

Oregon State Bar
Meeting of the Board of Governors
August 13, 2010
Open Session Minutes

The meeting was called to order by President Kathleen Evans at 9:15 a.m. on August 13, 2010, and adjourned at 2:00 p.m. Members present from the Board of Governors were Barbara DiIaconi, Kathleen Evans, Michelle Garcia, Michael Haglund, Gina Johnnie, Derek Johnson, Christopher Kent, Ethan Knight, Steve Larson, Karen Lord, Audrey Matsumonji, Kenneth Mitchell-Phillips, Mitzi Naucler, Maureen O'Connor, and Stephen Piucci. Staff present included Sylvia Stevens, Rod Wegener, Jeff Sapiro, Susan Grabe, Kay Pulju, Anna Zanolli, and Teresa Wenzel. Also, present were Jason Hirshon from the ONLD and from the Out of State Lawyers in Arbitration Task Force, Richard Spier, Michelle Vlach-Ing, and Robert Banks.

1. Inspiration

Mr. Piucci reported on the iCivics program that he learned about at the ABA Annual Meeting in August. Justice Sandra Day O'Connor presented the program, which is designed to teach elementary school students the fundamentals of civics through online games and activities. The Chief Justice has asked the Bar to promote the program to Oregon educators. The BOG will be discussing the idea further.

2. Departmental Presentation

A. Public Affairs

Ms. Grabe presented information about activities of the Public Affairs Department its interactions with the membership, the judiciary and the legislature.

3. Report of Officers

A. Report of the President

As written.

B. Report of the President-elect

As written.

C. Report of the Executive Director

As written.

D. Oregon New Lawyers Division

Jason Hirshon, ONLD Treasurer, highlighted the written ONLD report. He indicated the members are excited about the new mentoring program and he invited board members to attend the division's meetings to see firsthand what they are doing.

4. Professional Liability Fund

The PLF Board of Directors was meeting in Hood River and no representative from the PLF attended the BOG meeting.

A. SUA Appeal

The committee that reviewed Mr. Lawson's SUA appeal consisted of Mr. Kent, Ms. Johnnie, and Mr. Larson. Mr. Kent presented a summary of the issues surrounding Mr. Lawson's appeal and the committee's recommendation. The board discussed the matter concluding that based on the facts presented; Mr. Lawson was not at fault.

Motion: Mr. Johnson moved, seconded by Ms. Matsumonji seconded, that no SUA be assessed against Mr. Lawson. All board members voted in favor of the motion with the exception of Ms. Naucler, who opposed the motion and Ms. DiIaconi, who abstained.

B. General Update

As written.

C. Preliminary June 30, 2010 Financial Statements

As written.

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

A. Client Security Fund

1. No. 09-24 HORTON (Ryan) Appeal

Mr. Larson presented Mr. Ryan's request for an additional award to cover the legal fees he incurred in obtaining a judgment against Horton's estate.

Motion: Mr. Larson moved, Mr. Piucci seconded, and the board unanimously voted to deny Mr. Ryan's appeal.

2. No. 09-41 RICHARDSON (Ervin) Appeal

Mr. Larson presented Mr. Ervin's appeal from the committee's denial of his claim on the grounds that it was a fee dispute and that; in any event, Mr. Ervin had not exhausted his recourse against the lawyer.

Motion: Mr. Larson moved, Ms. DiIaconi seconded, and the board passed the motion to deny Mr. Ervin's appeal. Mr. Knight abstained.

3. CSF Claim No. 08-18 SHINN (Rhodes) Appeal

The board reviewed Mr. Rhodes' renewed appeal. The board discussed the issue of the medical provider liens and whether Mr. Rhodes was the real victim of Shinn's conduct.

Motion: Mr. Larson moved, Mr. Kent seconded, and the board voted to grant Mr. Rhodes an additional \$10,000. Ms. Lord, Ms. Johnnie, and Mr. Piucci opposed the motion.

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

A. Access to Justice Committee

1. Update

Ms. Johnnie informed the board that the Access to Justice Committee is meeting with ABA representatives to discuss percentage fee lawyer referral systems and the experience of other states. Board members were encouraged to attend the meeting, which will be September 9, 2010, from 9:00 a.m. – 11:00 a.m. at the Oregon State Bar Center.

B. Budget and Finance Committee

1. 2011 Executive Summary Budget

Mr. Kent informed the board that the preliminary budget projections for 2011 show a positive balance even without revenue from BarBooks™. Expenses for 2010 will likely be less than anticipated, but a dues increase will likely be necessary in 2012. PERS will continue to be a substantial line item, the financial impact was anticipated and there are sufficient reserves available. There are still many details that could affect the budget, including mandatory mentoring, creation of a senior lawyers division, lawyer referral changes, Urban Rural Task Force, and others. The committee will have another look at the budget during its September meeting and it will come back to the board for final approval in November.

2. Five Year Forecast

As written.

C. Policy and Governance Committee

1. Proposed Amendments to RPC

Ms. Naucler presented the proposed amendment to RPCs 1.5 and 1.15 regarding earned on receipt fees.

Motion: The board voted unanimously to approve the committee motion to accept the proposed amendment to RPCs 1.5 and 1.15.

Ms. Naucler presented the proposed change to RPCs 1.2 and 3.4 regarding a lawyer's duty not to violate court order or counsel clients to do so.

Motion: The board voted unanimously to approve the committee motion to accept the proposed amendment to RPCs 1.2 and 3.4.

Ms. Naucler presented the proposed change to RPC 3.3(c) regarding a lawyer's duty when a client commits perjury.

Motion: The board voted unanimously to approve the committee motion to accept the proposed amendment to RPC 3.3(c).

2. Proposed Amendments to MCLE Rule 5.5(b)

Ms. Naucler presented the MCLE Committee's proposed amendment to MCLE Rule 5.5(b), which adds the phrase "or military service" to the rule. Because most of what the proponent's concerns are covered under the existing rule, the committee recommended no change at this time. The proponent was invited to bring his concerns about anti-military bias back to P&G after he has discussed them with the various stakeholders of the Access to Justice compromise.

3. Ethics School

Ms. Naucler presented the proposed amendments to BR 6.4 concerning ethics school.

Motion: The board voted unanimously to approve the committee motion to accept the proposed amendment to BR 6.4.

D. Public Affairs Committee

1. Political Update

a. Court Fees Task Force Legislative Recommendation

Mr. Piucci reiterated the charge of the task force and indicated the task force is waiting for input from the court and the committee expects to bring the finalized report to the board at its November meeting.

2. Priorities for 2011 Legislative Session

Motion: The board unanimously approved the committee motion to approve the priorities for 2011, which include adequate funding for the court system, balanced access to justice in civil and criminal cases, and support for the bar bill package.

E. Public Member Selection

The committee interviewed seven candidates for the position and recommended Jenifer Billman.

Motion: The board unanimously approved the committee motion to appoint Jenifer Billman as Public Member to the Board of Governors commencing January 1, 2011.

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

A. BarBooks™ Steering Committee

1. Legal Publications Print Book Revenue Projections

The committee reviewed the results of the member survey and concluded there is still a market for print books. The steering committee recommends that the bar continue to provide print books during 2011 by pre-order only. The board agreed unanimously.

The committee also reported on the status of advertising and plans for educating members about BarBooks™

Advertisers will be offered “packages” that will include advertising in the online membership directory and on appropriate page in BarBooks™, as well as space in print materials.

An educational video and BarBooks™ demo is being prepared for the bar’s website; staff will make presentations to local bars and bar groups to assist in the education; and there will be a presentation at the SSFP resources fair to be held at the bar center on November 19.

B. Out of State Lawyers in Arbitration Task Force

1. Out of State Lawyers in Arbitration Task Force Report

Richard Spier presented the majority position that after carefully analyzing the myriad of issues raised by the HOD resolution in 2009, a registration program for out of state lawyers participating in arbitrations in Oregon is unnecessary and not recommended.

Robert Banks presented the minority position that supported a certification requirement being added to Oregon Rule of Professional Conduct 5.5. Lawyers would be required to show that they are in good standing in their home jurisdictions and that they possess malpractice insurance equivalent to that required of Oregon State Bar attorneys or that they have informed their client that they do not possess such insurance. Michelle Vlach-Ing added that as long as the out of state attorneys register with the bar and they were an attorney in good standing, it was not necessary to be over-burdensome by requiring them to have malpractice insurance as long as they inform their clients of their lack of insurance.

Mr. Spier indicated that the majority of the task force would support the rule change as a fair compromise if that is the will of the Board of Governors. All speakers thanked Ms. Stevens for her assistances with the task force.

The board thanked the committee for its work.

Motion: Mr. Kent moved, Mr. Piucci seconded, and the board unanimously passed the motion to table consideration of the action for the next board meeting.

C. Member Services Committee [Ms. Fisher]

1. Recommendation to Create Senior Lawyers Division

This was tabled by consensus until the board's next meeting.

2. Recommendations for 2010 OSB Annual Awards

Ms. Johnnie presented the nominees for awards. The board briefly discussed the relative merits of having multiple recipients the Judicial Excellence award. .

Motion: Mr. Johnson moved, Ms. Naucler seconded, and the board voted unanimously to give one Judicial Excellence Award in 2010.

Motion: Ms. DiIaconi moved, Mr. Johnson seconded, and the board voted unanimously to give The Honorable Daniel Harris the Judicial Excellence Award.

Motion: The board passed the committee motion to approve the 2010 OSB Annual Awards slate (Exhibit 1).

8. **Consent Agenda**

Motion: Ms. DiIaconi moved, Mr. Piucci seconded, and the board voted unanimously to add "or inactive" to the criteria for the President's Sustainability Award, Bar Bylaw Section 4.9.

Motion: Mr. Piucci moved, Mr. Mitchell-Phillips seconded, and the board unanimously voted to approve the Consent Agenda as amended.

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

Nothing for the good of the order.