

Oregon State Bar
Meeting of the Board of Governors
June 12, 2009
Open Session Minutes

The meeting was called to order by President Gerry Gaydos at 1:00 p.m. on Friday, June 12, 2009 and adjourned at 4:50 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Michelle Garcia, Gerry Gaydos, Ward Greene, Gina Johnnie, Kellie Johnson, Chris Kent, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. Staff members present were Teresa Schmid, Sylvia Stevens, Margaret Robinson, Frank Garcia, Emily Yip, Jeff Sapiro, Susan Grabe, Rod Wegener, Judith Baker, Kay Pulju, Katherine Petrecca, George Wolff, and Teresa Wenzel. Present from the PLF were Ron Bryant, Ira Zarov, and Tom Cave. Also present were Lauren Paulson, Ross Williamson (ONLD), Judge Adrienne Nelson, David Peterson (Pro Bono Committee), and Maya Crawford (Campaign for Equal Justice).

1. Report of Officers

A. Report of the President

Mr. Gaydos waived his oral report to allow additional time for Mr. Paulson and Judge Nelson to make their presentations.

B. Report of the President-elect

Ms. Evans updated the board on her attendance at the Northwest Bars Conference, the Western States Bar Conference, the ABA Midyear Meeting, the Lane County Spring Bash, and the PLF board of directors meeting; and reported that, along with Mr. Gaydos and Ms. Grabe, she has been keeping an eye on the budgeting process at the legislature.

C. Report of the Executive Director

Ms. Schmid highlighted issues included in her written report: (1) There will be a delegation of lawyers visiting the bar from China. (2) Member comments from the Eastern Oregon tour included the desire that HOD meetings be held in Portland rather than at the coast, the need for the bar to become more aggressive in find ways to reach attorneys through technology such as video conferencing, and concerns about how the downturn in the economy is affecting clients' access to justice. She reported that (3) the Washington State Bar Association has moved to paperless board agendas and that the OSB hopes to be paperless by October. (4) To help reduce the budget, bar staff has been taking on jobs previously done by contract workers, Human Resources is evaluating salaries to see that they are inline with corporate salaries in the area, and changes in Legal Pubs should lead to additional savings by providing more books and services to members electronically. (5) The Member Stimulus Package includes a new webpage, podcasts and videos that members can easily share, and new guidelines for

the Model Means Program. (6) Regulatory Services and the Client Assistance Office are evaluating the system for monitoring probation and diversion to determine if it can be used more often and effectively. (7) The OSB building has received an Energy Star rating and a recent universal design audit of the bar building resulted in a very favorable report. (8) The BBX intends to change the composition of the bar exam to include an additional MPE question and standardized essay questions; the changes should be implemented by February 2012.

D. Oregon New Lawyers Division

1. ONLD Report

Mr. Williamson highlighted his written report adding that Jessica Cousineau is the chair-elect of the ONLD and will begin attending meetings with him to become acquainted with the board before her term as chair begins.

2. Board Members' Reports

Board members waived their reports to allow more time for Mr. Paulson and Judge Nelson to make presentations.

3. Professional Liability Fund

A. General Update

Mr. Zarov informed the board that in 2008 the PLF had an increase of 10% in cases for an all-time high of 958 cases and that the cases are becoming increasingly complicated due to the economy.

B. Claims

There were about 100 more claims in 2008 and they were more severe than 2007.

C. Loss Prevention/OAAP

OAAP/PMA staff is very busy but doing well. They have updated three handbooks, and produced two well-attended CLEs.

D. Excess Program Treaty Date

The PLF Board of Directors will be reviewing its excess plan and will have it ready for BOG review in October.

E. Financials

Mr. Cave indicated that although the PLF has suffered significant investment losses in 2008, the financial situation has rallied and 2009 returns look positive. Because it appears claims will be fewer and smaller than in 2008, 2009 is expected to be a good, or

at the very least a better, year. Mr. Bryant indicated the PLF changed auditors and received a very clean audit for 2008.

4. Special Appearances

A. Judicial Evaluation

Lauren Paulson presented his proposal for judicial evaluations. He pointed out the importance for attorneys of having a general idea of how judges rule so they will be able to better advise and defend their clients. He presented a brief history of the BOG's actions regarding judicial evaluation and presented materials containing various websites supporting his views, which he felt might be of concern to the board. He concluded by encouraging the board to pursue judicial evaluations.

B. ABA Representatives

Ms. Harbur and Judge Nelson presented a written summary of the actions of the ABA House of Delegates at its February 2009 meeting.

C. Diversity Training

Judge Adrienne Nelson facilitated a diversity training session, "Walk of Privilege," with the board and staff. After the exercise, the board met and discussed its perceptions of the questions and how the process and the questions effected them personally. Board members found it an enlightening and moving experience.

5. Rules and Ethics Opinions

A. Proposed Amendment to RPC 1.18

Action: The board passed the committee motion to approve the addition of the following language to amend Oregon RPC 1.18(d) as follows. Ms. Wright abstained.

(d) When the lawyer has received disqualifying information as defined in paragraph (c), [R]representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

([1] 2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

([2] ii) written notice is promptly given to the prospective client.

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

A. Client Security Fund

1. CSF 08-41 Wilson (Lehman) Appeal

Ms. Lord presented information concerning CSF 08-41 Wilson (Lehman).

Action: Ms. Naucner moved, Ms. Evans seconded, and the board unanimously passed the motion to deny payment in CSF Claim No. 08-41 Wilson (Lehman).

B. Diversity Planning Task Force

1. DPRF Recommendation

Action: The board unanimously passed the committee motion to approve the recommendation of the Diversity Planning Task Force regarding a new value statement, diversity function, and diversity programmatic goals.

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

A. Access to Justice Committee

1. ABA Model Rule 6.1

Maya Crawford and David Peterson spoke in support of the Access to Justice Committee's proposal to add ABA Model Rule 6.1 to Oregon RPCs. Ms. Crawford presented background on the rule and the need for pro bono services in Oregon where the percentage of the population below the poverty level averages 19%, increasing to 50% in Washington, Clackamas, and Deschutes Counties. The economic decline has added to an increase in domestic violence and foreclosures and there are only 100 legal aid attorneys to serve 100,000 individuals. She pointed out the agenda exhibit showing past bar presidents' support for the rule and informed the board that only six states do not have the rule.

Mr. Peterson told the board that moving the aspirational standard to the RPCs would encourage all bar members to provide pro bono service; it would bring Oregon inline with other states; all three law schools in Oregon already use the rule; it would standardize the rule with other states and make it easier for lawyers that relocate; and it would streamline the pro bono reporting process. He emphasized that the standard would not be a requirement and language has

been included in the rule to make it clear that lawyers would no be subject to discipline for failing to meet the aspirational standard.

Action: The board passed the committee motion to present the addition of ABA Model Rule 6.1 to the House of Delegates. Yes, 7 (Gaydos, Johnson, Lord, Matsumonji, Naucler, Vieira, Wright); no, 6 (DiIaconi, Evans, Fisher, Johnnie, Kent, Piucci); and abstaining, 2 (Garcia, Greene).

2. Expansion of the Modest Means Program

Action: The board unanimously passed the committee motion to approve the revisions to the Modest Means Program policies regarding client eligibility and attorney fees to accommodate program expansion.

B. Budget and Finance Committee

1. OSB Investment Policy Evaluation

Mr. Greene updated the board on the review of the investment policy by Mr. Wegener and Ms. Garcia. Mr. Wegener is in the process of preparing the 2010 budget. He should have it completed for the October board meeting and no increase to dues is anticipated.

C. Policy and Governance Committee

1. Section Grant Applications

Action: Ms. Johnson moved, Ms. Wright seconded, and the board unanimously passed the motion to waive the one meeting notice requirement for amending the OSB Bylaws.

Action: The board unanimously passed the committee motion to adopt the following new bylaw to govern section grant activities:

Section 15.7 Grants

Sections may apply for grants only with prior approval of the Board of Governors. The board will allow grant applications only upon a showing that the grant activity is consistent with the section's purposes and the mission of the bar. The board may disallow any application that the board does not believe is in the best interest of the bar. The grant application must be reviewed and approved by OSB General Counsel before submission to the grant-making organization. Any grant funds received by a section shall be deposited with the bar and will be distributed only upon request of the section treasurer and in accordance with the grant specifications. The section must periodically report to OSB General Counsel regarding the status of the grant project and any

reports to the granting organization must be reviewed and approved by OSB General Counsel in advance of submission.

2. HOD Nominations

Action: The board unanimously passed the joint motion of the Member Services Committee and Policy and Governance Committees to introduce a bill in the 2011 legislative session to eliminate the provision in ORS 9.152(1) requiring ten signatures on the petition for a HOD candidacy.

The board briefly considered whether also to repeal the Board of Governors' signature requirement, but deferred further discussion until the August meeting.

D. Member Services Committee

Frank Garcia introduced the Affirmative Action Coordinator, Emily Yip. Ms. Yip graduated from law school in Wisconsin. She is licensed to practice law in Wisconsin, California, and Oregon, where she recently passed the bar.

E. Public Affairs Committee

1. Update on 2009 Legislative Session

Mr. Piucci presented the committee's recommendation that the OSB support House Bill 2335, which will defer implementation of Measure 57 and prevent a 17% cut to various public safety budgets, including the judiciary's budget.

Action: The board passed the committee motion to support House Bill 2335 with Ms. Johnson abstaining.

8. Consent Agenda

Action: Ms. Wright moved, Ms. Garcia seconded, and the board unanimously passed the motion to approve the consent agenda without change.

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

Mr. Greene thanked Mr. Gaydos for allowing him the opportunity to speak at the swearing in ceremony.