

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

**August 24, 2018
Astoria, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at the Cannery Pier Hotel in Astoria, Oregon by Chair, Dennis Black. Present in addition to Mr. Black were Directors Tim Martinez, Saville Easley, Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, Megan Livermore, and Susan Marmaduke. Also present during open session was BOG liaison, Eddie Medina and OSB Executive Director, Helen Hirschbiel. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Jeff Crawford, 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.

1. OPEN SESSION

(A) Determination of Quorum and Compliance with Public Meetings Notice Statute Requirements:

Mr. Black verified a quorum and confirmed that the public meetings notices were done as required by statute.

(B) Open Session Minutes (06/08/18):

Rob Raschio moved and Tim Martinez seconded that the open session minutes of June 8, 2018 be approved as written. Motion passed unanimously 9-0.

(C) Committee Minutes: 04/10/18 (Finance Committee); 05/30/18 (Finance); 05/30/18 (Investments); 06/18/18 (Excess); 08/06/18 (Excess); 08/08/18 (Nominations); 08/08/18 (Coverage); and 08/09/18 (Finance):

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

2. PLF REPORT

(A) General Report:

Ms. Bernick reported that during Hannover's underwriting audit, the PLF was asked about OFAC compliance. Ms. Bernick retained counsel to advise about OFAC compliance for the PLF. We have purchased software from Lexis that we will use for all Excess applicants and claimants.

Ms. Bernick reported that the PLF management attended an off-site leadership course. It was very valuable.

(B) Outside Activities on Behalf of the PLF:

See materials for Ms. Bernick's report.

(C) 2017 Annual Report:

Carol Bernick referred the Board to the annual report in the materials.

(D) Meeting Schedule for 2019:

Carol Bernick referred the Board to the 2019 meeting schedule. The schedule had been provided previously, but it now includes out-of-town meeting locations.

(E) Meeting Materials – via calendar invite:

Ms. Bernick reported that she has asked PLF staff to include Board materials as an attachment to the calendar invite (with the exception of the regular board meetings since they are placed on the BOD website). In the near future, board members will be sent to the website to retrieve all board and committee materials.

(F) New MCLE Requirements:

Carol Bernick referred the Board to the articles in the materials. In September, the Supreme Court will consider the Bar's request to require one general credit CLE hour be for mental health and substance abuse. Assuming it is approved by the Supreme Court, this requirement will be an important addition to the MCLE requirements for lawyers and will assist in destigmatizing mental health issues. Ms. Bernick thanked Barbara Fishleder for her hard work on this issue.

(G) Public Records Requests:

Ms. Bernick reported that there has been an increase in public records requests. Discussions internally took place on how to respond to the requests. We will add a public records policy and request procedure to our website.

Rob Raschio is a firm believer of transparency in public bodies. He supports adding this to our website. Molly Jo Mullen agreed.

Tim Martinez asked if the OSB is getting increased requests for public information. Helen Hirschbiel stated that they are. The law now requires faster response time.

Megan Livermore exited the meeting at this time due to the following discussion.

Ms. Bernick reminded the Board of the inadvertent change to ORS 9.080 in 2015. The Board discussed options for amending the statute.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Madeleine Campbell reported that as of August 23, the PLF has opened 537 new claims and 257 new suspense files. That puts us on track for 834 new claims and 399 new suspense files in 2018. Ms. Campbell informed the Board that the projected claim count has remained steady (in the 830's range) for the last two months. But, she noted we are seeing more higher value claims.

Ms. Campbell reported that our new claims attorney, Heather Bowman, is doing a great job. She has been able to help some of the claims attorneys who are overloaded. Covered Parties continue to give favorable reports about claims attorneys and defense counsel. She further reported we are starting to plan for the 2019 Defense Panel Conference. She expects a good program.

4. FINANCIAL REPORTS

(A) June 30, 2018 Financial Statements:

Ms. Morrow referred the Board to the balance sheet. Assets are up almost \$3 million. Investments have not done well. Liabilities have gone down because of the release of reserves (we released \$552,000 in reserves). YTD net position last year was \$5.4 million. This year, it's \$403,000. The reports show 79 full-pay attorneys over budget. Investment returns (including low duration) through June 30 is a negative .05%. The actuaries reduced the cost per claim to \$20,800, down from \$21,000 for the first half of the year.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) 2nd Quarter 2018 Report and Loss Prevention Update:

Ms. Fishleder reported that we hired a PMA to replace Jennifer Meisberger. She praised the PMAs for stepping up their workload due to the lack of one PMA. New PMA, Lee Wachocki, begins the end of September. He has a great background and we are looking forward to having him join our staff.

Ms. Fishleder reported on the new MCLE requirement. She feels confident that after attending the CLEs, lawyers will see it is easy to get the credit and that it is helpful. The OSB and PLF are working on a CLE for this purpose.

Ms. Fishleder reported that Rachel Edwards presented the CLE in Warrenton on August 23. The topic was Data Security and Data Breach. It was well received.

Barbara Fishleder referred the Board to the 2nd Quarter PMA and OAAP 2018 reports in the materials.

Ms. Fishleder thanked Ivan Hernandez and DeAnna Shields for their hard work on the shred events.

Learning the Ropes is coming up (November 14-16).

Rachel Edwards reported that the PLF is co-hosting a technology fair at the OSB September 26. It is an all-day tech fair/CLE from 8:00 to 5:00 in Columbia Rooms. 17 software vendors, IT consultants, and others involved in the legal industry will set up vendor booths and demonstrate their products. Vendors and others will also host CLEs. Ms. Edwards encourages people to attend and to spread the word. Dennis Black voiced support for the program.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Dennis Black reported that the committee met. There is nothing further to report at this time.

(B) Coverage Committee: Coverage Plan Changes:

Holly Mitchell reported that the Committee is seeking approval of modifications of two exclusions to the Primary Plan to make it more clear (Exclusion 6(b) – Business Interests/Ownership Interests and Exclusion 16 – Harassment and Discrimination). See materials for specific revisions.

The Board discussed the changes.

Rob Raschio moved and Dennis Black seconded that the proposed amendments be approved as written. Motion passed unanimously 9-0.

(C) Excess Program Committee:

Saville Easley reported that the Committee met on August 6th to discuss two topics, including one proposed policy change.

- i. Online payments and midyear changes (Policy 7.600(H)(2)).

Betty Lou Morrow reported that online payments via credit card will now be available to Excess firms. There is significant cost (2.99%) if the fees for this service are not passed on to the payor. Firms can send a check instead. Ms. Bernick explained that the PLF absorbs the cost for credit cards at the Primary level (about \$200,000 annually). Betty Lou Morrow said that the 2.99% rate will be open for negotiation every six months, depending on what cards are used. If lawyers are not using American Express, it will probably come down to 2.2%. See materials for proposed changes to the language.

Tim Martinez asked if any analysis had been done on the costs to process credit card payments. He opposes charging the payor. Rob Raschio concurred. Staff acknowledged the issue but also noted this was an administrative decision.

Jeff Crawford referred the Board to the memo regarding changes to Policy 7.600(H)(2).

There was a motion and a second that the revisions to Policy 7.600(H)(2) be approved as written. Motion passed unanimously 9-0.

- ii. August 13, 2018 Hannover Re Underwriting Audit.

Carol Bernick referred the Board to the underwriting audit and commented that Emilee Preble and Jeff Crawford deserve a lot of credit for the results of this audit. The PLF has only been doing full underwriting for three years. The audit gave good suggestions that we are implementing.

(D) Finance:

Tom Newhouse turned this portion of the meeting over to Betty Lou Morrow.

Ms. Morrow reviewed the highlights on pages 94 and 95 of the materials. The Committee is recommending that the BOD approve the following:

- i. Values for June 30, 2018 claim liabilities (\$24.1 million);
- ii. Values for average claim costs to be used for the next six months (\$20,800);
- iii. 2019 PLF Primary Program Assessment (\$3,300);
- iv. Net Position Goal for combined Excess and Primary Programs (\$13.3 million);
- v. PLF Budget for 2019; and
- vi. Elimination of Fidelity Bond (PLF Policy 5.150).

Rob Raschio moved and Molly Jo Mullen seconded that items i., ii., and iv. above be approved as written. Motion passed unanimously 9-0.

Betty Lou Morrow discussed budget highlights and reported that the Committee is asking for a 4% salary pool. The PLF is looking at increases in medical benefits, PERS is going up, claim costs are at \$20,800. The Committee is recommending a change in the assessment, lowering it from \$3,500 to \$3,300 (the actuaries are in support of the assessment reduction recommendation). Operations expenses increased by about 14%. We budgeted a 1.5% return on investments for next year (hoping this is a conservative number). We will be pulling \$2.6 million out of the net position.

Carol Bernick discussed the salary pool. The salary pool was discussed with the OSB as we have done historically. Because of the Bar's financial position, the OSB is recommending a 3.5% salary increase. This is the first time the PLF is not requesting the same pool as the OSB. Ms. Bernick and Helen Hirschbiel have discussed the issue. Ms. Hirschbiel agrees that 4% is an appropriate pool. Ms. Morrow noted that 2018 is the first time in the last five years our salary costs have actually increased as much as the salary pool.

Further discussions occurred.

Rob Raschio moved and Tim Martinez seconded that the 2019 budget (item v. above), as well as a reduction in the assessment to \$3,300 (item iii. above) be approved as written. Motion passed unanimously 9-0.

Rob Raschio moved and Tom Newhouse seconded that elimination of the Fidelity Bond, PLF Policy 5.150, (item vi. above) be approved. The motion passed unanimously 9-0.

(E) Investments:

Tim Martinez stated that there is nothing to report at this time.

(F) Long Range Planning/Communications: Memo re assessment, coverage grant and/or expense allowance:

Molly Jo Mullen reminded the Board that the materials about the Committee's evaluation of the assessment and coverage grant are included again in this section's materials.

(G) Nominations Committee: Nominations for Board members beginning January 1, 2019:

Dennis Black reported that we received an excellent pool of attorney applications again and that Ms. Bernick has some specific recommendations. Ms. Bernick did in depth background checking on the applicants and provided most of the information and recommendations.

- i. BOD Recommendations – terms beginning January 1, 2019.

Ms. Bernick reported that the claims attorneys wanted someone with creditors' rights experience. Carolyn Wade and Gina Johnnie both fit that need. Both are well regarded but Ms. Wade has not been in private practice for almost 20 years.

The Committee recommended submitting Gina Johnnie as first choice and Carolyn Wade as second choice.

There were two public member applications and the Committee recommends Patrick Hocking as first choice and Michael Batlan as second choice. Ms. Bernick feels that Mr. Newhouse's experience in finance is valuable and Mr. Hocking also has that. Mr. Batlan is an excellent choice as well but for the reasons mentioned, the Committee is recommending Mr. Hocking first.

Tim Martinez moved and Molly Jo Mullen seconded that the recommendations mentioned above be approved and presented to the BOG for their approval. The motion passed unanimously 9-0.

(H) Special Issues:

Susan Marmaduke stated that there is nothing to report.

7. LIAISONS' REPORT (BOG):

Eddie Medina gave the BOG report.

Mr. Medina reported on the following issues:

1. The BOG is looking closely at the OSB budget.
2. The Client Security Fund (CSF) has received many claims. The OSB tries to have a \$1 million reserve. The funds in excess of \$1 million are not enough to pay the claims this year (by about \$200,000). The BOG is considering an increase in the assessment (\$10 per attorney) to adequately maintain the reserves.
3. The Public Affairs Subcommittee has reported that the Governor's race is closer than in the past.
4. Mr. Medina reported that Carol Bernick gave persuasive rationale to recommend a mandatory mental health and substance use MCLE requirement to the Oregon Supreme Court. The recommendation was passed unanimously by the BOG. Mr. Medina has not received significant pushback, but has received some comments and concerns regarding the quality of the programs.

Ms. Hirschbiel reported that the issue of the April 2018 OSB *Bulletin* continues to be a topic of discussion. The BOG has amended the bylaws to provide new editorial policies. Now, the BOG will see the *Bulletin* and approve it before it is published. Second, the BOG is looking at the possibility of an editorial review committee.

Barbara Fishleder inquired about the Client Security Fund complaints and noted that sometimes, when there is a wave of large CSF expenses, it is one lawyer who has many claims. Ms. Hirschbiel commented that the claims are from a small group of people. There are 3 or 4 attorneys with many claims of significant amounts.

8. CHAIR REPORT

(A) Updates:

Dennis Black had nothing to report.

9. EXECUTIVE SESSION

Dennis Black 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.

10. OPEN SESSION

(A) Approval of Closed Session Minutes in Open Session: June 8, 2018, June 19, 2018 and July 25, 2018:

Rob Raschio moved and Molly Jo Mullen seconded that the executive session minutes of June 8, 2018, June 19, 2018, and July 25, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).

11. INFORMATION ITEMS

(A) Miscellaneous Articles/Other: WSBA Article: Mandatory Malpractice Insurance Task Force Interim Report to Board of Governors – July 10, 2018.

Carol Bernick referred the Board to the above article in the materials.

12. ADJOURNMENT

The meetings adjourned at approximately 1:40 p.m.

These minutes were approved by the PLF Board of Directors at its October 19, 2018 board meeting.