

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

**December 7, 2018  
Tigard, 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 Professional Liability Fund in Tigard, Oregon by Chair, Dennis Black. Present in addition to Mr. Black were Directors Tim Martinez, Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, Megan Livermore, and Susan Marmaduke. Also present during open session were OSB CEO, Helen Hirschbiel, Amber Hollister, OSB General Counsel, and PLF board member, Patrick Hocking (effective January 1, 2019). In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Emilee Preble, Sarah Troutt, Pam Stendahl, John Berge, Brad Tompkins, Patricia Nation, Holli Houston, Heather Bowman, Amy Hoven, and Shari Gregory 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 the public meetings notices were done as required by statute.

**(B) Open Session Minutes (10/19/18):**

*Tim Martinez moved and Rob Raschio seconded that the open session minutes of October 19, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).*

**(C) Committee Minutes:**

There were no committee minutes.

Dennis Black introduced new board member, Patrick Hocking. Mr. Hocking recently retired as CFO of Asante Health. Mr. Black expects a seamless transition in 2019.

## **2. PLF REPORT**

### **(A) General Report:**

Ms. Bernick reported that the PLF new board member Orientation was successful. Several people commented positively on the quality of our new board members.

Carol Bernick reported that there are increasing challenges to the Oregon State Bar's unified bar structure. Ms. Bernick reported about the discussions at the BOG retreat. Helen Hirschbiel and her team provided a number of handouts regarding the history of the unified bar and reasons why the Bar believes it is the best organizational structure to carry out the mission of protecting the public, as well as advancing the rule of law and the judicial system generally. Copies of the handouts are available.

Carol Bernick reminded people that the PLF annual dinner is this evening. Attire is business/business casual. Reception is at 6:30, followed by dinner around 7:30.

### **(B) Outside Activities on Behalf of the PLF:**

See materials for Ms. Bernick's report.

### **(C) Combining Committees – PLF Policy 2.300:**

Ms. Bernick presented a recommendation that PLF Policy 2.300 be revised to combine the Finance and Investment Committees into one committee.

*Megan Livermore moved and Dennis Black seconded that the two committees be combined into one. Motion passed unanimously 8-0 (1 absent).*

### **(D) 2019 Committee Assignments:**

Ms. Bernick referred the Board to the materials on page 12 and noted that she and Saville Easley discussed the committee assignments. Ms. Bernick asked board members to let her know if they are not happy with the assignments and she will try to accommodate.

### **(E) ORS 9.080:**

Carol Bernick reported that in 2015, the statute was amended adding subparagraphs to ORS 9.080. The intention was to have ease of reading but, unfortunately, it arguably changed the meaning. We are working with the Bar's Legislative Affairs director on the best fix.

### **(F) OSB-PLF Lease (Handout):**

Ms. Bernick handed out some materials pertaining to the OSB-PLF lease. The OSB owns the building and they are refinancing. The lender is asking for a 10-year commitment from the

PLF from the date of closing. Ms. Bernick's concern is not as much about leaving the building but rather about the amount of space we may need in the future.

Ms. Bernick noted that Amber Hollister of the Oregon State Bar (General Counsel) and Helen Hierschbiel (OSB CEO) are attending the meeting to answer questions. Ms. Bernick wants the Board to weigh in on this with any questions and/or concerns they may have. If we accept, it will add an additional eight years to our lease. The OSB will allow the PLF to sublet.

Megan Livermore asked how much less space we want. Ms. Bernick stated that space needs are hard to determine but we expect it will be less than what we currently have. We would then have the added expense of repurposing the space.

Tim Martinez asked if the PLF's agreement to the extension is a deal-breaker for the refinance. Amber Hollister said it is in order to secure the interest rate. The PLF is about 30% of the square footage of the Bar Center.

Ms. Bernick needs to know if the PLF Board has concerns that she should pass on to the Board of Governors. If not, she feels the request is reasonable.

Patrick Hocking asked if the terms are consistent with fair market value. Betty Lou Morrow did some research and the average rate is \$25.46/SF in the Portland area. The PLF is paying \$28.87/SF. Molly Jo Mullen asked if it is Class A space and Ms. Morrow said it is.

Dennis Black commented that it might stretch us a bit to have excess space for the 8 years, but it allows time to see what paperless means for the PLF. When the 8 years is up, the organization will be in a position to understand what size it needs, going forward.

Tim Martinez noted that there was a lot of discussion in 2008 when the PLF moved to the Bar Center. The OSB was excellent to work with at that time. Amber Hollister and Helen Hierschbiel emphasized its commitment to work cooperatively with the PLF should circumstances arise making its lease unmanageable.

### **3. CLAIMS REPORT**

#### **(A) General Claims Report (Open Session):**

Madeleine Campbell projected a claim count of 869 for the year. This is on target with Betty Lou Morrow's estimate. We continue to have excellent evaluations from Covered Parties. 98% are either very satisfied or satisfied. Ms. Campbell has been working on file review with each claims attorney and feels things are well in hand. Since the last meeting, the claims department had two trials and two defense verdicts.

#### **4. FINANCIAL REPORTS**

##### **(A) October 31, 2018 Financial Statements:**

Ms. Morrow referred the Board to the materials on page 13 and reported that the investment portfolio currently has completely eradicated the \$1.3 million expected gain projected at the October board meeting. We are projecting a deficit of about \$900K to \$950K. This is due to higher claim count and losses in our investments. She is also doubtful we will have much, if any, release of reserves as indemnity is up compared to last year.

Ms. Morrow stated that when the reduction of assessment was discussed, the committee did a five-year projection and felt confident we could sustain the assessment over five years, even with a down year.

Tim Martinez asked what Ms. Morrow expects the net position to be at the end of 2018. Ms. Morrow projects \$18.5 million. Ms. Morrow suggests that next year's Board look at the whole investment strategy, specifically whether we should focus less on growth and more on capital preservation.

#### **5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT**

##### **(A) Loss Prevention Update:**

Ms. Fishleder referred the Board to the materials on page 22.

Ms. Fishleder happily reported that Lee Wachocki is back from grand jury and is doing a great job. He has a great attitude and good judgment.

*Learning the Ropes* went well. It was an interesting mix of attendees. The audience was a combination of new lawyers and experienced lawyers coming from other jurisdictions. Ms. Fishleder reported that next year's "Ropes" would be a bit different due to the new MCLE rule.

The new OAAP website has launched. Ms. Fishleder thanked Emilee Preble, Tanya Hanson, and Bryan Welch for all their work. It was a great team operation.

Ms. Fishleder encourages all board members to subscribe to Practice Management Advisors blog, *inPractice*.

Ms. Fishleder referred the Board to the materials for information about loss prevention staff and departmental statistics.

Shari Gregory reported that the OAAP had an extremely busy fall and it is getting busier. The OAAP is participating in the wellness summit with the Bar January 25, 2019. She anticipates more phone calls because of this summit. The goal is to destigmatize mental health. She hopes those who attend can be ambassadors to get the profession to be more accepting and forgiving

of human problems. The Board discussed whether the OAAP should charge when it presents programs to non-Covered Parties (i.e., government lawyers).

Shari Gregory reported that the OAAP has given some talks on cognitive decline. This is a topic of interest to many lawyers. The discussions deal with signs and symptoms but also how to talk to colleagues.

Rob Raschio noted that the presenters at the OCDLA did a great job.

## 6. **COMMITTEE REPORTS AND ASSIGNMENTS**

### (A) **Claims:**

Dennis Black stated that the committee has nothing to report and he does not expect a report for the remainder of this year.

### (B) **Coverage:**

Holly Mitchell stated that there is nothing to report at this time.

### (C) **Excess Program: Renewal Update:**

Emilee Preble reported that the excess renewal is underway. Firms are applying online and can pay online, if they choose. We are about 75-100 applications ahead compared to the same day last year. We are on a three- to four-day turn around for underwriting. It is too early to see the renewal rate, but we hope it will hit about 90% (same as in the past). The PLF chose to part ways with a larger firm, which could have an impact on our numbers. We continue to keep an eye on firms who do securities work, which is high risk.

### (D) **Finance:**

Tom Newhouse stated that there is nothing to report.

### (E) **Investments:**

Ms. Bernick reported that a recommendation from RVK was to liquidate Westwood. The committee instead recommends a liquidation of just under 50% at this time. Westood has helped us when the market has gone down and has done better than some funds. Staying a bit more conservative, we will keep half and see how it goes. In 2019, we will consider whether to do a reallocation to focus on capital protection.

The Board then discussed the ranges we use for each asset class.

Mark Higgins and Cole Bixenman reported on the November 27, 2018 materials and the Third Quarter 2018 Performance Report.

**(F) Long Range Planning/Communications:**

Molly Jo Mullen stated that there is nothing to report at this time.

**(G) Special Issues:**

Susan Marmaduke stated that there is nothing to report.

**7. LIAISONS' REPORT (BOG)**

Helen Hirschbiel gave the BOG report, following the November 17, 2018 BOG meeting.

1. The 2019 President and President-Elect were announced. Chris Costantino will be President in 2019 and Liani Reeves will be President-Elect.

2. Alternative Pathways to Becoming a Lawyer. A Task Force was created after a HOD resolution asking the BOG to investigate whether the OSB should allow people to write for the Bar, if they pass the bar exam. The Task Force presented a report and recommended that the BOG establish this type of program, similar to the Washington State Bar program. The BOG accepted the report but did not make the decision to begin this type of program.

3. Health Insurance discussion. When Vanessa Nordyke and Helen Hirschbiel toured Oregon, many individuals asked about whether the Bar would consider providing health insurance to bar members. The OSB decided not to pursue the issue at this time.

4. Oregon New Lawyers Division. Ms. Hirschbiel reported on changes to the ONLD program.

5. The BOG approved the creation of an Editorial Advisory Committee.

6. The BOG approved the creation of an ad hoc committee to assist with development and implementation of a Leadership Academy Program.

7. The Oregon Law Foundation (OLF) did a legal needs study. The study is complete and a report was given.

Helen Hirschbiel also noted that in the *Gruber v. OSB* case, the Attorney General asked to file an amicus brief in the case, which was granted.

**8. CHAIR REPORT**

**(A) CEO Evaluation – Discussion in Executive Session:**

Mr. Black had nothing to report because this topic will be discussed in executive session.

**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.

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.

**11. OPEN SESSION**

**(A) Approval of Closed Session Minutes in Open Session: October 19, 2018:**

*Rob Raschio moved and Molly Jo Mullen seconded that the executive session minutes of October 19, 2018 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(B) CEO Evaluation – Open Session Report:**

Dennis Black reported that Carol Bernick has done an excellent job and the Board has approved a 4% salary increase for next year.

*Rob Raschio moved and Tom Newhouse seconded that that Ms. Bernick's salary increase be approved. Motion passed unanimously 7-0 (2 absent).*

**12. UNFINISHED AND NEW BUSINESS**

There was no unfinished or new business to discuss.

**13. ADJOURNMENT**

The meetings adjourned at approximately 12:22 p.m.

**These minutes were approved by the PLF Board of Directors at its February 8, 2019 board meeting.**