

Oregon State Bar
Meeting of the Board of Governors
April 30, 2010
Open Session Minutes

The meeting was called to order by President Kathleen Evans at 9:10 a.m. on April 30, 2010, and adjourned at 3:45 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, and Steve Piucci. Staff present included Teresa Schmid, Sylvia Stevens, Anna Zanolli, Linda Kruschke, Rod Wegener, Lorraine Jacobs, Jared Gosson, Kay Pulju, Jeff Sapiro, Susan Grabe, and Teresa Wenzel. Present from PLF were Cindy Hill, Ronald Bryant, Greg Greco, Barbara Fishleder, Lisa Almasy Miller, Jeff Crawford, William Carter, Tim Martinez, Fred Ruby, Valarie Fisher, Bruce Schafer, and Laura Rackner. Also present were Dave Madden (SSFP), Jessica Cousineau (ONLD), Marilyn Harbur (ABA Delegate), and Judge Adrienne Nelson (ABA Delegate).

1. Special Committee on BarBooks™

A. BarBooks™ Presentation

Ms. Evans reported on the steering committee's study of how to implement the BarBooks™ benefit. The steering committee recommends making a one-time draw from existing reserves and asking the PLF for a three-year stepped-down contribution; some operational savings will come through department reorganization and shifting of existing resources. Mr. Kent reported his confidence that the budget for 2011 looks good, but even with the anticipated development of new sources of revenue a dues increase likely will be necessary in 2012. Mr. Kent was optimistic that the membership will be amenable because of the value of the BarBooks benefit and the recognition that the bar has historically raised dues every five years or so to maintain operations. Ms. Evans acknowledged that the future financial impact cannot be known exactly, but she indicated the worst-case scenario would be that members would have to resume paying for the service later if it became financially impossible to continue providing the service to members at no charge.

Linda Kruschke, bar staff, presented information and answered questions concerning the proposed direction of BarBooks™. The presentation included a demonstration of how to access information through its online portal. The board encouraged Ms. Kruschke to make her presentation available to interested parties.

The board discussed the financial impacts including using some of the existing reserves and a requested three-year contribution from the PLF.

Motion: Mr. Haglund moved, Ms. DiIaconi seconded, and the board unanimous passed the motion to move forward with the BarBooks™ benefit.

2. Presentation of New Bar Logo

Ann Zanolli, IDT Manager, presented enhancements to the bar logo using a palette of Oregon photographs as the header on documents and as the masthead on web pages. Using the photos, taken by Judge Eric Valentine, will further the establishment of an OSB “brand” while allowing great flexibility and creativity. As an example, Ms. Zanolli suggested that OSB presidents could select a unique identity for their presidential year. The plain logo will continue to be used on disciplinary and other formal correspondence. Ms. Zanolli distributed samples of the new photo logo on note cards for each board member to keep.

3. Report of Officers

A. Report of the President

Ms. Evans updated her written report. She attended the Western State Bar Conference in San Antonio with Mr. Piucci, Ms. Fisher, Mr. Mitchell-Phillips, Ms. Schmid, and Ms. Stevens. A particular topic of interest was the Utah and Georgia bars’ mandatory mentoring program for new lawyers. Ms. Evans is appointing a task force to develop a similar program for Oregon State Bar, modeled after the programs in Utah and Georgia. The Chief Justice and the PLF are excited about the program and Ms. Stevens and Ms. Pulju will assist the task force that is looking into its implementation.

Ms. Evans attended ABA Day in Washington, D.C. with Mr. Piucci, Ms. Schmid, David Thornburg, Sandra Hansberger, Judge Ellen Rosenblum, and Ms. Grabe. It was a successful two days and the Oregon delegation was able to meet with all five of Oregon’s legislators.

Ms. Evans encouraged the board to attend the Past BOG Dinner on May 14th, where Judge Rosenblum and past BOG members Bette Worcester and Charlie Williamson will lead the attendees in a sing-a-long.

B. Report of the President-elect

As written.

C. Report of the Executive Director

As written.

D. Oregon New Lawyers Division

Ms. Cousineau added to her written report indicating that the ONLD has revised its newsletter with good results; presented CLEs and done public service projects; and now has a liaison to the Affirmative Action Program that allows for better interaction between the groups. Concerns for the ONLD members revolve mainly around jobs, opening their own offices, and questions concerning the profession. BarBooks™ could be a helpful tool for new lawyers dealing with these issues. The ONLD will be in Baker City the same time as the board and will present a CLE to the local bar members while there.

4. Professional Liability Fund

A. Joint Meeting of PLF/BOG Boards

The PLF joined the BOG for a joint meeting during lunch. Ms. Evans and Mr. Kent presented information to the PLF board regarding the BOG's plan for implementing the BarBooks™ benefit. Mr. Bryant, PLF Chair, indicated that the PLF board found the overall concept to be a good one that will be valuable in loss prevention and assistance to new lawyers. The BOG's request for a financial contribution matter will be discussed by the PLF board at its next meeting. Mr. Kent assured the PLF that the \$600,000 requested from the PLF over the next three years would be a one-time request.

B. General Update

Mr. Zarov and Mr. Bryant updated the BOG on the condition and activities of the PLF. Its profits are up about \$500,000 so far this year. It started the year with over 1,000 cases and it is down to approximately 945. The PLF board is hopeful that investments will maintain their positive climb, which would mean no assessment increase. The severity of claims appears to be down and this information will be more apparent after the PLF's next meeting. Lisa Almasy Miller is replacing Suzanne Chanti on the PLF board because Ms. Chanti was appointed to a judgeship. Ms. Miller served previously on the PLF board and with her knowledge of the board; it has been a smooth transition.

1. Change to PLF Settlement Authority

The PLF board plans to change its settlement authority, which will be the first time it has been changed in 25 years.

2. Audit Report

There were no unfavorable findings on the audit.

3. Report on Meeting with Reinsurers

The reinsurer talks went well and the 2009 year was a very good year for the insurance industry. The only cloud on the horizon is that one of the reinsurers is handling the oil spill in the gulf.

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

A. Court Fees Task Force

Mr. Kent also noted that he is participating on the Court Fees Task Force and the bar is keeping its position at the table and making its voice heard. The task force, chaired by former OSB president Gerry Gaydos, sees the fees mainly as an access issue, effecting mostly the middle class. The task force will continue working with the Chief Justice and the legislature to reach an equitable fee structure.

B. Client Security Fund

1. CSF Claim No. 09-24 DOUGLAS (Ulle)

Mr. Larson presented information concerning Mr. Ulle's appeal. The CSF Committee originally recommended awarding half of the fees paid based on its conclusion that work was performed. Mr. Ulle appealed and the BOG referred the matter back to the committee. On review, the CSF Committee found this was an "earned on receipt" fee, that more than minimal work had been performed, and that this was a fee dispute with no independent assessment of what amount should have been refunded. In response to the CSF Committee's denial of the claim, Mr. Ulle suggested that his claim be settled with an award of the \$2000 originally approved.

Motion: Mr. Larsen moved Ms. Naucler seconded, and the board affirmed the committee's decision with Ms. Fisher opposing.

2. CSF Claim No. 09-12 HORTON(Continental Express)

Mr. Larson presented information concerning the Continental Express appeal. The CSF and BOG previously approved an award reimbursing the client's share of a settlement misappropriated by Horton. On appeal, the client requested an additional award of Horton's attorney fee portion or interest on the award to compensate the client for the length of time it took the claim to be resolved.

Motion: Mr. Larson moved, Ms. Lord seconded, and the board passed the motion to deny the appeal with Ms. Fisher opposing.

3. CSF Claim No. 09-42 DOUGLAS (McRobert)

Mr. Larson presented information concerning Mr. McRobert's appeal. The CSF Committee found dishonesty in Douglas' failure to deposit the client's funds in trust, but also found that more than minimal work was done and that the client got the benefit of the funds paid. No new information was provided on the appeal.

Motion: Mr. Larson moved, Ms. Naucler seconded, and the board unanimously passed the motion to deny Mr. McRobert's appeal.

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

A. Access to Justice Committee

1. Update

Ms. Johnnie updated the board on the status of the Columbia County Legal Aid mediation and the possibility that the issue of CCLA's status under the Legal Services Program guidelines will eventually come before the BOG.

B. Budget and Finance Committee

Mr. Kent informed the board that the committee is considering sending bar dues invoices electronically, which will result in substantial cost savings. He reported that the OSB's investment advisor, Washington Trust Bank, is bearish on the U.S., and the small exposure we have through Goldman Sachs will be eliminated.

C. Member Services Committee

Ms. Fisher told the board that the committee has begun its review of all bar programs to ensure that the bar's resources benefit the broadest audience. This is not an exercise to remove individuals or programs, rather an exercise to make the bar more efficient and to serve its members better.

1. OSB Sustainability Awards

The committee continues to study the Sustainable Futures Sections' request for sustainability awards. It has concerns about the proposed application process and the number of awards that may be given.

D. Policy & Governance Committee

1. MCLE Rule Changes

Ms. Naucler informed the board that proposed MCLE rule changes regarding teaching and writing credits will be presented at the next board meeting.

2. Changes to LRAP Policies

Ms. Naucler presented the committee's recommendation for amending the LRAP policies as suggested by the LRAP Advisory Committee to make them consistent with the needs of applicants and to ensure better protection of the OSB funds.

Motion: The board unanimously passed the committee motion to approve the policies and guidelines for the LRAP program as set forth in the exhibit in the BOG's April 30, 2010 agenda.

3. MCLE Rule 5.2

Ms. Naucler presented the committee motion to amend MCLE Rule 5.2(e) and Regulation 5.100 to allow legislators to earn ½ of a credit for each week of legislative service.

Motion: The board unanimously passed the committee motion to amend MCLE Rule 5.2(e) and Regulation 5.100.

E. Public Affairs Committee

1. Legislative Workshop

Mr. Piucci reported that the legislative workshop was well attended and quite successful. The purpose was to share information about various section legislative proposals and give other interested sections an opportunity to provide input. He thanked Ms. Fisher for suggesting the idea.

2. Law Improvement Package

Mr. Piucci presented information concerning the bar's Law Improvement Package, which includes amending the Bar Act to delete the requirement that candidates for BOG and HOD positions have nominating petitions signed by ten active members. The revised package also removes a RELU proposal regarding property ownership by domestic partners, which will be studied further.

Motion: The board unanimously passed the committee motion to approve the bar's Law Improvement Package.

7. Special Appearances

A. Public Affairs Committee

1. E-Court Task Force Report

Mr. Comstock updated the board and submitted the eCourt Task Force' report. The task force has listened to the concerns of various groups and it continues to push the information out to the membership. It continues to ascertain how lawyer confidentiality and access to case information should be administered and how to deal with the confidentiality of special cases such as probate, domestic violence, juvenile cases, etc. Upon adoption, the task force report will go to the judicial department for initial implementation. Mr. Comstock answered questions, commented on confidentiality fears, and clarified information in the task force's report.

Motion: Mr. Haglund moved, Mr. Mitchell-Phillips seconded, and the board unanimously passed the motion to approve the first Interim Report of the OJD/OSB Oregon E-court Implementation Task Force.

B. ABA Update

Ms. Harbur and Judge Nelson presented a summary and answered questions about the ABA Annual meeting. The ABA reduced dues in hopes of picking up additional membership. The resolution regarding veteran courts passed and appears incorrectly in the written summary. News magazines including U.S. News and World Report and Newsweek have printed national rankings of attorneys. This is very controversial and concerns the ABA, which will continue to monitor the process. Collaborative law came before the delegation and there will be a resolution concerning it at the annual meeting, August 9-10, 2010 in San Francisco.

8. Consent Agenda

Motion: Ms. DiIaconi moved, Mr. Haglund seconded, and the board unanimously passed the motion to approve the minutes with typographical changes.

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