

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

**April 12, 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, Megan Livermore, Holly Mitchell, Susan Marmaduke, Gina Johnnie and Patrick Hocking (via telephone). In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Emilee Preble, Pam Stendahl, John Berge, Amy Hoven and Heather Bowman 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 (02/08/19):

Rob Raschio moved and Holly Mitchell seconded that the open session minutes of February 8, 2019 be approved as written. Motion passed unanimously 9-0.

(B) Committee Minutes 01/31/19 (Coverage Committee) and 02/01/19 (Finance/Investments Committee):

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

2. PLF REPORT

(A) General Report:

Senate Bill amending PLF statute, ORS 9.080

Ms. Bernick reported that a bill was introduced into session this year regarding an amendment to ORS 9.080 (the PLF statute). Ms. Bernick gave a brief description of the bill and reported that it did not receive a hearing.

Ms. Bernick reported that Judge Russo issued Findings & Recommendations dismissing the lawsuits against the Bar. Those Findings & Recommendations will be reviewed by an Article III Judge in due course.

Annual Joint BOG/BOD Lunch and Meeting

Ms. Bernick reminded the Board that the annual joint meeting and lunch would be held off-site at The Grand Hotel. The topic is the impact of the litigation against the OSB on the PLF. If the U.S. Supreme Court concludes that mandatory bars are not constitutional, what does that mean for the PLF? Ms. Bernick expects the discussion to be very interesting and encouraged people to ask questions and engage in the conversation. The topic has received the attention of many OSB members and Ms. Bernick is receiving more and more calls on the subject.

Mandatory Coverage in Other States

Ms. Bernick noted that there is an increasing push around the country to require lawyers to have mandatory malpractice coverage. Ms. Bernick is on a panel in May to discuss the issue.

Meeting with the Reinsurers

Ms. Bernick and Ms. Morrow met recently with the reinsurers in Miami. Carol Bernick thanked Emilee Preble for her work on the materials. The reinsurers continue to have a lot of confidence in the claims handling at the PLF.

Conference Calls

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

(B) Outside Activities on Behalf of the PLF:

See materials for Ms. Bernick's report.

(C) 2020 Board Meeting Schedule:

Carol Bernick referred the Board to the meeting schedule in the materials. For out of town meetings, the Calendar should account for a half-day on Thursday afternoon/evening and a full day on Friday.

We are currently recruiting for two lawyer BOD positions, beginning January 1, 2020. Ms. Bernick has already received two applications. There will be further discussion at the June board meeting regarding our needs. Ms. Bernick asked board members to let her know if they have any people in mind.

Rob Raschio suggested finding someone with personal injury background. Ms. Bernick agreed and said we would also like representation of someone east of the Cascades.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Madeleine Campbell reported that the claims department has had a very busy first quarter. We are currently at 270 claims to-date and 114 suspense files. If we keep at the same pace, there would be 976 claims in 2019 compared to 862 in 2018. We received very positive reviews from covered parties regarding claim handling.

Ms. Campbell reported that in response to Molly Jo Mullen's suggestion, we have sent a trial experience survey to our defense panel members. The results are not ready yet. Thanks to claims attorney, John Berge, we found another firm that might be able to do that work. They have agreed to our rate.

Madeleine reported that we are seeing a continuing upward trend in estate related claims. In both 2017 and 2018, the Claims Department received over 100 estate related claims and 16 suspense files on estate matters. This trend has continued into 2019.

4. FINANCIAL REPORTS

(A) February 28, 2019 Financial Statements:

Betty Lou Morrow reported that the PLF recovered \$2.3 million at February 28, 2019 of the \$3.1 million in year deficit of 2018. The gain came primarily from increases in value of the investment portfolio.

(B) December 31, 2018 Draft Audited Financial Statements:

Eric Zehntbauer and Rick Proulx of Kern & Thompson discussed their role in the audit. Mr. Zehntbauer reported that they received the information they needed from PLF staff. Mr. Zehntbauer and Mr. Proulx discussed some of the financial highlights of the PLF. There were no adjustments required by the auditors. Mr. Newhouse commented that this is unusual and he wants the Board to know that. Betty Lou Morrow thanked her staff for their hard work. She also noted that the PERS adjustments, as provided by the State of Oregon, were received the previous day. Final statement, including the PERS adjustment, will be approved at the June board meeting.

The Governance Letter indicates that the financial statements are appropriate and fairly stated. The auditors had no disagreements with management and there were no negative findings regarding internal controls.

Mr. Proulx reported that the PLF has very good leadership at the management level.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) 2019 1st Quarter Report and Loss Prevention Update:

Ms. Fishleder reported that she is seeing many great trends she wants to share:

1. She has seen a positive impact from the mental health and substance use credit. Many places that have never invited the OAAP in are now inviting us to present.
2. The Board of Bar Examiners is reviewing the questions asked on the Bar Exam and have invited the OAAP to assist with phrasing of some of the questions.
3. At the BOG's last meeting, it approved some changes to Form A & B Resignations for Bar members to provide more flexibility with placement of closed files.
4. For many years, there have been discussions about the baby boomer lawyers who are assessing when to retire. We are currently holding a support group for lawyers who are progressing towards retirement. The group filled almost immediately.

The OAAP recently had its women's retreat at the Oregon Gardens. We had a great turnout.

The PLF will be sponsoring a CLE and Reception for local lawyers in Klamath Falls on June 6, 2019 from 4:00 to 6:00 p.m. The CLE will be presented by OAAP Attorney Counselor, Karen Neri. Ms. Fishleder encourages board members to attend. She also noted that there are many credits available on the PLF website for the mental health CLE requirements.

Carol Bernick reported that we will be having the first Loss Prevention Committee meeting in Klamath Falls.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims:

Rob Raschio reported that the Claims Committee met prior to the board meeting. The claims department is doing well and the committee has a lot of confidence in Madeleine and the work the claims attorneys are doing. There will be some additional discussion in executive session.

(B) Coverage:

Holly Mitchell reported that the Coverage Committee continues to consider the shared limits issue.

Carol Bernick hopes that she and Madeleine Campbell will have information and recommendations at an upcoming board meeting. They have pulled data and done some analysis of claims to try to evaluate financial impact to the PLF of proposed changes.

(C) Excess Program: PLF Policy 7.600(C)(2):

Molly Jo Mullen turned this portion of the meeting over to Emilee Preble to discuss the proposed changes to PLF Policy 7.600(C)(2).

Ms. Preble discussed the proposed change to the policy regarding retroactive date credits.

Molly Jo Mullen moved and Rob Raschio seconded that the proposed changes to PLF Policy 7.600(C)(2) be approved as written.

Rob Raschio asked if the PLF still has the continuity credit. Ms. Preble said yes.

Motion passed unanimously 9-0.

(D) Finance/Investments:

Tom Newhouse stated that there is nothing to report.

(E) Long Range Planning/Communications:

Saville Easley stated that there is nothing to report.

(F) Loss Prevention:

Megan Livermore stated that there is nothing to report.

(G) Special Issues:

Susan Marmaduke stated that there is nothing to report.

7. LIAISONS' REPORT (BOG): Draft February 22, 2019 and March 8, 2019 BOG Open Session Minutes

The BOG liaisons did not attend this meeting due to a conflict with their own meetings.

8. CHAIR REPORT

Saville Easley stated that she had nothing to report.

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 Executive Session Minutes in Open Session: February 8, 2019:

Rob Raschio moved and Holly Mitchell seconded that the executive session minutes of February 8, 2019 be approved as written. Motion passed unanimously 9-0.

12. UNFINISHED AND NEW BUSINESS

There was no unfinished or new business to discuss.

13. ADJOURNMENT

The meetings adjourned at approximately 11:08 a.m.

These minutes were approved by the BOD at its June 7, 2019 board meeting in Klamath Falls.