

Oregon State Bar
Meeting of the Board of Governors

February 19, 2010
The Oregon Garden
Silverton, Oregon

Open Session Minutes

The meeting was called to order by President Kathleen Evans at 9:00 a.m. on February 19, 2010, and adjourned at 3:30 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathy Evans, Ann Fisher, Michelle Garcia, Mike Haglund, Gina Johnnie, Derek Johnson, Chris Kent, Ethan Knight, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, Maureen O'Connor, and Steve Piucci. Staff members present were Teresa Schmid, Sylvia Stevens, Susan Grabe, Jeff Sapiro, Rod Wegener, Andrew Baudoin, and Teresa Wenzel. Also present were Ira Zarov (PLF), Tom Cave (LPF), Lawrence Peterson, and Jessica Cousineau (ONLD).

1. Swearing in of New Members

President Evans administered the oath of office to Maureen O'Connor and Kenneth Mitchell-Phillips.

2. Inspirational Words

Ms. Evans welcomed the 2010 board, members provided introductions, and Ms. Evans read a speech from Abraham Lincoln – attached as Exhibit A

3. Report of Officers

A. Report of the President

1. Western States Bar Conference

Ms. Evans reminded the board members that the deadline for registering for the WSBC is March 8, 2010, and the bar has a fund of \$6,000 to be divided equally among attendees to help defray individual costs.

B. Report of the President-elect

As written.

C. Report of the Executive Director

1. ED Report

As written

2. Long Range Plan

Motion: Ms. Fisher moved, Mr. Piucci seconded, and the board voted unanimously to ratify the long-range plan as presented and agreed upon at the BOG's retreat in November 2009.

D. Oregon New Lawyers Division

Ms. Cousineau updated the board on the ONLD's activities including a successful Super Saturday CLE, its annual meeting, preparations for its December "futures" projects in Eugene, and an upcoming essay contest.

4. Professional Liability Fund

A. PLF Bylaws and Policy Manual - Chapter 6 Revisions

Mr. Zarov presented information concerning the changes to PLF Bylaws and Policy Manual; informed the board that Suzanne Chianti of the PLF resigned due to her new judgeship; and told the board that the PLF is in the process of going paperless.

The PLF will be meeting with its reinsurers in April, but has no predictions as to the rates for 2010. It has potentially high claims, but is not sure of the final amounts and it has some concerns regarding Medicare reporting. The PLF will keep the board updated on these issues.

Though the number of claims in 2009 was more than expected, the payout was less than expected, allowing for a break-even year. There was a spike in claims that appeared to come from lawyers that leave the practice suddenly. Because 2008 and 2009 were such volatile years, it is very difficult to predict 2010.

The board asked about having PLF premiums paid by credit cards and was informed that the PLF has opted not to do this because the transaction fees charged by the banks are substantial and it did not seem fair to have all covered parties pay for the convenience of a few. The PLF will continue to look at ways to make the payment process more convenient for members.

Mr. Zarov noted that the PLF continues to look at the aging of the bar and Ms. Evans noted that the bar had a Senior Lawyers Task Force that submitted recommendations to the BOG relating to aging issues.

Motion: Mr. Kent moved, Ms. DiIaconi seconded, and the board unanimously passed the motion to approve the changes to the PLF Bylaws and Policy Manual.

5. Special Appearances

A. Disciplinary Counsel's Office

1. Board's Role in Reinstatements

Mr. Sapiro presented information about the board's role and the standards to be applied in the reinstatement process.

6. Rules and Ethics Opinions

A. Revision of OSB Formal Op. No. 2005-48

1. Revised Opinion

Ms. Stevens explained that the Legal Ethics Committee recommends revisions to OSB Formal Opinion No. 2005-48 to address 2009 legislative changes that require abandoned funds in lawyer trust accounts to be paid to the OSB for legal services programs.

Motion: Mr. Haglund moved, Mr. Knight seconded, and the board unanimously passed the motion to approve revised OSB Formal Opinion No 2005-48.

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

A. Client Security Fund [Ms. Lord]

1. CSF Appeal No. 09-32 SHINN (Doblie)

Attorney Lawrence Peterson, representing Max Doblie, presented Mr. Doblie's appeal of the amount recommended by the CSF Committee, including the fact that Mr. Doblie had to incur significant legal fees to pursue his claims arising out of Michael Shinn's misappropriation of an injury settlement.

Ms. Stevens explained the CSF Committee's initial review of Mr. Doblie's claim and the adjustment it made to its recommendation based on the appeal.

Motion: Mr. Piucci moved, Ms. Fisher seconded, and the board approved an award to Mr. Doblie of \$32,190.50, which reflects an allocation of 25% rather than the original 33% for Shinn's attorney fee in the matter.

2. CSF Appeal No. 09- 04 SUSHIDA (Street)

Ms. Stevens presented information concerning the CSF's analysis, recommendation, and the basis for Mr. Street's appeal of the Committee's denial of his claim.

Motion: Mr. Piucci moved, Ms. Matsumonji seconded, and the board voted unanimously to uphold the CSF Committee decision and to deny Mr. Street's claim.

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

A. Access to Justice Committee

Ms. Johnnie reported that the Bench-Bar Task Force that Mr. Gaydos will chair has not yet begun to meet, as it is awaiting further developments in the federal LSC funding legislation. She also reported that General Counsel's Office has been asked to propose amendments to the RPCs on fee sharing that will facilitate contingent fees for RIS referrals.

B. Budget and Finance Committee

1. Revised Investment Portfolio

Mr. Kent explained the work that was done to develop the new investment policy as laid out in the proposed amendments to Bylaw 7.4.

Motion: The board unanimously passed the committee motion to approve the bar's new investment policy.

2. Request from SSFP Section on BarBooks Subscription Rate

Mr. Kent presented background on the SSFP Section's proposal that it be entitled to an "office share" BarBooks subscription price. Because the bar is moving toward a universal access model, the committee does not believe it is a good time to change the pricing structure of BarBooks for SSFP members.

Motion: The board unanimously passed the committee motion to deny the SSFP Section treatment as an office share group.

3. 2009 Financial Report

Mr. Wegener presented encouraging financial news. The bar ended 2009 with net revenue; Admissions had one of its best years financially, likely, due to reciprocity; MCLE and Lawyer Referral Services had their best years ever; and unrealized revenues added to the financial picture and contributed to the positive balance. The uncertainty on the horizon is OPUS Northwest's financial situation, since a default by OPUS on the Master Lease will result in increased expense for the bar.

4. Guidelines for BOG Special Account

By consensus, the board agreed to the proposed guidelines for a special account managed by the CFO for purchases of alcoholic beverages at BOG functions, with the stipulation that contributions by BOG members are strictly voluntary.

C. Member Services Committee

Ms. Johnnie informed the board that the Member Services Committee would be joining the BarBooks discussions with the Budget and Finance and Policy and Governance Committees.

D. Policy and Governance Committee

1. Implementing the Senior Lawyers Task Force Recommendations

Ms. Naucler informed the board that the Member Services Committee be reviewing the recommendations of the Senior Lawyers Task Force for the board's consideration later this year.

2. BOG Spouse/Guest Expense Reimbursement Policy

Motion: The board unanimously passed the committee motion to reimburse BOG members for spouse or guest expenses for board meetings and the Past BOG Dinner (see Exhibit B). The reimbursement will also be available to senior staff whose attendance at meetings is required.

3. Adoption of Bar Rule of Procedure for Ethics School

Motion: The board unanimously passed the committee motion to use the model in Option C (see Exhibit C).

4. MCLE Regulation 3.300

Motion: The board unanimously passed the committee motion to approve new MCLE Regulation 3.300(d) to clarify the alternate reporting requirement for Access to Justice credits. (see Exhibit D).

5. Bar Rule of Procedure Changes from Redistricting

Motion: The board unanimously passed the committee motion to amend the Bar Rules of Procedure (BRs) relating to Disciplinary Board and LPRC appointment, to conform to the new BOG regions that will be effective January 2011 (see Exhibit E).

6. Bylaw 3.4 Amendment re: Distribution of HOD Agendas

Motion: The board unanimously passed the committee motion to amend Bylaw 3.4. (see Exhibit F).

7. Misc. Housekeeping Bylaw Amendments

Motion: The board unanimously passed the committee motion to apply various housekeeping changes to the OSB Bylaws (see Exhibit G).

8. CSF Rule 2.2.1 Amendment

Motion: The board unanimously passed the motion to amend CSF Rule 2.2.1 expanding the definition of "dishonesty" to include a lawyer's wrongful failure to maintain client funds in trust until earned (see Exhibit H).

9. Proposed Amendments to LPRC Statute

Motion: The board unanimously passed the committee motion to propose amendments to LPRC statute, which will appear in the 2011 legislative package (see Exhibit I).

10. Certified Mailings for MCLE Notices

Motion: The board unanimously passed the committee motion to amend MCLE Regulation 1.115 regarding service by mail (see Exhibit J).

11. Proposed Amendment to MCLE Regulation 4.350(e)

Motion: The board unanimously passed the committee motion to amend MCLE Regulation 4.350(e) to assess late fees for untimely accreditation requests by local bar associations (see Exhibit K).

12. Limit Number of HOD Resolutions

The Policy and Governance Committee is not recommending that the BOG take any action to limit the number of HOD resolutions presented by a single delegate at the HOD meeting.

13. Committee Charges Revisions

Motion: The board unanimously passed the committee motion to revise the Federal Practice and Procedure and Quality of Life Committee charges (see Exhibit L).

E. Public Affairs Committee [Mr. Piucci]

1. Legislative Update

The legislature is looking to go to annual sessions, alternating between short sessions in even-numbered years and the regular longer session in odd-numbered years. The state's revenue for 2010 is stable but 2011 is projected to have a \$2.5 billion deficit. On April 13 and 14, the bar will sponsor a legislative review session, emceed by Ms. Fisher, in an effort to review upcoming bills, provide better communications between sections on the various proposals, and to flush out problems and ascertain the impact they will have.

The board reviewed and discussed issues surrounding the state court filing fees and establishing a task force to review the matter (see Exhibit M).

Motion: The board unanimously passed the committee motion to convene a task force on state court filing fees as set forth in Exhibit M and to ask the Chief Justice to join the task force.

The task force will report back to the board at its November 2010 meeting.

9. Consent Agenda

Motion: Ms. DiIaconi moved, Ms. Lord seconded, and the board unanimously passed the consent agenda items, including the October 30, 2009 minutes as corrected (see Exhibit N).

Notes for a Law Lecture

Abraham Lincoln [c. 1859]

I am not an accomplished lawyer. I find quite as much material for a lecture, in those points wherein I have failed as in those wherein I have been moderately successful.

① The leading rule for the lawyer, as for the man of every other calling, is diligence. Leave nothing for to-morrow, which can be done to-day. Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it, which can then be done.

When you bring a common-law suit, if you have the facts for doing so, write the declaration at once. If a law point be involved, examine the books, and note the authority you rely on, upon the declaration itself, where you are sure to find it when wanted. The same of defences and pleas. In business not likely to be litigated--ordinary collection cases, foreclosures, partitions, and the like,--make all examinations of titles

^and note them,^ and even draft orders and decrees in advance. This course has a tripple advantage; it avoids omissions and neglect, saves your labor, when once done; performs the labor out of court when you have leisure, rather than in court, when you have not. Extemporaneous speaking should be practiced

and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business, if he can not make a speech. And yet there is not a more fatal error to young lawyers, than relying too much on speech-making. If any one, upon his rare powers

of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance

Never encourage ^③ Discourage^ litigation. Persuade your neighbors to compromise whenever you can.

Point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time. As a peace-maker, the lawyer has a superior opertunity of being a good man. There will still be business enough.

Exhibit A

Never stir up litigation. A worse man can scarcely be ~~conceived~~ of ^{^found^} than one who does this.

Who can be more nearly a fiend than he who habitually overhauls the Register of deeds, in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession, which should drive such men out of it.

4 The matter of fees is important far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. As a general rule, never take your whole fee in advance, nor any more than a small retainer. When fully paid before hand, you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you, as well as for your client. And when you lack interest in the case, the job will very likely lack skill and diligence in the performance. Settle the amount of fee, and take a note in advance. Then you will feel that you are working for something, and you ^{^are^} sure to do your work faithfully, and well. Never sell a fee-note--at least, not before the consideration service is performed. It leads to negligence and dishonesty--negligence, by losing interest in the case, and dishonesty in refusing to refund, when you have allowed the consideration to fail.

5 There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence, and honors are reposed in, and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty, is very distinct and vivid. Yet the expression, is common--almost universal. Let no young man, choosing the law for a calling, for a moment yield to this popular belief. Resolve to be honest at all events; and if, in your own judgment, you can not be an honest-lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.

Exhibit A

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: January 15, 2010
From: Sylvia E. Stevens, General Counsel
Re: BOG Spouse/Guest Expense Reimbursement

Action Recommended

Consider whether to revise the policy on spouse/guest reimbursement for BOG members and staff.

Background

Questions have come up recently regarding the policy on reimbursement of spouse/guest expense at BOG meetings. The general policy on expense reimbursement is set forth in OSB Bylaw 7.500:

Bar employees and members of the Board of Governors...will be reimbursed for their expenses in accordance with this policy when acting in their official capacities. Expenses of spouses or guests will not be reimbursed except as specifically approved by the Board of Governors....

The BOG Handbook sets out the following policy for board members:

Spouse/guest expense for one guest is complimentary for official Board of Governor's events as follows: Meal expense at Board of Governors regional bar social events, past Board of Governors dinner, annual Board of Governors dinner, and House of Delegates' social events. Guest expenses considered to be a personal expense include meals at the November planning retreat, other meals associated with travel and meetings or additional travel costs such as airline tickets.

The spouse/guest policy was adopted sometime after 1992. Prior to that time, the bar covered the expense for BOG members' spouses or guests to attend any board meeting or other bar-related event at which BOG members were expected to be present. The reason for the change is unclear, but may reflect a desire to contain costs when the board met more frequently, held more meetings away from the Portland metro area, and had more guests in attendance.

The policy as written is deficient in several respects. First, there is no "annual Board of Governors dinner." Nor does there seem to be any clear rationale for the choice of events at which expenses are covered.

Exhibit B

**Proposed Ethics School BR
Option C – No Exam Requirement**

BR 6.4. Ethics School.

(a) An attorney sanctioned under BR 6.1(a)(ii), (a)(iii) or (a)(iv) shall successfully complete a one-day course of study developed and offered by the Bar on the subjects of legal ethics, professional responsibility and law office management. Successful completion requires that the attorney attend in person the course offered by the Bar and pay the attendance fee established by the Bar.

(b) An attorney reprimanded under BR 6.1(a)(ii) who does not successfully complete the course of study when the course is next offered by the Bar following the effective date of the reprimand shall be suspended from the practice of law until the attorney successfully completes the course.

(c) An attorney suspended under BR 6.1(a)(iii) or (a)(iv) shall not be reinstated until the attorney successfully completes the course of study, unless the course is not offered before the attorney's term of suspension lapses, in which case the attorney may be reinstated if otherwise eligible under applicable provisions of Title 8 of these Rules until the course is next offered by the Bar. If the attorney does not successfully complete the course when it is next offered, the attorney shall be suspended from the practice of law until the attorney successfully completes the course.

Exhibit C

OREGON STATE BAR

P & G Committee Agenda

Meeting Date: January 15, 2010
Memo Date: December 18
From: MCLE Committee
Re: MCLE Rule 3.2(c) Access to Justice and proposed regulation

Action Recommended

Review proposed MCLE Regulation 3.300(d) regarding the reporting requirements for access to justice (A2J) credits.

Background

At its August 28 and October 30, 2009 meetings, the Policy and Governance (P&G) Committee of the Board of Governors reviewed the MCLE Committee's recommendation for an amendment to MCLE Rule 3.2(c).

After lengthy discussions, the P&G Committee declined to approve the proposed rule amendment.

In lieu of amending Rule 3.2(c), the P&G Committee asked the MCLE Committee to propose a regulation to the rule, which outlines the reporting periods in which A2J credits are required.

The MCLE Committee recommends adding MCLE Regulation 3.300(d), which sets forth the reporting periods in which access to justice credits are required:

Regulation 3.300 Application of Credits.

(d) Members in a three-year reporting period are required to have 3.0 access to justice credits in reporting periods ending 12/31/2012 through 12/31/2014 and 12/31/2018 through 12/31/2020. Access to Justice credits earned in a non-required reporting period will be credited as general credits.

Exhibit D

OREGON STATE BAR

BOG Policy & Governance Agenda

Meeting Date: January 15, 2010
Memo Date: January 6, 2010
From: Sylvia Stevens, General Counsel, Ext. 359
Jeffrey D. Sapiro, Disciplinary Counsel, Ext. 319
Re: Proposed Amendments to Bar Rules regarding New BOG Regions

Action Recommended

Recommend to the Board of Governors that amendments to the Bar Rules of Procedure (BRs) be adopted to implement the new BOG regions, effective January 2011.

Discussion

As a result of the recent reconfiguration of BOG regions required by ORS 9.025, a new Region 7 (Clackamas County) will be created effective January 1, 2011. The creation of the new region necessitates amendments to the Bar Rules of Procedure relating to the SPRB and Disciplinary Board, as they are both tied to the BOG regions. (The compositions of Regions 1, 3, 4 and 6 are also affected by the reconfiguration, but do not require additional changes in the BRs.) Staff suggest the following amendments to BRs 2.3(b)(1) and 2.4(a), respectively:

Rule 2.3 Local Professional Responsibility Committees And State Professional Responsibility Board.

* * *

(b) SPRB.

(1) Appointment. The Board shall create for the state at large a state professional responsibility board and appoint its members. The SPRB shall be composed of eight [~~seven~~] resident attorneys and two members of the public who are not attorneys. Two attorney members shall be from Board Region 5 and one attorney member shall be from each of the remaining Board regions. The public members shall be at-large appointees. Members of the SPRB shall be appointed for terms of not more than four years and shall serve not more than four years. Each year the Board shall appoint one member of the SPRB as chairperson. The chairperson shall be an attorney. In the event the chairperson is unable to carry out any responsibility given to him or her by these rules, the chairperson may designate another member of the SPRB to do so.

* * *

Exhibit E

Rule 2.4 Disciplinary Board.

(a) Composition. A disciplinary board shall be appointed by the Supreme Court. The Disciplinary Board shall consist of a state chairperson, 7 ~~[6]~~ regional chairpersons, and 6 additional members for each Board region except for Region 1 which shall have 9 additional members, Region 5 which shall have 23 additional members, and Region 6 which shall have 11 additional members. Each regional panel shall contain 2 members who are not attorneys, except for Region 1 which shall have appointed to it 3 members who are not attorneys, Region 5 which shall have appointed to it 8 members who are not attorneys, and Region 6 which shall have appointed to it 4 members who are not attorneys. The remaining members of the Disciplinary Board shall be resident attorneys admitted to practice in Oregon at least 3 years. Except for the state chairperson who shall be an at-large appointee, members of each regional panel shall either maintain their principal office within their respective region or maintain their residence therein. The members of each region shall constitute a regional panel. Trial panels shall consist of 2 attorneys and 1 public member, except as provided in BR 2.4(f)(3). The state chairperson, regional chairpersons and trial panel chairpersons shall be attorneys.

Other volunteer positions within the disciplinary system (LPRC and bar counsel) do not require amendments to the rules of procedure because they either are not tied to region configuration or their composition is not addressed in the existing BRs.

Exhibit E

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: December 18, 2009
From: Sylvia E. Stevens, General Counsel
Re: Revision of Bylaw 3.4 (HOD Agendas)

Action Recommended

Consider amending Bylaw 3.4 regarding distribution of the HOD agenda to assure conformance with current practice.

Background

The Committee should consider recommending to the BOG that OSB Bylaw 3.4 be amended as follows:

Section 3.4 Meeting Agenda

After receiving all resolutions, the Board must prepare an agenda for the House. The Board may exclude resolutions from the agenda that are inconsistent with the Oregon or United States constitutions, are outside the scope of the Bar's statutory mission or are determined by the Board to be outside the scope of a mandatory bar's activity under the U.S. Supreme Court decision in *Keller v. the State Bar of California*. The **House agenda, including any resolutions that the Board has excluded, must be published by Board, [must distribute the House agenda] with notice thereof** to all active and inactive bar members, [including any resolutions that the Board has excluded,] at least 20 days in advance of the House meeting.

The *former* BOG Policies required that the agenda be *mailed* to the membership. When the policies were incorporated into the Bylaws in 2003, the language was changed to substitute "distributed" for "mailed" in anticipation of electronic distribution. Since approximately 2006, we have distributed the agenda by sending an e-mail with a link to the OSB web site where the agenda is posted. The only members who get hard copies are those who don't have an e-mail address on file with the bar.

A question was raised this year whether sending an e-mail with a link is the equivalent of "distributing" the agenda. Thus far we have not had any complaints or objections from any delegate. However, it may be wise to amend the bylaw to avoid any challenges to the manner in which the agenda is handled. Of course, amending the bylaw doesn't entirely solve the problem because of there is also a HOD rule requiring "distribution" of the agenda.¹ Changes to

¹ HOD Rule of Procedure 5.5 provides: In advance of any meeting of the House of Delegates, the Board of Governors of the Oregon State Bar shall review proposed agenda items for conformity with applicable law and bar

Exhibit F

the HOD Rules must be approved by the HOD and that could not happen until the 2010 HOD meeting.

policy and propose a preliminary agenda for the meeting. *The preliminary agenda*, along with notice of the questions or measures the Board determined should not be placed on the agenda, *shall be distributed to the membership* of the Oregon State Bar at least twenty (20) days prior to the meeting.

Exhibit F

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: February 18, 2010
From: Sylvia E. Stevens, General Counsel
Re: Bylaw Corrections

Action Recommended

Approve the two “housekeeping” bylaw amendments set out below.

Background

Bylaw 2.302

Bylaw 2.302 sets out the grounds for which a public members of the BOG is subject to removal. There is an incorrect citation to Bylaw 2.400, which should be Bylaw 2.300:

Subsection 2.300 Appointment

Any person appointed to a public position on the Board must meet the qualifications set forth in ORS 9.025(1). Public members serve for a term of four years, beginning on January 1 of the year following appointment. Every attempt will be made to maintain geographic distribution; however, the priority will be to match the current needs of the Board with the areas of interest of the public members.

* * *

Subsection 2.302 Removal

Public members of the Board are subject to removal by the Board upon the following grounds and for the following reasons: A public member no longer meets the initial qualifications for appointment set forth in Subsection 2.300 of the Bar’s Bylaws; or a public member commits an act substantially similar to the conduct proscribed by ORS 9.527 or fails to perform the duties of the office. If at least ten members of the Board propose that the public member be removed, the public member is given written notice of the proposed removal, together with the reasons therefore. The written notice must be given at least 15 days before the next regularly scheduled board meeting. Thereafter, on a vote of at least ten members of the Board, the public member is removed and the position is vacated.

Bylaw 18.4

When the Client Assistance Office was created in 2003, we amended Bar Rule of Procedure 2.5 and moved most of the previous BR 2.5 to a new BR 2.6. Apparently, we didn’t correct all of the references in the Bylaws:

Section 18.4 Disciplinary Correspondence

Members of the Board of Governors or other bar officials may receive occasional correspondence related to disciplinary matters. All such correspondence, including letters from complainants or accused lawyers, must be forwarded to Disciplinary Counsel for response. Disciplinary Counsel need not send a copy of any response to the board member or bar official to whom the initial correspondence was addressed. Any correspondence alleging an ethics complaint about Disciplinary Counsel or General Counsel must be sent directly to the chairperson of the SPRB pursuant to BR 2.6(g), with a copy to the staff member named in the complaint.

Exhibit G

OREGON STATE BAR

Policy & Governance Committee Agenda

Meeting Date: February 18, 2010
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Re: Bylaw Corrections

Action Recommended

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Background

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Exhibit G

2.2.1 In a loss resulting from a lawyer's refusal or failure to refund an unearned legal fee, "dishonest conduct" shall include **(i)** a lawyer's misrepresentation or false promise to provide legal services to a client in exchange for the advance payment of a legal fee **or** **(ii)** a lawyer's wrongful failure to maintain the advance payment in a lawyer trust account until earned.

Exhibit H

OREGON STATE BAR

Board of Governors Agenda

Meeting Date: February 19, 2010
From: Mitzi Naucler, Chair, Policy & Governance Committee
Steve Pucci, Chair, Public Affairs Committee
Re: Proposed Amendments to LPRC Statute

Action Recommended

Authorize staff to include in the 2011 Bar Bill an amendment to ORS 9.532 eliminating the requirement that volunteer investigators be grouped by regional committees.

Discussion

For many years, the Oregon State Bar has utilized the services of unpaid volunteers for assistance in investigating disciplinary complaints. The authority for this is found in ORS 9.532, the same statute that gives the Board of Governors authority to appoint the SPRB. That statute provides:

9.532 Local professional responsibility committees; state professional responsibility board; powers; witnesses; subpoenas; oaths.

(1) The board of governors shall create local professional responsibility committees to investigate the conduct of attorneys. The composition and authority of local professional responsibility committees shall be as provided in the rules of procedure.

(2) The board of governors shall also create a state professional responsibility board to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure.

(3)(a) The state professional responsibility board and local professional responsibility committees shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the member being investigated, and the production of books, papers and documents pertaining to the matter under investigation.

(b) A witness in an investigation conducted by the state professional responsibility board or a local professional responsibility committee who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The state professional responsibility board or local professional responsibility committees may enforce any subpoena issued pursuant to paragraph (a) of this subsection by application to any circuit court.

Exhibit I

(c) Any member of the state professional responsibility board or a local professional responsibility committee may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection.

Presently, there are 16 LPRCs. There is one for Douglas County, one for Lane County and one for Multnomah County. The rest are multi-county committees. When rosters are full, total LPRC membership is roughly 100. Each year, staff gathers the names of those lawyers who express interest in LPRC service, solicits additional volunteers, puts together a proposed roster for each of the 16 committees and presents them to the Board of Governors Appointments Committee. The Appointments Committee then makes recommendations to the full Board of Governors, which makes the final appointments. Members are then notified of their appointments, a training manual is updated by staff and circulated, and pending committee assignments are coordinated with the new chairpersons.

Two developments suggest that it is time to amend ORS 9.532 to do away with the committee structure (but *not* with volunteer investigators):

(1) The number of investigative assignments made to LPRCs has diminished substantially as Disciplinary Counsel's Office (DCO) has assumed most of the responsibility for investigating complaints. For example, 131 assignments were made to LPRCs in 1997. Ten years later, in 2007, the number of assignments was 18, and the average is even fewer since then;

(2) Interest in LPRC service has diminished radically over the last several years such that it is extremely difficult to fill vacant positions on LPRC rosters. Staff expends a good bit of time drumming up volunteers, but over the last few years has had to resort to asking existing members to consider reappointment year after year.

Staff suggests that the LPRC committee structure has outlived its usefulness. In fact, the Bar and the Supreme Court took a step in the direction of reducing reliance on the committee structure in 2004, when Bar Rule of Procedure (BR) 2.3(a) was amended to provide that investigative assignments are to be made by disciplinary counsel directly to *individual* members of an LPRC, rather than routing assignments through committee chairpersons. Although an LPRC member may request that the LPRC chair convene a meeting of the full committee to discuss an assignment, the investigating member "need not obtain the approval of the LPRC as a whole, or of the chairperson, before submitting his or her final investigative report to Disciplinary Counsel." BR 2.3(a)(2)(E). To staff's knowledge, the only LPRC that actually meets as a committee and discusses investigative reports is in Multnomah County.

Disciplinary Counsel’s Office still has occasional need for investigative assistance from volunteer lawyers in local communities. It is not always practical for DCO to travel to Burns or Pendleton or Medford to interview a witness or meet face-to-face with an interested party. Disciplinary Counsel envisions keeping a list of volunteers who are willing to take on an investigative assignment as the need arises. However, continuing with the present committee recruitment, appointment and maintenance process is not an effective use of time given the low numbers of investigative assignments each year, the limited number of volunteers and the rule that provides for direct assignments to and direct reports back from individual investigators.

The Policy & Governance and Public Affairs Committees propose that ORS 9.532 be amended as set out below. The amendments eliminate LPRCs, but authorize the designation of individual bar members to serve as investigators with all the authority to issue subpoenas and compel the attendance of witnesses and the production of records that LPRCs presently have.

9.532 ~~State professional responsibility board; powers; witnesses; subpoenas; oaths.~~

(1) ~~The board of governors shall create a state professional responsibility board to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure.~~

~~(2) The state professional responsibility board shall have the authority to designate one or more members of the bar to investigate the conduct of attorneys on behalf of the state professional responsibility board.~~

~~(3)(a) The state professional responsibility board and any member of the bar designated to investigate the conduct of attorneys pursuant to subsection (2) shall have the authority to take evidence, administer oaths or affirmations, and issue subpoenas to compel the attendance of witnesses, including the member being investigated, and the production of books, papers and documents pertaining to the matter under investigation.~~

~~(b) A witness in an investigation conducted by the state professional responsibility board or by a designated investigator who testifies falsely, fails to appear when subpoenaed, or fails to produce any books, papers or documents pursuant to subpoena, shall be subject to the same orders and penalties to which a witness before a circuit court is subject. The state professional responsibility board or designated investigator may enforce any subpoena issued pursuant to paragraph (a) of this subsection by application to any circuit court.~~

Deleted: Local professional responsibility committees; s

Deleted: The board of governors shall create local professional responsibility committees to investigate the conduct of attorneys. The composition and authority of local professional responsibility committees shall be as provided in the rules of procedure.

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(c) Any member of the state professional responsibility board or a ~~designated investigator~~ may administer oaths or affirmations and issue any subpoena provided for in paragraph (a) of this subsection.

Deleted: local professional responsibility committee

Conclusion

The above amendments are not likely to reduce the involvement of volunteer lawyers in the investigative process beyond the current level of that involvement. However, the amendments will streamline the appointments process and eliminate a level of structure that is not necessary or beneficial. The SPRB has seen the above amendments and are not opposed to them.

Exhibit I

OREGON STATE BAR

P & G Committee Agenda

Meeting Date: January 15, 2010
Memo Date: December 18, 2009
From: MCLE Committee
Re: Certified Mailings for MCLE Notices

Action Recommended

Review the proposed amendment to MCLE Regulation 1.115 regarding service by mail.

Background

At the August 28, 2009 meeting of the Policy and Governance (P&G) Committee, members concluded that certified mailings, which will no longer be sent “return receipt requested”, should be accompanied by an e-mail or regular mail notice (for members who do not have e-mail) as a back-up method of notice. The P&G Committee asked the MCLE Committee to draft a regulation to that effect.

Pursuant to the P&G Committee’s request, the MCLE Committee recommends amending Regulation 1.115 as follows:

1.115 Service By Mail.

(a) Anything transmitted by mail to a member shall be sent to the member by first class mail, or certified mail if required by these rules, addressed to the member at the member’s last designated business or residence address on file with the Oregon State Bar. Certified mail will not be sent “Return Receipt Requested”. Members who are sent certified mail will also be notified about the certified mailing via e-mail or regular mail (for those members who do not have e-mail).

(b) Service by mail shall be complete on deposit in the mail.

Exhibit J

OREGON STATE BAR

P & G Committee Agenda

Meeting Date: January 15, 2010
Memo Date: December 18, 2009
From: MCLE Committee
Re: Review Proposed Amendment to MCLE Reg 4.350(e)

Action Recommended

Review the proposed amendment to MCLE Regulation 4.350(e) regarding sponsor fees paid by local bar associations.

Background

In November 18, 2005, the Board of Governors amended the MCLE Regulations to exempt local bar associations in Oregon from payment of the MCLE program sponsor fee. See Regulation 4.350(e) below.

4.350 Sponsor Fees.

- (a) A sponsor of a CLE activity that is accredited for 4 or fewer credit hours shall pay a program sponsor fee of \$40.00. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.
- (b) A sponsor of a CLE activity that is accredited for more than 4 credit hours shall pay a program sponsor fee of \$75. An additional program sponsor fee is required for every repeat live presentation of an accredited activity, but no additional fee is required for a video or audio replay of an accredited activity.
- (c) Sponsors presenting a CLE activity as a series of presentations may pay one program fee of \$40.00 for all presentations offered within three consecutive calendar months, provided:
 - (i) The presentations do not exceed a total of three credit hours for the approved series; and
 - (ii) Any one presentation does not exceed one credit hour.
- (d) A late processing fee of \$40 is due for accreditation applications that are received more than 30 days after the program date. This fee is in addition to the program sponsor fee and accreditation shall not be granted until the fee is received.
- (e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees.

The MCLE Department frequently receives accreditation applications from local bar associations for programs that were held more than 30 days prior to the application being received in our office. These applications are often for programs that were held 90 days, six

Exhibit K

months, or occasionally one year prior to the request for CLE credit being submitted. This frustrates program attendees who do not understand why the MCLE Department has no record of a local bar association program they attended.

In order to encourage local bar associations to submit their applications in a timely manner, the MCLE Committee recommends amending MCLE Regulation 4.350(e) to impose late fees on local bar associations, as follows:

MCLE Regulation 4.350

(e) All local bar associations in Oregon are exempt from payment of the MCLE program sponsor fees. However, if accreditation applications are received more than 30 days after the program date, the late processing fee set forth in MCLE Regulation 4.350(d) will apply.

Exhibit K

OREGON STATE BAR

Policy and Governance Committee Agenda

Meeting Date: February 18, 2010
Memo Date: February 2, 2010
From: Danielle Edwards, Ext. 426
Re: Committee assignment revisions

Action Recommended

Consider changes to the Federal Practice and Procedure and Quality of Life Committee assignments (also referred to as a committee charge).

Background

The Federal Practice and Procedure Committee would like to revise its current assignment to allow the committee to review the procedure used to nominate district and magistrate judges and make a recommendation to the Board of Governors as to the role the bar can play in the process. The attached assignment outlines the specific wording of these changes.

Due to the creation of the Sustainable Futures Section, the Quality of Life Committee would like to remove the assignment of tracking national and local developments in applying the concepts of sustainability to the practice of law. This change is noted on the attached revised assignment.

Note: Any additions, deletions or changes made to the original assignment are indicated by underlining (new) or strikethrough (deleted).

Exhibit L

FEDERAL PRACTICE AND PROCEDURE COMMITTEE CHARGE

General:

Assist in update and review of federal practices and procedures, keep the members of the Bar apprised of changes, and assist judiciary in its efforts to modernize this area of law. Advise Board of Governors on issues relating to federal practice. Coordinate liaison efforts between Bar membership and the federal judiciary.

Specific:

1. Identify and report to BOG improvements and proposed changes in federal practices and procedures.
2. Continue liaison activities with Oregon federal judges and staff to maintain communication and cooperation on issues affecting practice in the federal courts.
3. Continue liaison activities with Litigation Section.
4. Continue liaison activities with Federal Bar Association, federal court Local Rules Committee and 9th Circuit Lawyer Representatives.
5. Publish from time to time federal practice and procedure updates and other relevant information in appropriate forums, such as the Oregon State Bar Bulletin, to keep the Bar apprised of federal practice issues and developments.
6. Study the procedures used to nominate district court judges and magistrate judges to determine how the Bar can provide input into this process and make a recommendation to the Board of Governors.
7. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

Exhibit L

QUALITY OF LIFE COMMITTEE CHARGE

General:

Educate and motivate lawyers to make professional choices that will enhance their quality of life and advance the legal profession.

Specific:

1. Encourage awareness and discussion of the diverse standards by which lawyers evaluate their lives.
2. Educate lawyers and law firms about the benefits of reducing tension between personal and professional life, and methods for doing so.
3. Provide information and support for lawyers who choose non-traditional career paths.
4. Continue publication of articles on enhancing the quality of life in the *Bulletin* and other OSB publications.
5. Form relationships with other Bar sections and committees to promote discussion of these issues within their constituencies. Enhance involvement with groups outside of the OSB, including OAAP, OWLs and Oregon law schools in promoting the goals of the committee.
6. Continue to maintain web site.
- ~~8. Track national and local developments in applying the concepts of sustainability to the practice of law and make recommendations for the Board of Governors.~~
8. Pursue greater speaker outreach to talk to members and law students about balancing home and work life.
9. Solicit nominations for the OSB Award of Merit, the President's Public Service Award, Membership Service Award, Affirmative Action Awards, the Joint Bench Bar Professionalism Award and any other state, local and national awards for lawyers who contribute to serving the legal needs of Oregonians.

Exhibit L

The increase in state court filing fees and fines effective on October 1, 2009, has led court users to notice and examine the use of court filing fees and criminal fines as a revenue raising device for state government – even when some of that revenue is used to fund the operation of the State’s court system. The Oregon State Bar has an important role to play in assisting the legislature in assuring continued access to the court system. The bar supports a healthy, effective, and accountable judicial branch as an essential part of the state government. While users have always paid for the privilege of using the Oregon court system, the bar wishes to examine the appropriate place of filing fees and criminal fines in supporting the courts in particular and state government in general.

The Oregon State Bar will convene a Task Force on State Court Filing Fees. The Task Force will assist the Joint Interim Committee of Justice System Revenue in assessing the effects of the current filing fee and criminal fine structure on the operation of the court system. The Task Force may also make recommendations to the Joint Interim Committee.

The Task Force will be appointed by the Board of Governors, will be chaired by a lawyer, will include the two non-legislator members of the Joint Interim Committee on Justice System Revenues, representatives of the civil plaintiff and defense bars, representatives of district attorneys and criminal defense bar, a circuit court judge and an appellate court judge, and a staff person from the Oregon Judicial Department.

Among the issues the Task Force will examine are the following:

- How much has the increase in filing fees affected the access of people to the court system?
- At what point will filing fees become so high that litigants will routinely use non-judicial dispute resolution procedures?
- Are certain kinds of court filings or proceedings within cases inappropriate for the imposition of a fee?
- Are the fine surcharges appropriate to the crimes on which they are imposed?
- To what extent should the legislature look to the users of the courts to defray the state’s expense in running them?
- What justice system related entities are appropriately funded by filing fees?
- Should there be a dedicated source of funding for the operation of the State court system which will preserve access to justice in Oregon for all who need such services?

The Task Force will meet regularly, will take public comment at a time to be determined, and will provide a report to the Board of Governors on or before November 13, 2010.

The task force charge, for the long term, will be to recommend a system for funding the courts that recognizes their status as a separate and co-equal branch of government; preserves the balance between judicial accountability and independence; and maintains an open and accessible judicial system for all Oregonians.

Exhibit M

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.