

Oregon State Bar
Meeting of the Board of Governors
August 28, 2009
Open Session Minutes

The meeting was called to order by President Gerry Gaydos at 1:00 p.m. on Friday, August 28, 2009, and adjourned at 5:00 p.m. Members present from the Board of Governors were Barbara DiIaconi (via telephone), Kathy Evans, Ann Fisher, Gerry Gaydos, Ward Greene, Gina Johnnie, Kellie Johnson, Chris Kent, Steve Larson, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. Staff members present were Teresa Schmid, Sylvia Stevens, Margaret Robinson, Jeff Sapiro, Susan Grabe, Rod Wegener, and Teresa Wenzel. Present from the PLF were Ron Bryant, Ira Zarov, and Tom Cave. Also present were Lauren Paulson, Ross Williamson (ONLD), Marilyn Harbur (ABA Delegate), Christine Meadows (ABA Delegate), Judge J. Cheryl Albrecht, Larry Wobbrock, and Peter Jarvis.

1. Report of Officers

A. Report of the President

Mr. Gaydos reminded board member of their right to express publicly their personal opinions on issues addressed by the BOG, so long as it is clear that the opinion is a personal opinion and not the position of the board. He also reminded board members that the BOG decided to place the addition of ABA Model Rule 6.1 on the House of Delegates agenda and the board has not yet taken an official position on the issue.

Mr. Gaydos thanked Ms. Schmid for joining him in travels to the various local bars around the state and expressed the local bars' appreciation for the visits. He also thanked BOG members for their liaison work. Mr. Gaydos reported on his presentation at the ABA meeting in Chicago and his attendance at various investitures, encouraging other BOG members to do the same.

B. Report of the President-elect

1. Report of President-elect

Ms. Evans expressed praise for the OLIO event in Bend and particularly for the classroom portion. She encouraged staff to video the classroom portion of the program for distribution to the three law schools so that all incoming students can have the benefit of the information.

C. Report of the Executive Director

1. Draft of Long Range Plan

Ms. Schmid introduced the draft of the Long Range Plan, explaining that it is a work in progress. The draft plan is based on existing program measures, but looks prospectively at how to achieve the stated goals. Staff has provided some initial ideas, but the ultimate decisions are for the BOG to make. The expectation is that the BOG will review the long-range plan yearly at its retreat as a tool for budget and other planning.

D. Oregon New Lawyers Division

1. ONLD Report

The ONLD thanked the board for allowing it to participate in the board meetings, as it is a great learning experience. The ONLD continues to expand its outreach. It is cementing its relationship with the Affirmative Action Program by having four of its member on the OLIO executive board, participating in BOWLIO, and continuing to work closely with Mr. Garcia. It concluded its second annual rafting trip and anticipates having another next year. In September, it will have a CLE at the law school in Eugene.

2. ONLD Master Calendar

Mr. Williamson encouraged the board to review the ONLD Master Calendar.

E. Board Members' Reports

Board members reported on various meetings and events they had attended since the last board meeting.

2. **Professional Liability Fund**

A. PLF General Update

Mr. Zarov updated the board on PLF activities and reminded the board that the PLF will be bringing its budget and recommendation for two Board of Director members to the board at its October meeting.

B. Financial Report

Mr. Cave updated the board on the PLF's financial situation, which is very much improved over 2008 and doing better than anticipated for 2009. The PLF board is confident there will be no need to increase the assessment for 2010. At the same time, the PLF board is not likely to lower the assessment until its reserves reach \$12 million. The budget at the end of July is looking good and it is likely that the PLF will break even for 2009. The severity and frequency of claims for 2009 is expected to be less than 2008.

C. Defense Panel Training

The PLF's bi-annual Defense Panel Training was held at Salishan and had 110 attendees, which is up from past years. The PLF is committed to training younger lawyers to carry on as "baby boomer" members of the existing panel move toward retirement.

D. Succession Planning

Mr. Bryant informed the board that the PLF is continuing with its Succession Planning, including preparing for the anticipated retirement of Mr. Zarov in approximately five years. The PLF is contracting for a salary study comparison with

companies similar to the PLF and expects to have a report for the PLF board at its October meeting regarding any recommended salary adjustments.

E. Approval of PLF Policy 3.500 SUA Offsets

Mr. Zarov presented information concerning proposed amendments to PLF Policy 3.500 SUA Offsets

Motion: Ms. Johnson moved, Ms. Matsumonji seconded, and the board unanimously passed the motion to approve PLF Policy 3.500 SUA Offsets.

3. Special Appearances

A. ABA House of Delegates

1. ABA Update

Ms. Harbur reported on behalf of the bar's 2009 ABA Delegates, which include Ms. Harbur, Christine Meadows, Judge Adrienne Nelson and Mark Johnson (ABA Delegate). She gave the board a summary of actions taken at the ABA Annual Meeting.

Ms. Meadows informed the board that the Oregon State Bar would be entitled to one more ABA delegate, based on increased OSB membership. The new delegate must be a new lawyer, as defined by the ABA, which means a member who is 35 years or younger at the time of election.

4. Rules and Ethics Opinions

A. Disciplinary Counsel

B. Proposed Amendments to Bar Rules of Procedure

Mr. Sapiro informed the board that the amendments to Bar Rules of Procedure were housekeeping in nature, as some old rules no longer apply. Also, included in the changes was an increase to the reinstatement fee, which had not been adjusted in twenty years.

Motion: Ms. Wright moved, Mr. Greene seconded, and the board unanimously passed the motion to approve the proposed amendments to Bar Rules of Procedure.

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

A. Client Security Fund

1. CSF Appeals

a. BROWN (Scott)

Ms. Stevens presented information concerning Mr. Scott's request for payment.

Motion: Mr. Greene moved, Mr. Kent seconded, and the board unanimously passed the motion to decline payment to Mr. Scott.

b. SHINN (Rhodes)

Ms. Stevens presented information concerning Mr. Rhodes' request for payment.

Motion: Mr. Greene moved, Ms. Evans seconded, and the board unanimously passed the motion to decline payment to Mr. Rhodes.

c. VANCE (Hines)

Ms. Stevens presented information concerning Ms. Hines' request for payment.

Motion: Mr. Greene moved, Ms. Evans seconded, and the board unanimously passed the motion to decline payment to Ms. Hines.

B. Workers Comp Board of Governors

1. Request of BOG Review of Attorney Fee Changes

Ms. Stevens presented information concerning the Workers Comp Board's request.

Motion: Mr. Kent moved, Ms. Johnson seconded, and the board unanimously passed the motion to approve the Workers Comp Board's request to increase fees.

C. Advertising Task Force

1. Report of the Advertising Task Force

a. Advertising Task Force Majority Report

Peter Jarvis presented the Advertising Task Force Majority Report. The task force members, minus one, believe that most of the current RPCs on advertising and solicitation are impermissible under Article I, Section 8 of the Oregon Constitution and should be repealed. The majority requested that the BOG circulate the report to the membership for discussion before making any decision about proposing rule changes to the HOD.

b. Advertising Task Force Minority Report

Mr. Wobbrock presented the minority position on behalf of himself and the Oregon Trial Lawyers Association, which he represented on the Task Force. He expressed concern that repealing the current rules would impugn the public image of lawyers and would allow the practice of "ambulance chasing" by attorneys. It would also allow the use of non-lawyer "runners" to solicit clients in emergency rooms and at crime scenes. Mr. Wobbrock asked the board to deny the Advertising Task Force' request to distribute the Majority Report, suggesting that the constitutionality of rules should be determined through "case and controversy" and was too important to be decided by the membership.

He indicated that several groups including OTLA, OMA, and ABOTA support the minority report.

Motion: Ms. Evans moved to postpone the discussion indefinitely. The motion passed with Ms. Johnson abstaining. This action releases the committee from duty.

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

1. Access to Justice Committee

Ms. Wright updated the board. The Pro Bono Fair will take place October 26th and will include pro bono awards. Starting September 14th, the “30 Second Law School” public service announcements will begin airing on television. In October, the committee will bring its requests for distribution of legal services funds to the board for approval. The board requested that Ms. Wright send them a copy of the Pro Bono calendar so board members can participate in upcoming pro bono events.

B. Budget and Finance Committee

1. 2010 Executive Summary Budget

Mr. Wegener presented the first look at the 2010 budget. Issues to consider are that revenue for 2009 is down and 2011 will bring a substantial increase in the PERS employer contribution. The committee will bring a final budget to the board at its October meeting. The committee has reviewed the recommendation of the CSF Committee to increase the CSF assessment from \$5 to \$15 to maintain the reserve minimum in the face of increasing claims.

Motion: The committee motion to increase the CSF assessment passed unanimously.

2. Facilities Management Agreement with Opus Northwest

Mr. Greene informed the board that OPUS Properties Service is being sold to Northmarq Realty Services; no change in service under the management agreement is anticipated.

3. Investment Policy Revision

Mr. Kent reported on the ongoing review of the investment policy and the conclusion that professional advice should be sought. A subcommittee will be appointed to work with Mr. Wegner to submit a request for proposals to several financial investment institutions.

4. OSB Membership Directory and Online Legal Publications Library

The committee is looking at ways to ensure that OSB member information and online legal publications are timely and affordable at the same time that they are cost-effective. The current delivery systems will continue through 2009 and the board will look at possible future changes during its strategic planning session.

5. Selection of an Auditor for Fiscal years 2008 and 2009

Motion: The board unanimously passed the committee motion to continue with Moss Adams, as auditors.

6. Uniform Civil and Criminal Jury Instructions

The Uniform Civil and Criminal Jury Instructions Committees have suggested making the instructions available online at no cost to members or the public. The committee will review this proposal and its financial implications as part of its strategic planning session.

C. Member Services

1. Approve Committee Recommendations for 2009 OSB Awards

Motion: The board unanimously passed the committee motion to present the awards as recommended by the committee.

D. Policy and Governance Committee

1. BOG Nomination Signature Requirement

Motion: The board unanimously passed the committee motion that candidates for the BOG not be required to submit petitions signed by ten active members.

2. IOLTA Rule Changes

Motion: The board unanimously passed the committee motion to introduce legislation in 2011 and to propose an RPC amendment to change IOLTA certification from a disciplinary to an administration matter.

3. Bylaw Amendment--Diversity Mission and Goals

Motion: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously passed the motion to waive the one meeting notice rule pursuant to Article 26 of the Bar Bylaws.

Motion: The board unanimously passed the committee motion to approve changes to Bar Bylaw 1.2 as follows:

Section 1.2 Purposes

The mission of the Oregon State Bar is to serve justice by promoting respect for the rule of law, by improving the quality of legal services and by increasing access to justice.

The Bar fulfills that mission through the following functions:

(A) We are a professional organization, promoting high standards of honor, integrity, professional conduct, professional competence, learning and public service among the members of the legal profession.

(B) We are a provider of assistance to the public seeking to ensure the fair administration of justice for all and the advancement of the science of jurisprudence, and promoting respect for the law among the general public.

(C) We are a partner with the judicial system, seeking to ensure a spirit of cooperation between the bench and the Bar.

(D) We are a regulatory agency providing protection to the public, promoting the competence and enforcing the ethical standards of lawyers.

(E) We are leaders helping lawyers serve a diverse community.

(F) We are advocates for access to justice.

4. Fee Arbitration Task Force

Motion: The board unanimously passed the committee motion to appoint a task force to review and update the rules and other aspects of the program.

5. Proposed MCLE Rule Change

The board referred the matter back to the committee for additional review.

E. Public Affairs Committee

1. Wrap up of 2009 Legislative Session

The Public Affairs Department is completing the Legislative Highlights Notebook. The Legislative Highlights CLE will take place November 6th prior to the HOD meeting. The legislature will begin yearly sessions in 2010 with a shortened session and, while the bar will not have any bills in the 2010 session, it will assist with other bills being presented. Ms. Grabe encouraged the board to meet with their sections, flush out upcoming bills, and inform PAC so it can deal in timely fashion with any conflicts or other issues. Voter initiatives are anticipated to repeal two end-of-session tax bills and a former board member asked the board to actively oppose those bills. The board discussed the pros and cons of supporting the initiatives.

Motion: Mr. Kent moved, Ms. Fisher seconded, and the board passed the motion not to submit an informational resolution regarding the tax initiatives to the House of Delegates at its November meeting. Mrrs. Piucci and Greene abstained.

F. Public Member Selection

1. Public Member Recommendation for 2010

Mr. Vieira thanked the committee members and Ms. Edwards for their time and efforts in reviewing the applications and participating in the interviews.

Motion: The board unanimously approved the committee motion to appoint Maureen O'Connor to the Board of Governors as its new Public Member.

7. **Consent Agenda**

Motion: Ms. Wright moved, Ms. Johnson seconded, and the board unanimously passed the Consent Agenda without change.

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

Judy Cheryl Albrecht thanked the board for the opportunity to attend the board meeting.