorneys; they will be handling more work in-house, which will result in lower attorney fee expense. The PLF is on track to process 880 claims in 2009, which is down slightly from 2008. The PLF liaisons to the board for 2009 are Ronald Bryant and William Carter.

B. Financial Report

The PLF investment returns are down approximately 20% due to the economy. All areas other than investments remain strong and administrative costs and severity of claims are both less than expected. The fund's reserve account remains intact.

C. 2008 Claims Attorney and Defense Counsel Evaluations

The PLF received high marks from covered parties who responded to evaluations about claims handling.

D. Approval of the 2009 Excess Rates

Excess program rates had an unexpected increase of 5% in reinsurance costs, necessitating an increase the PLF Excess Coverage Rates to members by the same amount.

Action: Mr. Piucci moved, Ms. DiIaconi seconded, and the board unanimously approved the PLF Excess Coverage Rates as proposed by the PLF Board of Directors.

6. Special Appearances

A. OSB ABA Delegates

Marilyn Harbur, Christine Meadows, and Judge Adrienne Nelson, the OSB delegates to the ABA for 2009 reviewed the summary of ABA resolution for the February 2009 meeting. Although they anticipate vigorous debate, they expect the resolution to add screening to the ABA Model Rules that was co-sponsored by the OSB will pass.

B. Special Appearance - Mr. Comstock

Mr. Comstock gave the board a brief history and update on e-Court filing and its progress within the Oregon court system. The Supreme Court is online and it is anticipated that the remainder of the courts will be up and running before the year ends, which is sooner than originally planned.

7. Rules and Ethics Opinions

A. Government Lawyer Employment Negotiations

Action: Ms. Evans moved, Mr. Kent seconded, and the board passed the motion to accept the proposed ethic opinion as presented by Ms. Stevens with Ms. Johnson abstaining.

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

A. Sustainability Task Force

Mr. Greene will be the BOG representative on the Sustainability Task Force. Appointment of other members was approved in the Consent Agenda.

B. Advertising Task Force

The task force asked the board to approve the conceptual ideas for amending RPC 7.1 through 7.5 before submission of the final report, in an effort to begin the comment period so the proposal will be available for presentation before the House of Delegates in November. Concern was expressed about the scope of the changes.

Action: Mr. Piucci moved, Mr. Larson seconded, and the board unanimously passed the motion to wait until the BOG receives both the task force report and the minority report before it makes a final decision.

C. Legal Service Program Committee

1. General Fund Appropriation for Legal Aid

Action: The board passed the committee motion to distribute the Legal Services Program appropriation for 2009 with Ms. Naucler abstaining.

D. Member Services Committee

The committee will continue to explore ways to accommodate more programs and interaction among bar groups and will seek common ground for better services for bar members. Ms. Johnson encouraged the board to assist in securing qualified candidates for the House of Delegates elections.

E. Policy and Governance Committee

1. Repeal of CLE Multiple User Policy

At its last meeting the board approved a CLE policy that required multiple users of an OSB program to purchase a certificate in order to claim MCLE credit. Member response was uniformly negative and, on the recommendation of bar staff, the Policy and Governance Committee asked the board to repeal the new policy.

Action: The board unanimously passed the committee motion to repeal MCLE Regulation 6.700 and Bar Bylaw 16.02.

2. House of Delegates

The committee is not recommending any changes in the HOD, preferring to wait and see if the new rule allowing alternate delegates will improve attendance. Staff has been asked to provide the HOD handbook to BOG members to assist them in with regional meetings and other HOD responsibilities.

3. Admissions Task Force

Based on the recommendation of the Chief Justice, the committee will take no further action with regard to this issue.

4. Senior Lawyers Task Force

5. **Action:** The board unanimously passed the committee motion to create the Senior Lawyers Task Force. MCLE Regulations

Action: The board unanimously passed the committee motion to amend MCLE Regulation 5.300. The revised rule reads as follows:

5.300 Personal management Assistance. A program may be accredited as a personal management assistance program if it provides assistance with issues that could impair a lawyer's professional competence (examples include but are not limited to programs addressing alcoholism, drug addiction, burnout, procrastination, depression, anxiety, gambling, or other addictions or compulsive behaviors, and other health and mental health related issues). A program may also be accredited as a personal management assistance program if it is designed to improve or enhance a layers' professional effectiveness and competence (examples include but are not limited to programs addressing time and stress management, career and transition, and impersonal/relationship skill building.)

6. Developing Comment to the Oregon RPCs

Action: The board unanimously passed the committee motion to inquire of the Supreme Court if it is interested in developing comments to the ORPCs.

7. Diversity Planning Task Force

The board discussed the creation of a task force to develop language reflecting the OSB's commitment to diversity for incorporation into a broader organizational mission statement. It was observed that the OSB's existing commitment to diversity is reflected in Bylaw 10, but that the bylaws are not familiar to most members and a more prominent expression might be helpful.

Action: Ms. Johnson moved, Mr. Larson seconded, and the board passed the motion to develop a Diversity Planning Task Force with Mr. Greene opposing and Mr. Kent abstaining.

8. Long Range Planning

Ms. Schmid presented the board with a brief summary of what she expects to do in the way of long range planning. She will identify several emerging issues for consideration at the November retreat with an emphasis on affirmative action.

9. Introductory Course in Access to Justice

Action: The board unanimously passed the committee motion to approve new MCLE Regulation 3.600 to establish a standard for accrediting “introductory” Access to Justice Programs required for all new members admitted after January 1, 2009.

F. Public Affairs Committee

1. Post Conviction Relief Task Force

Action: The board unanimously passed the committee motion to accept the Post Conviction Relief Task Force’ report.

2. 2009 Legislative Session Update

The current session is focused on the effect declining revenues will have on the state budget. Bar representatives continue to meet with legislators, track bills, and testify when appropriate. Because of the financial climate, it is difficult to move forward on bar issues of support for courts, indigent defense, legal services funding, and concerns for low-income Oregonians , but many of the legislators understand the bar’s concerns and support them.

Action: The board passed the committee motion to adopt the following priorities for 2009: Adequate funding for the justice system and integrated components to public safety system; support of access to justice through adequate funding for civil legal services; improvement to court facilities; passage of the bar’s law improvement package; and timely publication of Oregon Revised Statutes. Ms. Naucler abstained.

Action: The board unanimously passed the committee motion to support and adopt a resolution to oppose congressional restrictions on the use of state, local, and private money by organizations that receive Legal Services Corporation funds and to support the reinstatement of Tax Preferred Status for Group Legal Services Benefit Plans.

9. Consent Agenda

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

10. Good of the Order

Ms. Stevens reported on the Employment Law Section's plan to coordinate with the Oregon Law Center to identify volunteers to handle employee-side claims. Board members were complimentary of the Section for its efforts to assist in pro bono efforts.