

**OPEN SESSION MINUTES
OREGON STATE BAR
PROFESSIONAL LIABILITY FUND
BOARD OF DIRECTORS**

**February 8, 2019
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order shortly after 9:00 a.m. at the Professional Liability Fund in Tigard, Oregon by Chair, Saville Easley. Present in addition to Ms. Easley were Directors Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, Susan Marmaduke, Gina Johnnie and Patrick Hocking. Also present during open session were OSB Board of Governor Members John Bachofner and Robert Gratchner, as well as OSB CEO, Helen Hirschbiel. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Maureen DeFrank, Sarah Troutt, Pam Stendahl, John Berge, Matt Borrillo, Hong Dao and Rachel Edwards attended the meeting.

These meetings were noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq. and a quorum was verified.

1. OPEN SESSION

(A) Open Session Minutes (12/7/18):

Holly Mitchell moved and Susan Marmaduke seconded that the open session minutes of December 7, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).

(B) Committee Minutes 12/7/18 (Investments):

There were no comments regarding the minutes and no action was required.

Saville Easley asked everyone to introduce themselves for the benefit of the two new PLF board members and the BOG liaisons.

2. PLF REPORT

(A) General Report:

Annual Dinner

The Board discussed the annual dinner budget.

Conference Calls

Carol Bernick asked Board members to respond in a timely manner to conference call polls.

BOD/PLF Staff Lunch

Ms. Bernick reminded the Board that a lunch is scheduled at the Bar Center (first floor) and that a place card for each board member will be placed at each table. She noted that we very much appreciate the Board's willingness to take the time to do this.

(B) Outside Activities on Behalf of the PLF:

See materials for Ms. Bernick's report.

(C) Integrated Bar – PowerPoint Presentation (Helen Hirschbiel):

Helen Hirschbiel presented a PowerPoint regarding the history of bar organizations in the United States, highlighting the benefits of an integrated bar.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Madeleine Campbell reported that the claims department has been very busy since the first of the year. If we keep at the same pace, there would be 1126 claims in 2019 compared to 862 in 2018. Ms. Campbell is hopeful this is not a trend.

Ms. Campbell reported that defense panel member Steve Voorhees is retiring in ten weeks. The PLF has many large cases involving securities and complicated real estate transactions. She expects several more defense panel members will retire within the next few years. We are continually identifying new defense panel members with trial experience.

Molly Jo Mullen suggested that we analyze who on our panel has non-PLF trial experience.

(B) 2018 Claims Attorney and Defense Counsel Evaluations:

The PLF continues to receive excellent reviews regarding the services provided. See materials for specific information.

(C) 2018 Claims Statistics 2009-2018 (by Claim Year and Year Closed):

See materials for specific information.

4. FINANCIAL REPORTS

(A) Draft December 31, 2018 Financial Statements:

Ms. Morrow reported that this time last year, the PLF had a \$10 million surplus. That is not the case this year. She referred the Board to the materials on page 31. The bottom line is a swing of over \$12 million between end of 2017 and end of 2018.

Ms. Morrow reminded the Board of the role of our net position.

Mr. Hocking referred to the current investment portfolio (\$55 million) and asked about a worst-case scenario in recent years. Ms. Morrow reported that in 2008/2009, we had a deficit of \$6 million. There was further discussion about how much of the net position could be used in one year.

Ms. Morrow reported that the claims budget ended lower than projected. Even though we had 862 claims and we budgeted 855, we projected higher than actual claims costs. Operating expenses were only off by \$8,000 in a \$7 million budget.

Betty Lou Morrow reported that the Excess Program lost \$103,000, which is a positive trend. In 2018, the ceding commission covered 94% of our expenses. If our investments had done better, the Excess Program would have made money. The Excess Program is 100% reinsured. We try to at least break-even so the costs of the program are covered. The Excess Program has a positive net position to cover the losses and what the ceding commission does not cover.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) Loss Prevention Update:

Ms. Fishleder reported that this year is a legislative year for the PMAs which translates into updating 300 practice aids and four handbooks. In legislative years, the PMAs are less on the road and doing less outreach because so much time is spent updating the practice aids.

Due to the new mental health/substance use credit requirement, the OAAP has increased invitations to speak at large groups (OTLA, etc.). The OAAP has done greater outreach to law schools and now needs to work on balancing their time.

There is a new look to the OAAP website and the publication, *inSIGHT*.

The OAAP is also working on a new database that is tailored to what the OAAP needs. Since the OAAP does not keep detailed records to maintain privacy/confidentiality, the new database assists with better follow up.

(B) 2018 Year-End Report:

Ms. Fishleder referred the Board to the materials that begin on page 39 for the 4th Quarter 2018 report and 2018 year-end report. She reported that access to the OAAP has increased 12% in 2018 compared to 2017. There has been an increase in access for PMAs by mid-sized and large firms.

Ms. Fishleder reported that the program for new admittees, *Learning the Ropes*, satisfies their CLE requirements for the first reporting period.

The usage of the OLCR (Oregon Lawyers Conference Room) has increased approximately 22% over the 2017 usage hours.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims:

Rob Raschio reported that the Claims Committee and claims attorneys met prior to the board meeting. He is confident that the claims attorneys are looking out for the best interest of the PLF and Oregon lawyers.

(B) Coverage:

Holly Mitchell reported that the Coverage Committee held a meeting and there would be a more detailed discussion in executive session.

(C) Excess Program: Renewal Update:

Jeff Crawford reported that we have had a successful excess renewal. The PLF has about half of the excess market in Oregon.

In 2018, we completed an automated on-line application process and it has made the whole process much more efficient. The turnaround time has been cut in half despite the fact that we are down one clerical person this year (due to retirement). We expect the program to be run more cost-effectively in the future.

We declined three firms this year because of securities exposure (too high risk). We have added 20 new firms and expect another 30 firms and 50 lawyers over the course of the year.

Jeff Crawford hopes to have Emilee Preble give a presentation of how the excess program works in the near future.

Patrick Hocking asked if we reinsure 100% of claims exposure in the excess program and if our underwriting process is by the reinsurers or us. Mr. Crawford replied that we do reinsure

100% of our claims exposure and noted that we work together with the reinsurers. The risk is that if we cover high-risk firms and have many claims, our reinsurance rates will increase. We implemented more underwriting for internal purposes, but also the excess program had high claims in 2008. The reinsurers felt that we needed to develop a more sophisticated underwriting system and the rates increased. The good news is that we are at the end of the process implementing that new system. We have lost a few firms to the commercial market but we have gained as well.

(D) Finance/Investments:

Betty Lou Morrow asked the Board for approval of the recommendations the actuaries made, as follows.

1. Adopt total claim liabilities of \$24.6 million;
2. Adopt an average cost of new claims of \$20,000 (\$9,500 indemnity and \$10,500 expense). This figure represents a decrease of \$800 from the June 30, 2018 number; and
3. Adopt AOE, ERC, and Suspense liabilities as follows:
 - AOE Liability - \$2.4 million (increase of \$100,000)
 - ERC Liability - \$3.1 million (increase of \$200,000)
 - Suspense Liability – \$1.5 million (no change).

Tom Newhouse moved and Rob Raschio seconded that the three recommendations above be approved. Motion passed unanimously 8-0 (1 absent).

Ms. Morrow reported that the financial auditors would be here on March 4 for one week. We hope to have draft audited statements at the April board meeting.

Betty Lou Morrow reminded the Board that there was a discussion at the last meeting of asset allocations. She and Carol Bernick will work with RVK to bring the issue to a future Finance and Investments Committee meeting.

(E) Long Range Planning/Communications:

Saville Easley stated that there is nothing to report at this time.

(F) Loss Prevention:

This is a new committee and it has not yet met. They expect to meet soon.

(G) Special Issues:

Susan Marmaduke stated that there is nothing to report.

7. LIAISONS' REPORT (BOG)

John Bachofner reported that the BOG retreat was held on November 17 in Ashland. Mr. Bachofner reported the following:

1. The BOG approved the 2019 OSB Law Improvement Package that will be presented to the legislation this year.
2. The BOG agreed to withdraw OSB Formal Op No 2005-127 and 2005-100.
3. The BOG approved the amended bylaws for the Oregon New Lawyers Division.
4. The BOG adopted some editorial guidelines for the OSB Bulletin.
5. The BOG met on January 11, 2019 to welcome new Bar President, Chris Costantino, President-Elect, Liani Reeves, and new BOG members.
6. The BOG agreed on areas of focus for 2019, as follows:
 - A. Follow-up on Futures Task Force items (determine whether to create an admissions path for individuals who do not attend law school but who pass the bar exam; determine whether to create a limited license to practice law for paraprofessionals; consider recommendations from the Referral Fees Committee).
 - B. Conduct Program Review of Referral and Information Services.
 - C. Review the OSB governance model, strategic functions, programs, activities and communications to ensure they are aligned with the Bar's public service mission.
 - D. Evaluate potential forms of revenue and cost-savings for 2020 budget and beyond.
 - E. Continue investment to upgrade I/T footprint (hardware and software) to attain modern compatibility, low-cost efficiency and ease of use, and improved data security.
 - F. Consider changes to member fee structure to provide greater equity.
 - G. Engage and expand the Citizens Campaign for Judicial Funding to bolster support for adequate funding for Oregon's court system.
 - H. Implement Diversity Action Plan items identified for 2019.

Mr. Bachofner noted that he is on the Washington Task Force for Mandatory Malpractice and they are recommending mandatory coverage.

8. CHAIR REPORT

Saville Easley stated that she had nothing to report.

Carol Bernick pointed out that the next board meeting, April 12, 2019, is joint with the BOG. The joint BOG/BOD dinner will be on Friday night, as opposed to Thursday. Spouses/guests are not included.

9. **INFORMATION ITEMS**

(A) **Miscellaneous Articles/Other:**

There were no informational items to discuss.

10. **EXECUTIVE SESSION**

See separate executive session agenda. Executive Session materials require a password.

Saville Easley called the meeting into executive session pursuant to ORS 192.660(2)(f) and (h) to discuss claim matters and other executive session issues. See separate executive session minutes.

The meeting was called back into open session to approve the executive session minutes and other executive session issues.

11. **OPEN SESSION**

(A) **Approval of Closed Session Minutes in Open Session: December 7, 2018; December 27, 2018; and January 14, 2019:**

i. *Rob Raschio moved and Molly Jo Mullen seconded that the executive session minutes of December 7, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).*

ii. *Rob Raschio moved and Molly Jo Mullen seconded that the executive session minutes of December 27, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).*

iii. *Rob Raschio moved and Molly Jo Mullen seconded that the executive session minutes of January 14, 2019 be approved as written. Motion passed unanimously 8-0 (1 absent).*

12. **UNFINISHED AND NEW BUSINESS**

There was no unfinished or new business to discuss.

13. **ADJOURNMENT**

Open session adjourned at approximately 11:57 a.m.

These minutes were approved by the PLF Board of Directors at its April 12, 2019 board meeting.