



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

**June 5, 2020
Zoom Videoconference**

The regular meeting of the Board of Directors was called to order at approximately 9:03 a.m. via Zoom videoconference by Chair, Molly Jo Mullen. Present in addition to Ms. Mullen were Directors Tom Newhouse, Holly Mitchell, Megan Livermore, Gina Johnnie, Michael Batlan, and Steve Hill. BOG members John Grant and Eddie Medina, as well as OSB CEO Helen Hirschbiel attended open session. In addition, PLF staff members Nena Cook, Madeleine Campbell, Matt Borrillo, Betty Lou Morrow, Jeff Crawford, Cindy Hill, Emilee Preble, Shari Pearlman, Heather Bowman, Sarah Troutt, Patricia Nation, Pam Stendahl, Amy Hoven, Maureen DeFrank, Sharnel Mesirow, and Marci Sasik 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 (Ms. Mullen)

Ms. Mullen reported that Susan Marmaduke resigned from the PLF Board of Directors because of a conflict of interest. Ms. Marmaduke served on the Board for 2-1/2 years and was an integral part of the Board. This created another opening on the PLF Board and Ms. Cook is working on this.

(A) Draft Open Session Minutes (04/17/20):

Megan Livermore moved and Holly Mitchell seconded that the April 17, 2020 minutes be approved as written. Motion passed unanimously 7-0 (1 absent).

(B) Committee Minutes: April 13, 2020 (Finance/Investments Committee):

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

2. CEO REPORT (Ms. Cook)

(A) General Report:

PLF Continues to Work Remotely.

Ms. Cook reported that the PLF is still operating remotely and we are keeping a watchful eye on Washington and Multnomah County plans for reopening.

PLF Reorganization.

Ms. Cook reported on the reorganization of the PLF. Mr. Crawford is now the Director of Risk Management Services (no longer Loss Prevention) and oversees the PMAs and OAAP Attorney Counselors. A General Counsel position was created and Ms. Campbell will serve in that role. Mr. Borrillo will serve as the Director of Claims. A Communications Group was formed, headed by Emilee Preble and Tanya Hanson. This group falls under the management of Ms. Campbell. Cindy Hill will be assisting in this department.

Update on the OAAP Lease.

Ms. Cook reported that we narrowed the options down to four and two have been eliminated. Ms. Cook explained the process and noted that senior management was involved.

The first option was to maintain a downtown location (in our current location or the 610 Building). If we maintain our current location, we would request an extension of five or six years, or see what a landlord proposal would be for a one year extension (with the pandemic situation, we might have more favorable options next year).

The second option, which has now been eliminated, was to move the OAAP to the suburbs (out of downtown). We looked at I-217 corridor and the Meadows areas as cost-cutting measures and parking is better for people. Ms. Morrow and Ms. Cook looked at the options (as well as management) and decided it was not viable.

The third option (which has been eliminated), was the possibility of moving the OAAP to the Bar Center in the PLF's current administrative wing (with a separate door entrance).

The fourth option is moving the OAAP to the first floor of the Bar Center. There are advantages and disadvantages to this option, but confidentiality and accessibility are vitally important. After much discussion, and acknowledging that we are here to serve Oregon lawyers throughout the state, we are pursuing option four. The process from here is to continue to work with the attorney counselors to discuss the confidentiality and accessibility issues.

The BOG Policy and Governance Committee will discuss the issue at its next meeting as to whether it makes sense to have the OAAP at the Bar Center. The Committee is sensitive to the issues of protecting the OAAP

services. If the BOG Policy and Governance Committee agrees to option four, it will be up to the Board of Governors to discuss and make a determination. Ms. Hirschbiel and Ms. Cook and respective counsels will come together to come up with a financial agreement. If option four is not viable, we will follow up on the downtown option. BOG member John Grant (member of the BOG Policy and Governance Committee and Chair of the Budget and Finance Committee) questioned if there has been consideration with regard to downtown Portland being the hub. He asked if a move to Tigard would create more challenges for lawyers attempting to reach the OAAP if they have to drive from Portland. Mr. Grant also asked what the build-out costs would be, moving to the 610 building. Ms. Cook replied that we have not determined the build-out costs for the 610 building yet. The PLF location has bus lines nearby. Public transportation would need to be an option.

Ms. Pearlman thanked Ms. Cook and Mr. Borrillo for their comments and concerns. The OAAP attorney counselors are looking forward to working with the departments regardless of the location. They remain very concerned about the potential changes and will continue to weigh-in.

Mr. Crawford commented that he looked at the recent Bar economic survey and 30% of lawyers are in the Portland area. This is important information in terms of accessibility to the OAAP for Oregon lawyers around the state. The level of access outside the Portland area has increased dramatically because people can get access to meetings from any location. Mr. Hill noted that attorneys around the state are doing more online (due to COVID-19) than they were doing. To some extent, the actual physical location of the OAAP begins to be less of an issue.

(B) 2021 BOD Meeting Schedule:

Ms. Cook referred the Board to the 2021 meeting schedule in the materials. Because PLF board meetings are not allowed out of state, the August 5 board meeting will be held on **Thursday** in Tigard (PLF boardroom) and those attending the PLF Defense Panel Conference will travel to Skamania Lodge in Stevenson, Washington following the board meeting.

(C) PLF Bylaw 3.5:

Ms. Cook reported on PLF Bylaw 3.5. Ms. Cook presented proposed PLF Bylaw 3.5 to the BOG in February without appreciating that the BOG had to change their bylaws first. Ms. Hirschbiel and Ms. Hollister of the OSB created language that applies to both boards. The BOG passed the version in our current materials (revised from our original proposal). The difference is a 2/3 vote from our Board and it is a non-voting position. It still keeps within what the PLF wants.

Ms. Cook updated the Board on Ms. Bernick's interest in serving on the Board for the remainder of the year. Ms. Bernick sent an email to Ms. Cook saying that she continues to remain available in any way, but does not expect to serve on the Board the remainder of this year. Due to COVID-19, Ms. Bernick is doing more legal work than she expected and does not feel it makes sense to serve for the remainder of 2020.

Megan Livermore moved and Tom Newhouse seconded that Bylaw 3.5 be approved as written. The motion passed unanimously 7-0 (1 absent).

Ms. Mullen noted that if the BOD wants to request that a prior CEO serve on the BOD, it requires a 2/3 vote of the current BOD to extend that invitation. It was noted that the 2/3 vote is based on the quorum, not the full Board.

Ms. Mullen questioned whether the BOD would like to extend an invitation to Ms. Bernick to serve as a non-voting member for the remainder of 2020. Mr. Newhouse feels it is worth extending the invitation.

There was a motion and a second that all in favor of extending an invitation to Ms. Bernick to rejoin the BOD as a non-voting member for the remainder of 2020 raise their hands. Motion passed unanimously 7-0 (1 absent).

3. CLAIMS REPORT (Mr. Borrillo)

(A) General Claims Report (Open Session):

Mr. Borrillo reported positive feedback from the claims department with regard to the restructuring of the PLF and thanked Ms. Campbell for making his transition easy.

Mr. Borrillo reported that with regard to COVID-19, working remotely works well for the claims department. He noted that Zoom mediations had a slow start but they are now more productive. The PLF website shows a steady increase in the use of the portal for filing claims. Mr. Borrillo gave credit to Ms. Preble and Ms. Morrow for their efforts.

The quality of work in the claims department remains high. We have received very positive surveys.

Mr. Borrillo reported that we have a low claim count for the year, but it is steadily increasing. The low claim count is not indicative of the workload. While the claim count is low, the severity and complexity is high. With the restructuring of the PLF, the claims department is down two attorneys (Ms. Campbell and Mr. Borrillo). Ms. Campbell's files are being distributed among the claims attorneys, as are some of Mr. Borrillo's files. Claims attorney Patricia Nation will be retiring in August. The claims department continues to have a positive attitude during these challenging times. We predict an increase in claims later in the year due to the fallout from COVID-19, bringing the count back to a normal level.

Ms. Mullen noted that these are challenging times and she appreciates the professionalism, problem solving and all that the PLF has done.

4. FINANCIAL REPORTS (Ms. Morrow)

(A) March 31, 2020 RVK Flash Report

Ms. Morrow referred the Board to the materials.

(B) April 30, 2020 Financial Statements:

See Finance and Investments Committee report.

(C) December 31, 2019 Draft Audited Financial Statements:

Mr. Zehntbauer of Kern and Thompson reported on the financial audit.

In accordance with generally accepted accounting principles, Kern and Thompson's responsibility is to present an opinion about the statements. The result was all clean reports. He thanked Ms. Morrow for being very prepared for the audit.

Ms. Cook emphasized that this audit showed for the sixth straight year, that there were no adjustments or changes to the internal processes. Ms. Morrow is the first person to give credit to her accounting staff, but Ms. Cook wants the BOD to understand how much we appreciate Ms. Morrow. Mr. Newhouse concurred.

(D) December 31, 2019 Draft Governance Letter:

Mr. Zehntbauer explained that the Governance Letter discusses Kern and Thompson's responsibilities under generally accepted auditing standards and government auditing standards. He reviewed the letter and noted that there were no new accounting policies adopted during the year and no transactions with a lack of guidance or consensus. It was a clean report. He noted that the PERS contribution was \$1.2 million. The December 31, 2019 financial statements do not reflect this.

Tom Newhouse moved and Michael Batlan seconded that the Board approve the December 31, 2019 Draft Audited Financial Statements and the December 31, 2019 Draft Governance Letter. Motion was approved unanimously 7-0 (1 absent).

5. RISK MANAGEMENT SERVICES (Mr. Crawford)

Mr. Crawford referred the Board to the materials beginning on page 116. The reports are in a different format from the past and now include historic information, as well as current information. He noted that due to working remotely, both groups have increased their level of contact with Oregon lawyers, whether personal, via webinars, or via publications.

(A) General Report:

i. April-May 2020 OAAP Board Report.

Ms. Pearlman gave the OAAP report. She noted that while remote access is definitely an interesting way to go, best practices say we should be live with people. COVID-19 says we should not be live with people. The OAAP continues with its groups, some live, some not. Many groups are remote. With regard to recovery meetings, three are remote and are up by 25% consistently. They will resume live recovery meetings once the pandemic period is over and they are allowed to do so. They will not lose sight of the fact that meeting remotely is an option. Mr. Sabala set up a large screen in one of their meeting rooms, so they can meet remotely for the purpose of reaching lawyers around the state. It turned out to be great during COVID-19.

ii. April-May 2020 PMA Board Report.

The live CLEs held in February averaged 43 attendees. There were four webinars in May that averaged 450 attendees. There is a dramatic difference between the two.

Mr. Crawford addressed the issues of collaboration and communication at the PLF and within the community about the services and value of the PLF. Many institutions are being called into question about the relevance of services provided. Mr. Crawford is treating this issue as a priority to gather information about how effective our programs are and what we can do better.

6. EXCESS REPORT (Ms. Preble)

(A) Excess Program Update: 2021 Excess Renewal Timeline:

Ms. Preble reported that every firm has paid their second installment and we did not lose any firms. She expects the third installment will also go well.

The first virtual reinsurance meetings will be held soon. At the meeting, we hope to get a sense of what the reinsurance environment is and what the cost of 2021 coverage rates will be.

7. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims (Ms. Marmaduke/Mr. Borrillo):

Ms. Marmaduke resigned from the PLF Board of Directors effective May 31, 2020.

Mr. Borrillo reported that the Claims Committee met prior to today's board meeting. The meeting went well and was part of the Claims Report.

(B) Coverage (Ms. Livermore):

Ms. Livermore stated there is nothing to report.

(C) Excess Program (Ms. Johnnie):

Ms. Johnnie stated there is nothing to report.

(D) Finance/Investments: (Mr. Newhouse):

Mr. Newhouse turned the meeting over to Ms. Morrow.

Ms. Morrow reported on the April 30, 2020 financial statements.

Cash and Investments are down approximately 4% from the same time last year. The net position is \$13.6 million with the goal being \$15.5 million (the financial statements do not include the \$1.2 million PERS deficit). The goal was \$16.5 million.

The suspension deadline on the second installment is June 10th. As of today, 378 Covered Parties have not paid. This amounts to approximately \$300K, depending on discounted rates. The next installment is due July 10.

There were 890 claims budgeted for 2020. As of June 4, there are 732 claims annualized. This helps offset the losses on investment returns.

Operating Expenses are within budget. Ms. Morrow reviewed variances to the Operating expenses.

The ceding commission is greater than budgeted in the Excess Program. If not for the decline in the portfolio, Excess would have had a surplus of about \$60,000.

Mr. Higgins of RVK attended the Finance and Investments Committee meeting. There have been significant changes since the March 31, 2020 report. The portfolio rebounded in April from the losses in March. Ms. Morrow reminded board members that our portfolio is built for the long haul. There are a mix of fixed income and low duration accounts that provide short-term liquidity with equities, providing growth over the longer term. The PLF continues to work with RVK and the Finance and Investments Committee to be vigilant about major swings in the market and the appropriate responses. The PLF continues to believe the current asset mix is appropriate for the needs of the PLF.

(E) Long Range Planning/Communications (Mr. Newhouse):

Mr. Newhouse stated there is nothing to report.

(F) Loss Prevention (Ms. Marmaduke/Mr. Crawford):

Mr. Crawford stated there is nothing to report; however, the name of the Committee needs to be changed at some point.

(G) Special Issues (Mr. Hill):

Mr. Hill stated that there is nothing to report.

8. LIAISONS' REPORT (BOG): (Mr. Medina/Mr. Grant/Ms. Hirschbiel)

(A) April 17, 2020 Draft BOG Minutes:

Mr. Medina gave the report.

The BOG is trying to increase revenue due to the economy. Member fees only account for 2/3 of the budget. The other 1/3 comes from other resources, lawyer referral fees, building rent, CLE department, and revenue from BarBooks. All of those resources are down, some more than others. Many CLEs have been canceled, although there are efforts to provide them remotely. The Bar expects a \$300,000 to \$500,000 loss and is instituting internal measures to cut down on payroll to minimize losses as much as possible.

The litigation involving the unified bar issue went to oral argument at the 9th Circuit (audio of that argument is available). A decision is not expected until next year. The Wisconsin bar challenge was denied, which is helpful for the Bar in the long run. Ms. Hirschbiel noted that at oral argument, there were many very direct and challenging questions for the Bar. Reports are available online, but she is happy to send the information to Board members, if interested.

The BOG welcomed new OSB CFO, Mike Williams. Mr. Williams is doing an excellent job and has found some different ways to approach things going forward.

The BOG approved the PLF request of bylaw 3.5. The issue was taken very seriously by the BOG and triggered a robust debate. The BOG ultimately approved the request.

The BOG performs reviews of every OSB program. The next review is for Section Support and Member Services. The reviews are tied to the budget. They have reviewed the Member Events Program and have found cost savings in that program. The silver lining of COVID is that people are not traveling as much and not spending as much. Many events were canceled. From a financial point of view, it is helpful but unfortunate for engagement with members.

The BOG supported some legislation that more aligned the Bar's duty to the public, while assisting members.

The OAAP location issue was discussed in the Budget and Finance Committee’s last meeting. It triggered a robust discussion about the OAAP in general. It is pretty universal that the OSB supports the OAAP and values their work with focus on mental health issues. At the Budget and Finance Committee meeting, it turned from what is the cost of rent to what are the values of the OAAP. Mr. Grant is looking forward to the discussion the PLF is having internally about restricting/reorganization and how it ties into the Bar Center. It triggers their program review process that goes beyond dollars and cents. The issue will be in front of the Policy and Governance Committee in the next couple of weeks. The BOG hopes to have PLF involvement during those discussions.

Mr. Grant noted that the change in the Mission of the Bar has been extremely impactful for how the Bar is going about its decision-making. He suggested looking at the “About” page on the OSB website. Mr. Crawford spoke earlier about reminding lawyers of the importance/impact of the PLF with regard to all of its programs. We also include that the public protection element of what the PLF stands for is very important. We are here to protect the rights of the people in Oregon. Looking through that lens might be helpful for all of the PLF programs.

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.

Ms. Mullen called the meeting into executive session at 11:27 a.m., 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 at approximately 12:50 p.m. to approve the executive session minutes and other executive session issues.

11. OPEN SESSION

(A) Approval of Executive Session Minutes in Open Session:

- i. 2020-04-17 Executive Session Minutes
- ii. 2020-05-13 Executive Session Minutes

Ms. Livermore motioned and Ms. Johnnie seconded that the April 17, 2020 and May 13, 2020 executive session minutes be approved as written. Motion passed unanimously 6-0 (2 absent).

12. UNFINISHED AND NEW BUSINESS

There was no unfinished or new business to discuss.

Ms. Cook reminded the Board that there would most likely be a special board meeting once the BOG determines if it will allow the OAAP in its space. We will need to address the issue in short order because we will have to build-out the space and the OAAP lease is up the end of October.

We also have to replace Ms. Marmaduke for the remainder of her term.

Cindy Hill will send an email with regard to the most convenient date for a special meeting. Ms. Campbell noted that a BOD conference call is scheduled on July 8. These issues could be discussed at the same time. Mr. Borrillo said that nothing is scheduled with regard to claims at this time.

Ms. Cook is gathering names for potential replacements of Ms. Marmaduke. We need to consider gender, geography, race, and practice areas. Ms. Cook asked for suggestions. Ms. Mullen and Ms. Marmaduke suggested going through the CEO applications to see if we might want to consider an applicant for this role. There are 2-1/2 years remaining of Ms. Marmaduke's term.

Ms. Cook also reminded the board that we are looking for two new board members with terms beginning January 1, 2021. Ads have been placed. We have only received two applications so far. Ms. Cook will reach out to all who apply and will present to the Board. Once approved, the recommendations will go to the BOG for their approval.

13. ADJOURNMENT

The meeting adjourned at approximately 12:57 p.m.

These minutes were approved by the PLF Board of Directors at its October 9, 2020 board meeting.