



**OPEN SESSION MINUTES**

**JOINT BOG-BOD SPECIAL ISSUES COMMITTEE  
Office/Practice Location Standards**

**June 9, 2021  
Zoom Videoconference**

The meeting of the Joint BOG-BOD Special Issues Committee on Office/Practice Location Standards was called to order by Committee Co-Chair, Megan Livermore at 3:32 p.m. Present in addition to Ms. Livermore was Co-Chair David Wade and committee members Ryan Hunt, Gabe Chase (arrived at 3:59 p.m.), Helen Hirschbiel, Dani Edwards, Susan Cournoyer, Amy Zubko, Steve Hill, Harshi Waters, Jeff Crawford, and Emilee Preble. Cindy Hill also attended the meeting.

This meeting was noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq.

Ms. Livermore led the meeting and explained that the purpose of the joint committee is to review what it means to practice law in Oregon, what it means for the Bar's rules and PLF rules in light of people working remotely.

Ms. Livermore reported that she read an Advisory Opinion from the Florida Supreme Court that addresses a similar situation (an attorney licensed in New Jersey moved to Florida during COVID). The opinion was that it was not the illegal practice of law because the attorney was not serving Florida clients.

Ms. Edwards who works in OSB Member Services discussed the issues the Bar is facing. Member Services oversees elections, which is based on principal office address; they determine where a candidate can run from and the number of positions available in those regions. She noted that Bar Rule 1.11 includes information a member must share as part of membership to the OSB. Ms. Edwards said the membership directory is available to the public and bar members. They have received many requests from members who work in multiple offices. There is a component with public records requests for member data information from a variety of sources, requesting contact information for all Oregon lawyers in Oregon and they are required to disclose that. They receive quite a few contacts from various outside organizations looking to advertise. Ms. Hirschbiel added that an issue arose recently in a BOG election for Region 5 where a member may have their principal office for practice of law in their home, but not want to list that address as their principal place of business because it is

subject to disclosure under public records laws. Bar Rule 1.11 was recently amended where an attorney can provide a post office box, as long as a county is provided for their physical address (does not have to be a physical address).

Mr. Wade questioned what constitutes the illegal practice of law in Oregon if you are not admitted here, but live here, have closed your office in California where you do all your work and are now Zooming around California, representing California clients. This is the most pressing issue for Mr. Wade. Ms. Hirschbiel agreed it is the area of most concern. Ms. Cournoyer reported that from what they normally see, they do not get that many complaints about lawyers practicing law in Oregon except for lawyers who clearly have violated the rules. Recently at the Supreme Court re *Harris* (Portland Public Schools General Counsel) – The court looked at whether or not it was okay, pending admission to the Bar. Ms. Hirschbiel noted that this is another way this issue comes up regarding the Unlawful Practice of Law (UPL).

Ms. Livermore confirmed that on the regulatory side, UPL and Rule 5.5 are the issues. Ms. Hirschbiel confirmed.

Ms. Livermore then turned to the PLF side of these issues: Whom do we have to cover and who is required to buy coverage? Ms. Preble said the PLF rules work well, but having clarity and alignment with what the OSB is doing would be helpful. Another concern is the imposition of a “substantially equivalent to PLF coverage” requirement for lawyers admitted to Oregon for reciprocity – that obligation is not imposed to Oregon bar members who are admitted by exam. Mr. Crawford noted that it is a historic accident that it has worked out that way. Originally, there was not any reciprocity – lawyers whose office was outside of Oregon, could not be covered by the PLF and there was no coverage requirement for them. No other states had that requirement, so those lawyers did not necessarily have malpractice coverage. Because there really have not been many claims over the years, the issue has not had action. When reciprocity was being looked at by the Board of Governors, the idea came up that the Bar needed to impose the “substantially equivalent to PLF” requirement. It is an anomaly that should be fixed as long as we are delving into this.

Ms. Preble discussed other rules where attorneys hold themselves out to practice and we use that information to determine if they need PLF coverage. We use what is held out to the public as their principal office. Ms. Preble then discussed that recently, some lawyers who literally have no office has become a thing. They do legal work at their home, but do not hold their home out as an office, so PLF rules would say that if they are not licensed in the state of residence, they do have to purchase PLF coverage, unless they can demonstrate that they do not practice law in Oregon at all. If no office at all, we go w/principal residence as long as they are an active member in that state; otherwise, they need PLF coverage if they do work in Oregon. ORS 9 mandates coverage with Oregon attorneys engaged in the practice of law with a principal office in Oregon. Mr. Wade commented that there is tension of the OSB and PLF holding out. Mr. Crawford asked in what sense? Mr. Wade said the OSB traditional position was if you send a letter and return address is your home in Oregon, you are practicing in Oregon because you are holding out by having an address in Oregon. The attorney would then say they do not represent Oregon clients and do not appear in Oregon courts, they do not advertise in Oregon, so they are not really holding out. When told that their address is in Oregon and that is their principal office, Mr. Crawford said that lawyer would have to have PLF coverage. Mr. Crawford said the PLF has a list of factors to

determine the principal office: Post office box, address on letterhead, etc. There can be a situation where a lawyer has more than one office.

Mr. Wade said he is troubled with the Zoom era. You have to have an address in the courts to appear – if the only physical address is your home in Oregon, we would say they are holding out. He feels it is very unrealistic in the Zoom era, not asking for anything in Oregon – just live there. Mr. Crawford discussed current rules pertaining to patent lawyers, making them subject to PLF coverage. There is always a balance between accuracy and certainty. It cannot be ambiguous. We either cover them or not. If no address, then it is determined in the state they reside. We have lawyers who live in Oregon and all work is in an office in another state. In that case, their principal office is in the other state.

Ms. Hirschbiel said this conversation is exactly why we are getting together. It would be helpful for OSB staff to know in more detail (the type of detail currently being provided) what constitutes practicing law in Oregon. There does not appear to be a rule in Oregon that addresses this issue. Ms. Cournoyer said it is because there is no conflict, but there could be a conflict looking at the details. Rule 5.5 provides the criteria for being licensed by the OSB. Mr. Crawford said that an attorney has to be licensed before the question of PLF coverage becomes an issue. If they are not a member of OSB, the PLF does not provide coverage.

Ms. Hirschbiel said another issue may arise where there is a potential RPC 5.5 violation saying you have a systemic presence in Oregon and need to be licensed, but might not be required to have PLF coverage. Mr. Crawford agrees this makes sense. The PLF does not cover half of Oregon lawyers because of various exemptions, including principal office exemption. It is a good point that some people might fall into that category.

Ms. Livermore asked if we see an issue in that we need to think about expanding who needs to be covered. Mr. Crawford said that from a public protection point of view, they are not licensed in Oregon, but practicing under another state's license, we run into problems of claims made against those lawyers, but the PLF has to deny coverage. Some states are a bit more strict on who has to be licensed in the state and do not tolerate it as much as Oregon does.

Ms. Livermore gave an example of an attorney licensed in Idaho, residence is in Oregon, and attorney represents an Idaho client; would that create a coverage issue? Mr. Crawford said he is talking about immigration lawyers who are not members of the OSB. Usually, they have many clients and English is not their first language. The lawyer disappears for some reason. If they are not an Oregon attorney, we are not there to entertain those claims. This is an example. Sometimes, the non-Oregon attorneys associate themselves with an Oregon attorney who does have PLF coverage. Ms. Cournoyer said that immigration lawyers could not reach out to the Client Security Fund (CSF) either because the lawyer is not an Oregon lawyer.

Ms. Livermore said we have to acknowledge this is a hole we cannot fill, but it is out there and we need to be aware of it. Mr. Crawford questioned if a lawyer who is not licensed in Oregon but is in Oregon representing Oregon clients before a federal agency can be required to join the Oregon Bar. Ms. Cournoyer said they have

to be licensed somewhere, so they are allowed to accept clients in Oregon. The Bar has no ability to discipline or suspend because there is no license in Oregon.

Ms. Hirschbiel recited RPC 5.5(d): *A lawyer admitted in another jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.* Typically, they are licensed in another jurisdiction. Mr. Crawford said that has always been a question in his mind but it sounds like that question has been answered. Ms. Hirschbiel questioned the example of a principal office in Vancouver, Washington but doing the bulk of actual work in Oregon courts. Mr. Crawford said that is possible and under PLF rules, that lawyer would not have PLF coverage. If they were admitted to Oregon through reciprocity, that is where PLF coverage would be provided. Mr. Wade asked if this issue could be fixed. Mr. Crawford said it would be a statutory fix. Mr. Wade wants this added to their list. Mr. Crawford said this has not been a huge problem, so it is not an emergency matter. There have been people who have tried to get PLF coverage and we cannot provide it.

Mr. Crawford referred to PLF policy 3.180. It can be found in the PLF Bylaws and Policy Manual available on the PLF website. He suggests taking a looking at it as a comparison. Mr. Wade said it sounds like there is a gap in required coverage and we need to fix it.

Ms. Preble said that the new PLF website has a lot of information available when it comes to the question of whether PLF coverage is required, etc. The new website has not gone live yet.

Ms. Livermore said we need to find out where pertinent information comes from to find out where the gaps are. She asked Ms. Hirschbiel if we could preempt ethics rules questions. Ms. Hirschbiel said that regarding Rule 5.5, their legal ethics committee could do an ethics opinion that would provide guidance on substantial and continuous presence. There has been some discussion on that but virtually no case law on the issues. It has been a few years since the original discussion, so she is not sure if additional guidance is available now. Ms. Cournoyer said the ABA has issued some opinions recently. Mr. Wade asked if it would have to be a statutory fix to gain more clarity in the Zoom world to fix the problem.

Mr. Crawford said the PLF policy fleshes out what the principal office is. He feels a lot can be done without changing the statute on this issue. With respect to reciprocity, he is curious to see the impact of UBE on that. There are probably plenty of people admitted through reciprocity from Idaho, Washington, etc. – lawyers entering the market having taken the UBE. They will apply that score to whatever jurisdictions they want to be admitted to. Mr. Crawford does not think the Substantial Equivalent rule is in a statute, but rather an admissions rule.

Mr. Wade is concerned about someone who passes the UBE, lives in Vancouver, represents clients in court in Multnomah County, but has no PLF coverage.

Mr. Crawford said that most lawyers would prefer to have PLF coverage and some have even taken steps to establish a principal office in Oregon so they can have PLF coverage. Ms. Livermore confirmed that without

their principal office in Oregon, we could not provide coverage – correct? Ms. Preble said that is correct. Ms. Livermore said it seems we might want to provide the coverage, or as Ms. Preble said, the Substantial Equivalent.

Mr. Wade again proclaimed his concerns about the Zooming situation without a principal office. For PLF purposes, they default to their residence. He is not sure that the OSB defaults to their residence. Ms. Hirschbiel said that with respect to RPC 5.5, it is a Supreme Court issue. She can get a legal ethics opinion.

Ms. Livermore said there is much to look at here, but it is difficult to grasp without rules in front of us. It would be beneficial to gather those rules; then identify the gaps.

Mr. Wade asked Ms. Edwards what rules govern what BOG region you are in. Ms. Edwards listed the following statutes: 9.025 (BOG) 9.136 (HOD) – and 9.080 (PLF).

Ms. Livermore suggested that a PLF staff member and an OSB staff member gather the pertinent information and each organization can get together to determine gaps on both sides (OSB and PLF). On the PLF side, she suggests the flow chart mentioned earlier by Ms. Preble in addition to anything else that is pertinent. The OSB can determine on their side what needs to be reviewed. Ms. Livermore said she is happy to look for ethics opinions outside Oregon, if that seems reasonable. The committee agreed.

Ms. Livermore asked Ms. Preble if she would please gather the information for the PLF. Ms. Preble agreed.

Mr. Crawford mentioned that we are going to try to use this process for updating PLF policies. Some of the language is outdated. This is a project for the back burner and it will not change the outcome of rules, but rather make them easier to understand in current context.

Ms. Hirschbiel said that Ms. Edwards and Ms. Cournoyer would provide OSB information to Cindy.

Ms. Livermore will gather ethics opinions outside of Oregon to review.

Ms. Livermore asked that the OSB and PLF send anything they find to Ms. Hill. Together, Ms. Livermore and Ms. Hill will organize the information and get back to everyone.

Ms. Hirschbiel asked if there is anything we could do for Ms. Edwards while she is on sabbatical. Ms. Edwards said that is not necessary and that she appreciates the committee working around her schedule.

Ms. Livermore said we would send the minutes to the committee, look at the information, go to our collective corners for a bit and return around October.

Mr. Crawford noted that if we want to change PLF policies for next year, October is not early enough as policy changes need to be approved by both boards (BOG and BOD). Ms. Livermore agreed that if changes are made for next year, we should move the date to receive information to the end of July. This allows time to

review all information and prepare documentation for the October PLF BOD meeting, then present approved changes to the BOG at its November BOG meeting.

Ms. Zubko said that the deadline for statutory changes in 2023 is April 21, 2022. Ms. Livermore asked what the process is for changing admission rules. Ms. Hirschbiel said it should go through the BBX first and they advise the Supreme Court on admission rules.

Ms. Livermore said that PLF changes could be done in time for the 2022 Bylaws and Policy Manual. With regard to statutory changes, there is no hope before 2023. For Admission Rules, we could get them changed before next year's bar exam (potentially), if not for 2022. Ms. Cournoyer said changes to RPCs need to be made defining what a continuing presence is by October 2022.

Ms. Livermore reminded the Committee of our obligation to protect the public.

### **ADJOURNMENT**

The meeting adjourned at 4:25 p.m.