

Oregon State Bar
Meeting of the Board of Governors

October 30, 2009

Revised February 25, 2010

Open Session Minutes

The meeting was called to order by President Gerry Gaydos at 10:10 a.m. on Friday, October 30, 2009, and adjourned at 4:15 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Gerry Gaydos, Ward Greene, Gina Johnnie, Chris Kent, Steve Larson, Karen Lord, Audrey Matsumonji, Mitzi Naucler, Steve Piucci, Robert Vieira and Terry Wright. New board members present were Derek Johnson, Mike Haglund, and Maureen O'Connor. Staff members present were Teresa Schmid, Sylvia Stevens, Rod Wegener, Susan Grabe, Anna Zanolli, and Teresa Wenzel. Others present were Ross Williamson and Jessica Cousineau from the ONLD; Ira Zarov, Jeff Crawford, and Bill Carter from the PLF; Dick Roy, Bill Kabeiseman, and Jim Kennedy from the Sustainability Task Force; and via phone, Bob Browning of the Sole and Small Firm Practitioners Section.

Friday, October 30, 2009

1. Nominating Committee

A. Nomination of Steve Piucci as President-elect

The board agreed by consensus to approve Steve Piucci as the 2010 President-elect.

2. Report of Officers

A. Report of the President

Mr. Gaydos thanked the board for its support and efforts during his term in office, directed their attention to his written report, and encouraged them to attend the Diversity Summit, House of Delegates meeting, and bar's awards dinner.

B. Report of the President-elect

Ms. Evans directed the board's attention to her written report and indicated that she continues to prepare for her term as president in 2010.

C. Report of the Executive Director

As written.

D. Oregon New Lawyers Division

1. ONLD Report

Mr. Williamson introduced the 2010 ONLD Chair, Jessica Cousineau and thanked the board for the opportunity of participating in the board meetings. His report was presented as written.

3. Board Members' Reports

A. Proposed HOD Resolution

1. Veterans' Day Resolution

Mr. Kent presented his request for an annual Veterans' Day Resolution honoring military service and sacrifice.

Motion: Mr. Kent moved, Mr. Piucci seconded, and the board voted unanimously to adopt the Veterans' Day Resolution.

4. Professional Liability Fund

A. General Update

Mr. Zarov informed the board the 2010 assessment would remain the same as 2009 and that he was optimistic it would remain the same for 2011.

B. 2010 Pro Bono Coverage Plan Changes

1. PLF Policy 3.800

Motion: Mr. Kent moved, Mr. Greene seconded, and the board voted unanimously to approve the proposed changes to PLF Policy 3.800 to allow coverage for all certified programs, provided they do not present an unacceptably high risk of claims, as shown on Exhibit A.

C. Primary Plan Retroactive Dates

1. PLF Policy 3.100 Claims Made Plan and Retroactive Date

Motion: Mr. Kent moved, Mr. Greene seconded, and the board voted unanimously to approve the proposed changes to PLF Policy 3.100 regarding the retroactive date of coverage for lawyers who discontinue and resume practice in the same coverage year, as shown on Exhibit B.

D. Primary and Excess Coverage Plan Changes

Mr. Crawford presented the PLF's recommendation to amend the Primary Coverage Plan to clarify the year to which a claim will be assigned. He also presented a recommendation to amend both the Primary and Excess Plans to limit statutory damages.

Motion: Ms. Evans moved, Mr. Kent seconded, and the board voted unanimously to approve the plan as shown on Exhibit C.

E. Adoption of 2010 Master Plans

Mr. Crawford presented the 2010 Master Primary (Claims Made), Excess and Pro Bono Plans for the board's approval as amended.

Motion: Mr. Kent moved, Ms. DiIaconi seconded, and the board voted unanimously to approve the plan.

F. Excess Rates for 2010

Mr. Zarov presented the PLF's request to increase the Excess Plan rates for 2010 by approximately 10%.

Motion: Mr. Kent moved, Ms. DiIaconi seconded, and the board voted to approve the revised rates.

G. Changes to 2010 Policy Manual

Mr. Zarov presented a recommendation to amend Chapter 7 of the PLF Policy Manual to charge additional rates for high-risk practices, redefine what constitutes securities practice, and clarify the rates for out-of-state firm members.

Motion: Mr. Piucci moved, Ms. DiIaconi seconded, and the board voted unanimously to approve the policy changes as set forth on Exhibit D.

H. 2010 PLF Assessment and Budget

Mr. Carter presented information about the PLF 2010 budget that includes a raise for the CEO. He acknowledged that the salary change will mean that the PLF CEO and the OSB Executive Director salaries will no longer be in parity, in contravention of the policy in recent years. Ms. Schmid informed the board that circumstances have changed and that, in her opinion, salary parity is less of an issue. Mr. Carter expressed the PLF Board of Directors' view that the raise will bring the CEO's salary in line with the market and will enhance recruitment and retention. Several board members inquired about

the process for determining a comparable market and the PLF's experience in recruitment and retention. Some concern was expressed that eliminating parity at the top would lead to increased salaries for all PLF staff. Mr. Carter assured the board that was not the intention.

Motion: Ms. Fisher moved, Ms. DiIaconi seconded, and the board voted to approve the PLF's 2010 Budget. Ms. Wright, Ms. Evans, Ms. Naucler, and Mr. Greene abstained.

5. Special Appearances

A. Sustainability Task Force [Mr. Roy, Mr. Kabeiseman, Mr. Kennedy]

Mr. Greene introduced the chair of the Sustainability Task Force (STF), Mr. Kabeiseman, and task force members Mr. Roy and Mr. Kennedy. The members of the STF thanked the board for its interest in sustainability and reviewed the STF report and recommendations. They put particular emphasis on the creation of a Sustainable Futures Section, for which they had obtained more than 400 petition signatures, and the adoption of an OSB bylaw recognizing the bar's commitment to sustainability. Mr. Greene thanked the task force for the enormous amount of effort put forth.

Motion: Ms. Evans moved, Ms. Wright seconded, and the board voted unanimously to create a Sustainable Futures Section.

Motion: Mr. Greene moved, Ms. DiIaconi seconded and the board voted to waive the one meeting notice requirement for changing the OSB Bylaws. Mr. Kent and Ms. Fisher opposed.

Motion: Mr. Greene moved, Ms. Evans seconded and the board approved new bylaw Article 26 as set forth below. Mr. Kent opposed.

Article 26 – Sustainability

The bar supports the goal of sustainability, generally defined as meeting present needs without compromising the ability of future generations to meet their own needs. Because bar operations and the practice of law impact the environment and society generally, the bar will be cognizant of sustainability in its internal operating practices as well as in its service to members. Internally, the executive director will designate a sustainability coordinator for bar operations, will encourage continuous sustainability improvement in bar operations, and will report to the Board of Governors at least annually on progress and impediments. In the practice of law, principles of sustainability may be important in addressing competing economic, social, and

environmental priorities that impact future generations. The bar will encourage education and dialogue on how law impacts the needs and interests of future generations relative to the advancement of the science of jurisprudence and improvement of the administration of justice.

The board will discuss implementation of other issues in the SSTF report at its planning session on October 31, 2009.

B. Sole & Small Firm Practitioners Section [Mr. Browning, Mr. Phinney]

1. Resolution for “Office Share” Pricing of

Mr. Browning presented the Section’s request that the bar implement a more equitable pricing of by treating the Section as a large law firm or “office share” arrangement. Mr. Gaydos responded that the board would be discussing pricing and related issues at the strategic planning session on October 31, 2009.

6. Rules and Ethics Opinions

A. Proposed Ethics Opinion

1. Formal Opinion Request No. 07-03

Ms. Stevens summarized for the board the proposed formal ethics opinion relating to a lawyer’s obligation to withdraw when a client files a bar complaint.

Motion: Mr. Piucci moved, Ms. DiIaconi seconded, and the board voted unanimously to issue the opinion as a Formal Ethics Opinion .

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

A. Client Security Fund

1. Request for Review of Claim Denial

a. No. 2009-28 MURPHY (Hubler)

Ms. Lord presented information concerning Ms. Hubler’s claim.

Motion: Ms. Wright moved, Ms. Evans seconded, and the board voted unanimously to uphold the decision of the CSF Committee to deny Ms. Hubler’s claim.

b. No. 2009-25 DOUGLAS (Ulle)

Ms. Lord and Ms. Stevens presented information concerning the claimant's request for review of the CSF Committee's recommendation to award only half of the money paid to his lawyer.

Motion: Ms. Evans moved to reimburse the full amount of the claim, Ms. Lord seconded the motion, but the motion failed (yes, 6 [Evans, Fisher, Gaydos, Lord, Piucci, Vieira]; no, 8 [DiIaconi, Greene, Johnnie, Kent, Larson, Marsumonji, Naucler, Wright]; absent, 2 [Garcia, Johnson])

B. Senior Lawyers Task Force

1. Senior Lawyers Task Force Report

Ms. Stevens presented the Senior Lawyers Task Force report on behalf of the chair, Albert Menashe. In the report, seniors are defined as lawyers over 55 and the task force recommended that the board establish a Senior Lawyers Division similar to the ONLD. The board thanked the task force for its work. Board members acknowledged the contributions that senior lawyers make as well as the problems of age-related impairments, but concluded that creation of a Senior Lawyers Division should be deferred pending further exploration into the level of interest among members and what the financial implications would be.

C. Urban /Rural Task Force

1. Update

Ms. Fisher indicated that the task force may continue for another year. Half of Oregon lawyers live outside of the Portland area, and many feel disenfranchised because of their distance from Portland. The task force is looking for ways to facilitate interaction throughout the entire bar. This will be an issue for the board's 2010 planning session.

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

A. Access to Justice Committee

1. Access to Civil Legal Services Task Force

Motion: The board passed the committee motion to establish the Access to Civil Legal Services Task Force, with Mr. Gaydos as chair. Ms. Naucler abstained.

2. Legal Services Program Appropriations

Motion: The board passed the committee motion to approve the LSP appropriations recommendation as set forth in Exhibit E. Ms. Naucler abstained.

B. Member Services Committee

1. Approve Election Dates for 2010

Motion: The board unanimously passed the committee motion to approve the election dates for 2010 with the understanding that the dates may change if the BOG retreat cannot be rescheduled.

C. Policy and Governance Committee

1. Miscellaneous Housekeeping Bylaw Amendments

Motion: The board unanimously passed the committee motion to approve the various housekeeping changes to the Bar Bylaws as shown on Exhibit F.

2. Revised Committee Assignments

Motion: The board unanimously passed the committee motion to approve the revised committee assignments for SLAC, as shown on Exhibit G.

3. Proposed Amendments to Bylaw 13.01

Motion: The board unanimously passed the committee motion to approve the amendments to Bar Bylaw 13.01 to expand eligibility for certified pro bono program, as shown on Exhibit H.

4. Anonymous Payments to the CSF

Ms. Stevens explained that the CSF had received an offer of an anonymous “donation” of funds that “may be due to the CSF.” The CSF Committee sought the board’s guidance on whether such payments should be accepted.

Motion: The board unanimously passed the committee motion to accept anonymous donations to the Client Security Fund provided they are unrestricted and not available as “credit” against a future obligation to the Fund.

5. Housekeeping MCLE Rule Amendments

Motion: The board unanimously passed the committee motion to approve the amendments to MCLE Rule 3.6 and MCLE Regulation 3.500 as shown on Exhibit I.

6. Sunsetting the Joint OSB/CPA Committee

Motion: The board unanimously passed the committee motion to sunset the Joint OSB/CPA Committee, as requested by the joint committee chair and members.

D. Public Affairs Committee

1. Public Affairs Update

Mr. Piucci updated the board on legislative issues, including the likelihood of passage or failure of various bills and reminding them that 2010 will be a short session proposed to last less than 30 days.

E. Budget and Finance Committee

1. 2010 OSB Budget

Mr. Greene summarized the proposed 2010 OSB Budget, informing the board that the bar has received significant savings from implementing electronic procedures.

Motion: The board unanimously passed the committee motion to approve the 2010 OSB budget.

2. Request from Sole & Small Firm Practitioners Section on BarBooks™

The committee had no recommendation regarding the request from the SSFPS. The board will review this matter during its strategic planning session on October 31, 2009.

Executive Session

3. Facilities Management Agreement
(closed pursuant to ORS 192.660(2)(e) and (h))

Mr. Greene updated the board on the status of the facilities management agreement. The committee brought no motion forward.

Open Session

4. Executive Director Contract and Salary
Recommendation

Ms. Naucler reported that the committee would recommend renewal of Ms. Schmid's contract at the board's November 6, 2009, special meeting.

9. Consent Agenda

The following items were removed from the Consent Agenda for discussion No. 09-08 SHINN, No. 09-32 SHINN, No. 09-09 COULTER, No. 09-33 COULTER, No. 09-36 COULTER, and No. 09-23 DOUGLAS:

1. No. 09-08 SHINN (Cousin)

Ms. Stevens explained that Mr. Shinn objected to the amount of award recommended by the CSF Committee and that she had verified his calculations, indicating that the award should be reduced to \$9000.01. Ms. Stevens also explained the Disciplinary Counsel's Office believed Mr. Shinn had charged the claimant for costs he had either not incurred or was not entitled to charge .

Motion: Mr. Greene moved, Ms. DiIaconi seconded, and the board voted to award \$9,000.01, concluding that there was insufficient evidence of dishonesty regarding the additional questioned amounts, which appear to be a fee dispute. Mr. Pucci opposed.

2. No. 09-32 SHINN (Doblie)

Ms. Stevens presented Mr. Doblie's request for review of the amount recommended for reimbursement by the CSF Committee.

Motion: Ms. Wright moved, Ms. Fisher seconded, and the board voted unanimously to return the matter to the CSF Committee for further action.

3. No. 09-09 COULTER (Warren), No. 09-33 COULTER (Puderbaugh), No. 09-36 COULTER (Christensen), No. 09-23 DOUGLAS (Johnson).

Motion: Ms. Wright moved to deny payment of No. 09-09, No. 09-33, No. 09-36, and No. 09-23. The motion died for lack of a second.

Motion: Ms. Evans moved, Mr. Pucci seconded, and the board voted unanimously to rescind action on No. 2009-25 DOUGLAS (Ulle) and send it along with No. 09-09, No. 09-33, No. 09-36, and No. 09-23 back to the CSF Committee for additional analysis and a recommendation for a consistent standard to apply in the cases.

Motion: Ms. Evans moved, Ms. Wright seconded, and the board unanimously approved the remainder of the Consent Agenda with a change to the October 30, 2009 minutes in 6.1. Access to Justice Committee. It should read "...the committee will bring its requests for distribution of legal services funds to the board for approval..."

10. Good of the Order

None.