

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

**February 21, 2020
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at 9:00 a.m. at the Professional Liability Fund in Tigard, Oregon by PLF CEO, Nena Cook. Present in addition to Ms. Cook were Directors Molly Jo Mullen (via telephone, executive session only), Tom Newhouse, Holly Mitchell, Megan Livermore, Susan Marmaduke (via telephone), Gina Johnnie, Michael Batlan, Oren Haker, and Steve Hill. Also present during open session were OSB Board of Governor Liaison, Eric Foster and OSB CEO, Helen Hirschbiel. In addition, PLF staff members Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Emilee Preble, Heather Bowman, Sarah Troutt, Holli Houston, Amy Hoven, Shari Pearlman, Tanya Hanson and John Berge attended all or part of 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. CHAIR REPORT (Mullen):

(A) Draft Open Session Minutes (12/6/19):

Ms. Livermore moved and Ms. Johnnie seconded that the open session minutes of December 6, 2019 be approved as written. Motion passed unanimously 7-0 (2 absent).

(B) Introductory Remarks:

Ms. Cook reported on behalf of Ms. Mullen. Ms. Mullen's priority this year is focusing on increasing diversity of the PLF defense panel members. The PLF would like to formalize the process and continue the efforts. Ms. Cook spoke with Ms. Campbell who will take over the process.

(C) Defense Panel Makeup:

Ms. Campbell reported that we are looking at associates in firms that can participate on the panel and have added a few new people. We have also lost a few panel members due to retirement, but are finding good replacements.

Ms. Campbell noted that achieving racial diversity is difficult in Oregon, but we are aiming for that.

There was a discussion of defense panel rates and whether the PLF is paying high enough rates to get qualified panel members. An additional discussion ensued regarding the difference in rates for shareholders as opposed to associates (possibly shareholders can charge less because they can make up for it with higher rates for other work whereas associates cannot afford to take less because of their revenue goals).

Ms. Livermore suggested doing a poll to see what people normally are paid because she wants to be sure that we are doing the right thing for panel members. She also wants to be fair about who is on our panel (diversity). Ms. Campbell feels our panel is fairly evenly split between males and females.

Ms. Hirschbiel recommended that board members look at the OSB Economics Survey from 2017. The rates listed are 2016 rates. This survey is done approximately every five years or so. The survey includes area of practice and region.

Mr. Haker asked if the PLF invites lawyers from larger firms. Ms. Campbell stated that we generally do not because of their rates, but we would love to have them.

There was further discussion about the importance of not creating a system where diverse lawyers are paid less than non-diverse lawyers because they do not feel they have the bargaining power the “white” lawyers have. The dynamics at work for more diverse lawyers are different.

2. PLF REPORT

(A) General Report:

See below.

(B) Outside Activities on Behalf of the PLF:

See Ms. Cook’s list of outside activities (page 11 of the materials).

Ms. Cook reported that on February 10, she met with Washington State Bar President-Elect Kyle Sciuchetti who is also a member of the Oregon Bar. The Washington Bar previously voted down mandatory malpractice coverage. Under the new leadership, they want to revisit that issue and are interested in the PLF model of a captive fund.

The first bulleted item in Ms. Cook’s list of outside activities refers to scheduled voluntary meetings with Ms. Cook for all staff attorneys and department managers to discuss what the PLF does well and what it can do better. Those conversations were incredibly valuable. People have entrusted confidential information regarding things that are important to them. The PLF is doing well, but there are some issues. Ms. Cook appreciates all viewpoints and is working with managers to set goals and work on these issues.

(C) OAAP Lease:

Ms. Cook reported that the lease of the OAAP downtown space is up in November of this year. A commercial broker with 20+ years of experience took Ms. Cook and Ms. Fishleder on a tour of six properties, which they then narrowed down to three potential locations. We have requested proposals for all three spaces as well as from the OAAP's current location. We want to make the space workable for all. We have to consider how late the buildings are open and a space that has entrances other than just a main door. The broker will be paid by the landlord.

Ms. Fishleder said she was very impressed with our broker. We used him when searching for our current space and he is very knowledgeable and responsive. He is doing a thorough comparison of the buildings and is using some of what we know as leverage. Ms. Cook said she has confidence in the broker as well.

Other items to consider if moving is that we will have buildout issues (soundproofing space, moving costs, etc.). Ms. Cook noted that some spaces might require considerable tenant improvements. Mr. Hill asked what the term of any new lease is. Ms. Fishleder stated that the lease is negotiable. The longer the term, the more willing the landlord is to negotiate tenant improvements. The majority of the current space was leased for ten years but the PLF acquired additional space after that initial term began. The additional space had a shorter term. Our three proposals are about 500 to 1,000 square feet smaller than the current space.

Ms. Pearlman noted that we want to make changes with the least amount of disruption as possible because we have many groups and factors to consider. Ms. Cook noted that everything would be done ahead of time and all concerns would be factored into the decision.

(D) PLF Bylaws, Article 3.5 Update:

Ms. Cook reported that there has been a change with Ms. Bernick's status as a board member. At the December 6, 2019 board meeting, the PLF Board of Directors passed an addition to Article 3 (3.5) of the PLF Bylaws, giving the Board the discretion to appoint the outgoing CEO for a one-year term on the Board. The idea behind the amendment was to give the incoming CEO the benefit of the experience of the outgoing CEO. The BOD passed the proposed Bylaw revision and Ms. Cook presented the proposal to the BOG at its February 7, 2020 meeting. The BOG requested that this proposal be vetted through the Policy/Governance Committee of the OSB for the April 17, 2020 BOG meeting.

Ms. Mitchell moved for Ms. Cook to appear at the Policy and Governance Committee meeting and make that request. Mr. Newhouse seconded the motion. Motion passed unanimously 8-0 (1 absent).

(E) PLF Policy 3.200(C):

The above policy relates to our Primary Plan coverages and assessments.

In January, a lawyer contacted the PLF and requested additional time to pay his assessment or waive it all together. He cited PLF Policy 3.200(C), which suggests that the Board

could either waive or reduce the assessment. That policy has never been cited by any covered party and there has never been a will of the Board to reduce or waive the assessment.

Ms. Morrow noted that accounting gets many requests to waive or reduce the assessment from individuals with very challenging circumstances. The PLF staff always say that we do not waive assessments. Installment payments are available and there is an additional two-month period after the deadlines to make payment before suspension. We make no exceptions. Tom Newhouse agrees and we need to let covered parties know we have PMAs who can assist them if they need to transition their clients. Mr. Newhouse stated that from an underwriting perspective, there are concerns about potential claims.

Ms. Preble commented that from the excess coverage perspective, it is nice to have bright-line rules. We added the ability for credit card payments a while ago, which can be helpful. Ms. Morrow stated that we have worked with covered parties as much as possible.

Ms. Cook suggested at some point, the Board might want to eliminate PLF Policy 3.200(C) if the Board does not waive or reduce the assessment. For now, the recommendation is to tell this person that we are not willing to reduce or waive his assessment.

Mr. Newhouse moved and Ms. Johnnie seconded that Ms. Cook's request above be approved. Motion passed unanimously 8-0 (1 absent).

Ms. Morrow will inform the Covered Party.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Madeleine Campbell reported that in January, the projected 2020 claim count was in the 700's. To-date, the projected 2020 claim count is 861. The number is similar to last year but still too early to predict the final 2020 claims count. Ms. Campbell sees higher value claims and that seems to be the trend.

(B) 2019 Claims Attorney and Defense Counsel Evaluations:

The PLF continues to receive excellent evaluations from our Covered Parties and the majority are very satisfied or satisfied with the claims attorneys and defense panel members.

(C) 2019 Claims Statistics 2009-2019 (by Claim Year and Year Closed):

See materials for specific information. These statistics remain very stable over the years.

4. FINANCIAL REPORTS

(A) December 31, 2019 Draft Financial Statements:

Ms. Morrow reported that at the end of 2019, we had 884 new claims. We budgeted 890 claims. The cost of claims was \$19.6 million. We budgeted \$17.3 million. The large difference was the \$1.2 million actuarial adjustment. Return on investment was 15.86%. We had about \$8 million in investment revenue. We were slightly under our budget for full-pay attorneys (ended with 6,823) and under budget for payroll. Our in year net position ended at \$3.6 million but that will reduce when we receive the PERS adjustment (expected to be about \$800,000). With the PERS adjustment, the net position is expected to be reduced to \$2.8 million.

The auditors will arrive on March 9 and will spend about one week here. We expect to have the audited statements at the June 5, 2020 board meeting.

(B) December 31, 2019 RVK Quarterly Report:

Ms. Morrow reported that domestic and international equities provided the best returns. She rebalanced the portfolio just before Christmas and plans to do another rebalancing soon.

(C) BOD Resolutions removing Carol Bernick from investment accounts and adding Nena Cook:

Ms. Morrow reported that all of our funds require certification from our Board and Mr. Newhouse, as Treasurer, to remove and/or add people to our investment accounts. She requested a motion to approve all of the resolutions in the materials.

Ms. Johnnie moved and Ms. Mitchell seconded that all ten resolutions be approved as written. Motion passed unanimously 8-0 (1 absent).

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) 4th Quarter 2019 Report and Loss Prevention Update:

See materials beginning on page 73.

(B) 2019 Year-End Report:

Ms. Fishleder introduced Ms. Pearlman, Assistant Executive Director at the OAAP and Ms. Hanson, editor of the PLF publications. Ms. Fishleder gave an overview of her reports.

In 2020, the PMAs will do extensive outreach to areas outside the Portland area. We currently have 14 PMA CLEs planned for around the state and an additional nine locations for replays around the state.

Ms. Pearlman responded to Ms. Cook's inquiry about trends (i.e., how do we decide the types of groups, etc.). Often, the OAAP groups are decided based on people reaching out individually. Sometimes the *InSight* publication includes an article with a topic in which people are interested. Consistently, people struggle with divorce issues and the impact can be very difficult. The OAAP is currently facilitating a Moving Forward group. More lawyers are identifying

with ADHD issues. Bryan Welch is providing workshops for this topic around the state. Ms. Pearlman stated that she is a big believer in groups. We are also able to accommodate groups around the state better now with online groups.

Ms. Pearlman reported that the 13th Annual OAAP/OWLs Wellness Retreat is in Sunriver this year.

Ms. Hanson, Loss Prevention Attorney, reported that she spends most of her time editing the PLF's two newsletters, *inBRIEF* (the malpractice avoidance publication), and *InSight* (the OAAP newsletter). In addition, she works on updating PLF aids and handbooks. The Oregon Statutory Time Limitations Handbook, also known as the "Red Book" is a dual effort between the PLF and the Oregon State Bar's legal publications department. Ms. Hanson also edits blogs and articles for the Bar *Bulletin*. Ms. Hanson encourages ideas for articles and asks you to contact her if you are interested in providing any articles. Ms. Pearlman commented that Tanya Hanson does an excellent job. Ms. Morrow commented that Ms. Hanson also does a great job on the annual report as well.

Mr. Hill commented that the Red Book is fabulous and feels that all covered parties should receive one automatically. It is available on the PLF website. We do not automatically send it, but we do hand them out at swearing-in ceremonies and law schools and people can order them online.

Ms. Cook reported that the *inBRIEF* would include a regular section called "Claims Corner" that discusses the issues the claims attorneys see regularly.

6. EXCESS REPORT

Ms. Preble gave highlights of the excess program. The excess renewal process began in October. The excess rates are determined with our reinsurers, effective October 1. Last year, we incorporated a 10% increase across the board and communicated that to renewing firms. The transparency was well received. We judge the success of excess renewals with the retention rate. The goal is 90% from the previous year. In 2019, the renewal rate was 92%. We expect the numbers to increase throughout 2020.

In terms of trends/observations, we saw two firms applying for coverage who had been denied by commercial carriers. Ms. Preble had not seen that before. She feels the market is hardening and also saw some tightening in cyber coverage. The PLF offers automatic cyber coverage with its excess coverage.

Looking at the future, the ABA Conference in New Orleans is in April. We will be meeting with the domestic reinsurers plus new ones interested in our program. There will also be conversations in June with our European and Lloyds of London reinsurers.

Ms. Cook reminded the Board that we do not want to look at just the number of firms for which the PLF writes excess coverage, but getting the right firms. Ideally, we would like to attract medium-sized firms, but commercial carriers are competitive in their pricing. Ms. Preble

reported that about 85% of our covered parties are small firms of three to five lawyers. Ms. Cook noted that Ms. Preble is planning to reach out to law firms to let them know of our excess coverage in our continued effort to bring in new law firms.

7. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims:

Ms. Marmaduke stated that there is nothing to report.

(B) Coverage:

Ms. Livermore stated that there is nothing report.

(C) Excess Program:

Ms. Johnnie stated that there is nothing to report.

(D) Finance/Investments:

i. Memo re December 31, 2019 actuarial recommendations.

Ms. Morrow referred the Board to page 141 of the materials and reported that every six months, we have an actuarial review of our primary program. The Finance and Investments Committee is requesting Board approval of the recommendations the actuaries made, as follows.

1. Adopt total claim liabilities of \$27.0 million (indemnity liabilities of \$13.2 million and expense liabilities of \$13.8 million);
2. Adopt an average cost of new claims of \$21,000 (\$10,000 indemnity and \$11,000 expense) for the first six months of 2020. This figure remains the same since June of 2019; and
3. Adopt AOE, ERC, and Suspense liabilities as follows:
 - AOE Liability – \$2.4 million (no change)
 - ERC Liability - \$3.2 million (increase of \$100,000)
 - Suspense Liability – \$1.5 million (no change).

These recommendations are based on a 50% confidence level. We have an allocation in our net position to bring that confidence level up to 80%.

Mr. Newhouse moved and Ms. Livermore seconded that the three recommendations above be approved. Motion passed unanimously 8-0 (1 absent).

ii. December 31, 2019 Actuarial Review.

See materials beginning on page 146.

(E) Long Range Planning/Communications:

Mr. Newhouse stated that there is nothing to report at this time.

(F) Loss Prevention:

Ms. Marmaduke stated that there is nothing to report.

(G) Special Issues:

Mr. Hill stated that there is nothing to report.

8. LIAISONS' REPORT (BOG): February 7, 2020 BOG Agenda and Areas of Focus for 2020

Mr. Foster reported on the following:

1. The BOG is working on a paraprofessionals program and is in the process of gathering committee members for its first meeting in March. Ms. Hirschbiel noted that two retired judges would serve as Chair and Vice-Chair. They are working together to set up the committee. Ms. Hirschbiel asked that if anyone knows of anyone interested in participating in the group, to please let her know. It is a small group overall. The larger advisory committee for those interested in knowing what is going on will include a PLF liaison. Representatives from law schools and community colleges will serve as advisory committee members, but will not necessarily attend every meeting.

2. The BOG has received the results from the climate survey and diversity/inclusion efforts. Now that it has the results, it needs to decide what to do with the information. It will be putting together a new Diversity Action Plan (2021-2026).

3. The BOG is working on a set of guidelines as to how board members work with each other professionally.

4. The Public Affairs Committee is working on legislation important to the PLF. It is working on fixing a statute to confirm the PLF is not subject to the insurance code. It is also working on third party paying notifications with lawyer trust accounts with insurance settlements.

5. The BOG is considering increasing the cap of the Client Security Fund. It was set at \$50,000 originally and has never changed. Since claims tend to increase over time, the BOG is considering a change in the cap.

6. The BOG is considering increasing license fees for 2021 as well as an increase in Client Security Fund fees.

Mr. Foster said he is proud of the work the BOG is doing.

Ms. Cook thanked Mr. Foster for his willingness to serve as a liaison, maintaining an important connection between the two groups.

Ms. Cook encouraged PLF board members to attend the April 17 joint BOG/BOD lunch and meeting.

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.

At 11:30 a.m., Ms. Cook 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.

At approximately 12:11 p.m., 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: December 6, 2019; January 8, 2020; and January 21, 2020:

Ms. Livermore moved and Ms. Johnnie seconded that all three minutes listed above 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

Open session adjourned at approximately 12:12 p.m.

These minutes were approved by the PLF Board of Directors at its April 17, 2020 board meeting.