

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

**December 8, 2017
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 Chair, Teresa Statler. Present in addition to Ms. Statler were Directors Dennis Black, Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, and Megan Livermore. BOG liaison Kerry Sharp and OSB CEO Helen Hirschbiel attended open session. Also, present were PLF staff members Carol Bernick, Bruce Schafer, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Emilee Preble, Sarah Troutt, Pam Stendahl, Patricia Nation, Amy Hoven, John Berge, and Shari Gregory.

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:

Ms. Statler verified a quorum and confirmed that the public meetings notices had been done as required by statute.

(B) Open Session Minutes (10/20/17):

Rob Raschio moved and Molly Jo Mullen seconded that the open session minutes of October 20, 2017 be approved as written. Motion passed unanimously 7-0 (2 absent).

(C) Committee Minutes: 10/10/17 (Investments and Finance):

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

2. PLF REPORT

(A) General Report:

BOD Orientation for New Board Member(s)

Carol Bernick reported that we held an orientation on December 7 for new board member, Susan Marmaduke. Ms. Marmaduke plans to attend the annual dinner this evening. Ms. Marmaduke stated that she appreciated the PLF's time in assisting her with her role as a new board member.

OSB BOG Retreat

Ms. Bernick reported that she attended the BOG retreat in November. Vanessa Nordyke will be the OSB president in 2018. Her focus is on new lawyers. The OSB sent a comprehensive survey to lawyers in the New Lawyers Division (includes anybody who has been in practice for five or fewer years or is age 36 or younger). The survey information is useful for PMAs and OAAPs. Ms. Bernick sent the survey to them so they can be thinking about practice aids, CLEs and other outreach that is geared toward members of the New Lawyers Division. It also highlighted the need for the OSB as an entity, OSB Sections, and the PLF to coordinate better the CLEs that are offered and not duplicate them. Working together allows for expertise in specific areas as well. This is an opportunity for more collaboration.

OSB Paraprofessional Program

The BOG voted to proceed with an implementation committee of the paraprofessional program. Ms. Bernick will participate on that committee as we anticipate malpractice coverage will be a component of the recommendation.

Joint Meeting with OAAP, Practice Management Advisors and Claims Attorneys

Ms. Bernick reported that a joint meeting was held with the OAAP, Practice Management Advisors, and Claims Attorneys to discuss office closure procedures and protocols. The goal is to make sure that all three departments are communicating well with each other in the closing process. It was a productive conversation.

PLF/OSB Chili Cook Off

The first PLF/OSB Chili Cook Off was held on November 14 to raise money for OLAH (Oregon Lawyers Against Hunger). It was a fun event. Carol Bernick and Helen Hirschbiel continue looking at opportunities for both organizations to get to know each other.

New PLF Director of Claims – Madeleine Campbell

With Ms. Campbell coming in as the new Director of Claims, the PLF is looking at organizing a one-day retreat for the PLF department directors to discuss ways they can work together, allowing better communication, sharing resources and doing some strategic planning.

OSB Annual Awards Luncheon

Bruce Schafer was honored at the OSB Annual Awards Luncheon on November 8. He will be further honored on December 12 at his retirement celebration at the PLF, from 4:00 to 6:00 p.m. in the OSB Columbia Rooms.

MBA Judicial Screening Committee (Multnomah County)

Ms. Bernick reported she was appointed to the above committee.

HOD Resolution

The HOD resolution seeking a study of assessment reduction for part-time lawyers and those who serve the poor failed. This perennial issue has been studied numerous times by the PLF because it is important to regularly revisit our shared risk pool structure. We will discuss this further as we review the assessment in 2018.

(B) Outside Activities on Behalf of the PLF:

Carol Bernick referred the Board to her list of activities on behalf of the PLF since the last board meeting.

(C) Committee Assignments - 2018:

Ms. Bernick referred the Board to the committee assignments in the materials. She noted that she tried to honor all requests and asked that board members let her know if they have any questions or concerns.

(D) Entertainment Fund and Annual Dinner Discussion:

Carol Bernick referred the Board to the memo on page 16 of the materials that deals with the above issues.

Annual Dinner

Ms. Bernick stated that she appreciates the effort and dedication board members make in their service to the PLF. She is in favor of thanking the Board members for those efforts, but raised the question as to whether our current annual dinner is too much. Ms. Bernick discussed the cost of the event.

Rob Raschio feels the annual dinner is a good time to talk to former board members and have a better understanding of the PLF process. He thinks it makes sense to provide some sort of activity to come together each year. Where and how does not matter to him. Tom Newhouse agreed with Rob Raschio and agreed the venue can be more modest. Teresa Statler asked about a lunch instead of a dinner. The Board was not in favor of a lunch. Molly Jo Mullen asked what the difference in cost is with or without former board members in attendance. The numbers were not readily available, but Ms. Bernick reported about one-fourth to one-third of attendance is former board members and their guests.

Dennis Black commented that he agrees with spending less money on self-congratulation and skewed more toward the fellowship Raschio is talking about. Mr. Black would prefer

downscaling it, but continue hosting a dinner in recognition of the contributions of the Board of Directors.

Carol Bernick summarized the consensus: Keep a dinner, inviting former board members, but keep it more business attire (or casual attire) and less expensive. The Board agreed.

Alcohol Fund

Ms. Bernick reported that in the last couple of years, we have run short on the alcohol fund and she has borrowed from the next year's fund in order to complete the current year.

Carol asked whether the Board would accept a pay as you go system rather than the alcohol fund. Holly Mitchell stated that she does not mind either way (pay as you go or writing a check at the beginning of the year). Rob Raschio suggested that if we continue with the annual dinner honoring past and present board members, that maybe we can figure out a fund for that event but pay as you go for all other events. The contributions for the annual dinner could be made at the October board meeting. The Board concurred.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Bruce Schafer gave the claims report.

As of December 7, 2017, we had opened 788 new claims and 305 new suspense files. Mr. Schafer reminded the board that some suspense files turn into claims. Assuming the same pace for the rest of 2017, this would suggest 843 new claims (compared to 870 budgeted) and 326 new suspense files, a relatively low number compared to other years.

Mr. Schafer noted that Madeleine Campbell is very well prepared to take over as Director of Claims. He expects a smooth transition. He thanked the Board, the PLF, Carol, and the Claims Department staff for their assistance and fine work over the years. He said he considered himself very fortunate to work for an organization where he was encouraged to do the right thing and never felt pressured to do what he felt was unethical, unprofessional, or illegal.

4. FINANCIAL REPORTS

(A) October 31, 2017 Financial Statements:

Ms. Morrow reported that she has all good news regarding the financial statements. She reported the claim count is lower than budgeted (projected 845 to the end of December). Our investment portfolio continues to perform very well. At the end of October, the approximated ROI was 13%. We expect an in-year surplus for 2017 of approximately \$8 million. In light of this surplus, in 2018 we will be working on determining if we can lower the assessment for 2019.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) Loss Prevention Update:

Carol Bernick deferred this portion of the meeting to Shari Gregory.

Ms. Gregory reported that the OAAP is excited to have hired new attorney counselor, Karen Neri. Ms. Neri is enrolled in a Master's program at George Fox. She brings a fresh perspective. She has been a family and personal injury lawyer for ten years and comes from California. Ms. Neri has been in Oregon for 1-1/2 years. She will be a great ambassador for the OAAP. She has experience in every area to make her a great attorney counselor. Ms. Neri attended the PLF's holiday lunch earlier this week.

Shari Gregory reported that the mood at the OAAP is wonderful. This past year was interesting and tumultuous in terms of change but things are settling down. Ms. Gregory appreciates the collegiality in the office.

Ms. Gregory reported that Barbara Fishleder has shifted more responsibility to her. There is a lot of learning with this transition. It is allowing Shari to better support the professionals she works with. She has received positive feedback from her colleagues. The OAAP has a great staff.

Shari reported she and her team are working on making sure the OAAP staff is integrated with the PLF staff while maintaining separation to protect confidentiality.

The PMAs all work well together. They are an asset to the work the OAAP does and vice versa. She cannot say enough about the amazing work they do.

Ms. Bernick highlighted the shift in the role Ms. Gregory has taken on. Carol Bernick applauded Barbara Fishleder for seeing this as a good opportunity for Shari and the future of the OAAP.

Carol Bernick noted that she was involved in the interviewing with Karen Neri and she agrees with everything Shari Gregory said. It was a good process.

Ms. Bernick attended most of *Learning the Ropes*. She felt it was among the best we have had. The quality of the programs was excellent, especially on the last day. Barbara Fishleder curated a session that included several lawyers with disabilities. They talked about working with people with disabilities, whether clients or colleagues, employees or somebody in the court. Ms. Bernick has read the reviews and it was well received and very much appreciated. The program is on video on the PLF website and it includes access to justice credits. Ms. Bernick also noted that in the past, many who attended "Ropes" did not have jobs. This year, most had jobs. It was a very successful program.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Dennis Black and Bruce Schafer noted that a quarterly report was done in November. The next one will be in January.

(B) Coverage Committee:

Molly Jo Mullen stated that there is nothing to report.

Jeff Crawford noted that the coverage plans were approved by the BOG and have been published.

(C) Excess Program Committee:

Jeff Crawford reported that the excess program is in the midst of the renewal cycle. There are two main changes this year. The first is that it is all online through the new excess program portal. The second is that we have beefed up the business law supplement regarding securities. The renewal cycle is going very well.

Emilee Preble gave a demonstration of the new excess portal. By using the portal, we saved about 22,000 pieces of paper and over \$3,000 in postage.

Ms. Preble reported that as of this morning, 308 excess applications had been returned (out of 715). She expects closer to 350 by the end of the week. Ms. Preble noted that the handwritten application is still available for those who prefer to do it that way. Most applications have been submitted via the portal – only a few have been submitted by hand. The biggest barrier is the intimidation of it. Once they do it, they will find it is not difficult. Our biggest firm did the application online and said that it worked very well for them.

Jeff Crawford stated that he wanted the BOD to see the excess portal so they could see the work that has been spent on this by Emilee, our IT department, and the website staff. It shows leadership at the PLF in terms of new technology. Mr. Crawford congratulated Emilee Preble.

(D) Finance:

Tom Newhouse stated that there is nothing to report that has not already been discussed above.

(E) Investments:

Tom Newhouse reported that it is the same good news as discussed above.

Betty Lou Morrow reported that we typically have RVK (our investment consulting firm) report on results at the December meeting. The year-end report will be deferred to the February 2018 board meeting.

(F) Long Range Planning/Communications:

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

(G) Special Issues:

Megan Livermore stated that there is nothing to report.

7. LIAISONS' REPORT (BOG): Draft BOG Minutes: November 18, 2017

Kerry Sharp gave the BOG report. The BOG met in Cannon Beach on November 18.

The BOG ratified Chris Costantino as the 2019 OSB President.

Mr. Sharp confirmed that the BOG authorized a committee to develop an implementation plan for a paraprofessional program. Rob Raschio suggested that a member of the PLF Board of Directors be included with the committee as well as Carol Bernick. Ms. Bernick said that a BOD vote would be required before anything is implemented with respect to malpractice coverage.

Mr. Sharp reported that additional information would be provided on RPC 5.4 in the next six to 12 months.

Rod Wegener (OSB CFO) retired after 20 years at the OSB. A search is underway for a new CFO. From a budget and finance aspect, Rod Wegener assured the BOG they will not need to raise fees this next year.

The BOG approved all of the 2018 PLF Coverage Plans (Primary, Excess and Pro Bono).

8. CHAIR REPORT

(A) Updates:

Teresa Statler commented that it has been her honor and pleasure to serve on the PLF board for five years.

Ms. Statler reminded the Board that a CEO Evaluation would be held in executive session. Ms. Statler met with Carol Bernick on Tuesday and gave her a copy of the evaluation memo that was sent to the Board.

9. EXECUTIVE SESSION

Teresa Statler 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: October 20, 2017:

Rob Raschio moved and Tom Newhouse seconded that the executive session minutes of October 20, 2017 be approved as written. Motion passed unanimously 7-0 (2 absent).

(B) CEO Evaluation – Open Session Report:

Teresa Statler thanked Carol Bernick for a fabulous job and for her sense of humor.

Per Teresa Statler, the Board agreed to Ms. Bernick's five-week vacation request. The Board also approved a 4% salary increase for Ms. Bernick as of January 1, 2018.

11. New Business

Ms. Mullen asked about a timeline for the Long Range Planning Committee and asked what else is on the horizon for 2018. Ms. Bernick expects a meeting in February and discussions at the April and June meetings.

Carol Bernick said the other issue she will be reviewing with senior staff is succession planning. She does not want a lot of institutional memory leaving at the same time without planning.

Rob Raschio suggests a discussion of diversity when looking at recruitment. Carol Bernick asks board members to be ambassadors in that regard. She encourages board members to keep their eyes open for public board members as well.

Dennis Black suggested that in 2018, we look at the amount of money we spend on outside counsel. He also suggests looking at adding newer lawyers to do the work. Having newer lawyers working on cases would have lower rates, would give them experience, and would save the PLF money.

Molly Jo Mullen agrees with Mr. Black and adds that it should not be just newer lawyers but also asking that the law firms we hire are giving work to other diverse groups. With regard to specialty niches, it is good to have people we can go to who are familiar with specific topics, but we might consider asking them to encourage bringing newer and more diverse people to the

table. Carol Bernick thinks it is a good topic for the Claims Committee in February. Ms. Bernick will discuss with Madeleine Campbell. We are starting to look at assigned defense counsel once a month to ensure we are spreading the work appropriately. Ms. Bernick also suggested a survey of defense panel members for demographic information.

12. ADJOURNMENT

The meetings adjourned at approximately 11:39 a.m.

These minutes were approved by the PLF Board of Directors at its February 23, 2018 board meeting.