

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

**December 9, 2016  
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:04 a.m. at the Professional Liability Fund in Tigard, Oregon by Chair, Bob Newell. Present in addition to Mr. Newell were Directors Julia Manela, Teresa Statler, Tim Martinez, Saville Easley (via telephone), Dennis Black, Molly Jo Mullen (arrived late due to inclement weather), and Tom Newhouse. BOG liaison Tim Williams (via telephone) and OSB CEO Helen Hierschbiel attended open session, as did PLF board members effective January 1, 2017, Holly Mitchell and Megan Livermore. Also present were PLF staff members Carol Bernick, Barbara Fishleder, Bruce Schafer, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Brad Tompkins, John Berge, Pam Stendahl, Sarah Troutt, Sharnel Mesirow, Madeleine Campbell and Shari Gregory.

These meetings were noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq.

Bob Newell asked for introductions and welcomed new PLF board members, Holly Mitchell and Megan Livermore.

**1. OPEN SESSION**

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

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

**(B) Open Session Minutes (10/14/16):**

*Tim Martinez moved and Julia Manela seconded that the minutes be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(C) Committee Minutes: 10/03/16 (Investments/Finance) and 11/21/16 (Investments):**

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

## 2. PLF REPORT

### (A) General Report:

Carol Bernick referred the Board to the materials in Section 11 of the agenda – ABA Profile of Legal Malpractice Claims (2012-2015) and encouraged board members to read them.

#### OFAC Statute

Ms. Bernick reported that, pursuant to the comment from Hannover Re when it conducted its underwriting audit, we are evaluating whether and to what extent we are required to comply with the OFAC (Office of Foreign Assets Control) rules.

#### Excess Renewal

Ms. Bernick reported that we are in the middle of the renewal process. We added a business supplement to better underwrite lawyers considered high risk (business investments). As of November 29, 2016, Emilee Preble reported that we had received 251 excess applications. Of those applications, 18 have been flagged for further review by our securities defense panel member. We anticipate referring about 40 files total. We expect about \$15,000 will be spent on the process and feel it is money well spent. Jeff Crawford added that the business law supplements are aimed at trying to find areas of concern so we can better understand what the risks are and ways to take steps to mitigate it in general. We do not expect to have to do outside counsel review so thoroughly in subsequent years.

Mr. Crawford reported that we have not seen any signs of firms leaving the PLF excess program despite the price increase.

#### Listserv Activity

Ms. Bernick reported that there has been a flurry of activity on various listservs regarding concerns about OSB fees and the PLF assessment. She reported she reached out to three people who posted messages specifically about the PLF. All were appreciative of the call and she will be meeting with two of them later. Ms. Statler asked the general nature of the posts. Ms. Bernick reported that the complaints arose out of the HOD meeting where there was a proposal that certain section fees be shared with the Oregon State Bar. There was no quorum at the HOD meeting; therefore, the issue was tabled but the discussion was quite vigorous. The listserv postings were along the lines of “are the OSB and PLF serving their members?”

### (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) Entertainment Fund - 2017:**

Carol Bernick explained to new board members that the PLF does not pay for alcohol with company funds. In order to have alcohol at board events, board members and senior staff are asked to contribute. It is completely voluntary. Ms. Bernick recommended \$200 to \$250 each.

Tim Martinez asked Helen Hirschbiel if she ever sees the alcohol policy changing. Ms. Hirschbiel stated that she does not. It originated with concerns from the OAAP that the OSB was promoting drinking and creating an environment using member fees to support alcohol use. Many lawyers suffer from alcohol addiction and it is contrary to other work trying to be accomplished. She believes it would be very difficult to change the policy and feels it would be inappropriate.

**(D) Committee Assignments - 2017:**

Carol Bernick and Teresa Statler worked together on the committee assignments (page 22 of the materials). Ms. Bernick asked that board members let her know if they have any questions or comments.

**3. CLAIMS REPORT**

**(A) General Claims Report and 2016 Claims Audit – Executive Summary (Open Session):**

Bruce Schafer gave the claims report.

As of December 7, we had opened 799 new claims and 291 new suspense files. Mr. Schafer explained what suspense files are (for new board members). Extrapolating these numbers through the end of the year brings a projected 855 new claims and 311 new suspense files. The claim number is fairly low, however we budgeted for 834 new claims.

The pending count at the end of September was 781 and 786 the end of November, compared to 764 at the end of 2015. Given the anticipated push to close files at the end of December (end of quarter and year), Mr. Schafer expected there would be similar pending numbers for the end of 2016, consistent with his view that the claims attorneys are doing an excellent job in keeping up with the new claims and keeping their cases moving.

Mr. Schafer informed the Board the PLF hired Amy Hoven as its newest claims attorney to fill the position vacated by Steve Carpenter's passing. Ms. Hoven will begin January 17, 2017. She has been with the Kennedy Watts firm since the mid-2000's and came to Oregon from California. She has worked on complex business cases and family law cases. Ms. Hoven has been a PLF defense panel member and many people at the PLF know her. We are looking forward to her joining our team.

Finally, Mr. Schafer gave a very brief summary of the 2016 claims audit (the PLF has a claims audit every five years). Retired PLF defense panel member John Kilcullen of Eugene and

Warren Savage of Cary, North Carolina (claims attorney with Lawyers Mutual Liability Insurance Company of North Carolina, a NABRICO member) performed the audit. A general report of the audit is included in the board materials. In general, the audit was very positive about how the Claims Department was handling cases for the PLF. The auditors noted some issues the PLF is having with file maintenance that is part of the conversion from paper to electronic files. In addition, they identified some file documentation issues and the need to update our internal procedures to be consistent with current and best practices. In early 2017, Mr. Schafer will be working with a committee of claims attorneys to address the specific recommendations in the report.

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

##### **(A) October 31, 2016 Financial Statements:**

Ms. Morrow referred the Board to the October 31, 2016 financial statements beginning on page 23 of the materials.

Ms. Morrow noted that the OSB CFO provides graphs and some narrative with his board materials and asked if the BOD would like the information she prepares “packaged” differently.

Mr. Newhouse asked if the budget process could happen later in the fall so there will be better results available. Betty Lou Morrow noted that our meetings are scheduled around BOG meetings and other events. The BOG meets in November. Ms. Bernick stated that the problem this year was that the budget and assessment were not discussed at the same time. If we move both of them to the October meeting and the BOG does not approve our recommendations at its November meeting, it would not allow enough time to revise and resubmit before we need to send out the assessment notice.

There was a suggestion of moving our August meeting to September. Ms. Bernick said she would look at the BOG schedule with Helen Hirschbiel.

Ms. Morrow reported that the results of the 2016 budget are reflected in the October statement. The assessments are on budget. We budgeted for 6,928 full-pay attorneys and we have 6,932. We budgeted \$3.3 million in investment returns and we are currently at \$3.4 million. Although we under projected claims, Ms. Morrow reported that she expects a much better year than predicted.

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

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

Barbara Fishleder referred the Board to the materials beginning on page 32 for statistics and articles. She gave a brief report as follows.

Ms. Fishleder reported that Learning the Ropes went well and referred the Board to the materials. She noted that there are some interesting trends with new lawyers. The cost of a

legal education is so high and the prospects of getting a job are iffy, so the good news is that those who are going to law school really want to be there. They are very engaged and they ask many questions.

Barbara Fishleder met with Dawn Evans and some discipline staff. It was a good opportunity to get to know each other and discuss the issues and differences between our missions. Ms. Evans reviewed some of the changes in discipline.

Ms. Fishleder reported that Kyra Hazilla passed her social work exam. She is now a Licensed Clinical Social Worker (LCSW).

Barbara Fishleder reported that PMA Rachel Edwards has a new baby girl. Two other staff members in loss prevention are pregnant, Jennifer Meisberger and Kyra Hazilla. Shari Gregory is taking two months of her three-month sabbatical in June and July. Due to all of these events, the game plan for 2017 is to reduce some of our outreach and focus on contact with people who are reaching out to us. We do not have a road show planned. Bryan Welch (OAAP) is moving from half time to full-time for 2017. We will reevaluate program needs after that. We also plan to dial down some of the OAAP groups a bit in the spring.

Ms. Fishleder will meet with Teresa Statler regarding BOD outreach at the local bar receptions and CLEs for next year.

Ms. Fishleder noted that the OAAP had several facilitated discussions earlier this year that focused on building a stronger team and on making effective use of OAAP team time. She stated that, in conjunction with these discussions, the OAAP is looking at alternatives for keeping the information that is needed for the purpose of allowing the attorney counselors to follow up and that is used to generate statistical reports for the board.

Ms. Fishleder noted that there are a lot of anniversary celebrations and the department has been very successful in diversifying experience levels of staff for succession planning.

Barbara Fishleder introduced Shari Gregory and turned this portion of the meeting over to her. Ms. Gregory reported that in 2017 the OAAP will facilitate a new group for transitioning toward retirement. Other groups and highlights are as follows: Creating Healthy Habits; Mindfulness; Mindfulness Approach to Relapse Prevention; Revamp of Lawyers in Transition, finding meaningful work, 7-week group now plus evening career workshop. This has been very popular with 14 people in each group; Working with Minority Lawyers (OSB has really taken this on regarding diversity and inclusion). Ms. Gregory is involved with the advisory committee on this topic. The OAAP did a pilot minority lawyer support group (8 weeks; co-facilitated with a lawyer from the community, a mediation lawyer and a Buddhist monk). Ms. Gregory reported that there is an increase in fear in the lawyers of color. She is receiving a lot of input from outside the OAAP (community leaders from specialty bars, etc.) to incorporate into next steps.

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

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

Bob Newell stated that the Claims Committee met on October 24 to discuss the high reserve claims. There is nothing additional to report.

**(B) Coverage Committee:**

Saville Easley stated that there is nothing to report, other than the rate changes.

The Coverage Plan was re-vamped this year and all plans will be placed on the PLF website in January. Saville Easley encourages the Board to take a look at them. Ms. Bernick stated that Madeleine Campbell had a thorough meeting with the claims attorneys about the changes.

**(C) Excess Program Committee:**

Carol Bernick noted that Jeff Crawford discussed this under the PLF Report. The rates are going up but we are not seeing a decline in enrollment. We will have a better idea of final numbers after January 10.

**(D) Finance:**

Tom Newhouse stated that there is nothing to report at this time.

**(E) Investments: RVK Presentation (Mark Higgins and Cole Bixenman):**

**(1) Q3 2016 Performance Report and October 2016 Flash Report**

Mark Higgins reviewed the October 31, 2016 report. Mr. Higgins reviewed general market conditions before turning to the PLF portfolio.

Mr. Higgins referred to page 3 of the handout. The total portfolio is inclusive of the short duration and stood at about \$49 million. We have had good returns lately and nothing new to report. Going forward, there is a proposal to invest in bank loans at 5%. VOYA is tentatively the manager.

Page 4 of the materials reflects assets by class. There are minor revisions to the October 31, 2016 asset classes if we move to bank loans. There is some speculation that inflation is returning a bit.

Ms. Higgins noted that we left PIMCO and added two new managers, both have outperformed substantially. The low duration fixed income fund was replaced with Wells Fargo. It has outperformed by about 19 basis points. Logistically, there are some issues but it has outperformed well. Real Estate through September is up about 6% for the year, outperforming their index.

**(2) RVK – CSAM Credit Investments Group – November 2016**

See below.

(3) RVK – VOYA Senior Bank Loan Strategy – November 2016

See below.

(4) RVK – Bank Loans Review – November 2016

Tim Martinez reported that the Investments Committee met last month. At the end of the presentation, he felt there was a better understanding of bank loans and the committee is more comfortable with the concept of bank loans. VOYA and CSAM made excellent presentations, but the committee recommends VOYA. Mr. Martinez noted that the BOG approved the reallocation plan; we now need to decide on VOYA.

Dennis Black questioned whether this investment vehicle is good public policy. He questions if this is a good category ethically to be involved in even though he agrees with Mr. Martinez's proposition from purely an investment point of view. Mr. Higgins noted the PLF should look at its entire portfolio if it wants to adopt a "socially responsible" investment policy and analyze each fund through that lens.

Julia Manela asks going forward, to consider the question of being socially responsible. Oregon State Bar members could have concerns about this. Many board members concurred. Helen Hirschbiel reported the BOG's Budget and Finance committee explored this issue several years ago than abandoned it. When discussing socially responsible investing there needs to be a definition of what that means (i.e., environmentally responsible, how employees are treated, etc.). There are numerous categories that can limit how money is invested. It is a great conversation to have and very worthy but in the end, the committee decided not to address it.

(5) Proposed Revision to PLF Policy 5.200: Approve Reallocation of Investment Portfolio Assets (increase Fixed Income and Eliminate Real Return Strategies) – Action Required.

*Tim Martinez moved and Bob Newell seconded that the Board approve the re-allocation of investment portfolio assets to effect -5% from Real Return Strategies (Diversified Inflation Strategies) and +5% to Senior Secured Bank Loans. Motion passed 6-0 (2 absent; 1 abstained-Black).*

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

Julia Manela stated that there is nothing to report at this time.

**(G) Special Issues:**

Dennis Black stated that there is nothing to report.

**7. LIAISONS' REPORT (BOG): Draft BOG Minutes: November 19, 2016**

Tim Williams gave the BOG report.

Mr. Williams reported that the BOG had a 2-day retreat at Timberline last month. The emphasis was on diversity/inclusion.

Mr. Williams referred the Board to the materials beginning on page 142. Highlights are as follows:

1. The BOG unanimously confirmed Michael Levelle as 2017 president. He noted that Mr. Levelle is one of the most gracious people you will meet. Mr. Levelle will be the first African-American OSB President.
2. Vanessa Nordyke was elected President-elect.
3. 2017 OSB Budget was approved.
4. Bar application members and bar passage rate has decreased in recent years. There is concern of potential shortfall in revenue; may need cuts in the budget or increase member dues.
5. Public Affairs Committee presented a motion to adopt the 2017 legislative guidelines – motion passed.
6. Because measure 97 did not pass, there will be a 10% cut in the judicial budget over the next couple of years.
7. BOG approved all PLF items requiring action.
8. At HOD meeting, the only real point of contention was the discussion regarding section CLE co-sponsorship with the OSB CLE Seminars Department. This would have a financial impact on those committees. There was not a quorum, so no vote. It was a very contentious issue. The discussion was tabled.

Mr. Williams noted that this is his final year as a BOG member and he has enjoyed participating with the PLF Board. Mr. Newell thanked Tim for his service.

Helen Hirschbiel noted that the changes the BOG approved regarding Rule 7.3 (anti-solicitation rule) are not minor. They need to go to the HOD for approval, then to the Supreme Court. They will be putting that proposal out for comment. The proposed changes take out all prohibitions against in-person solicitation.

## 8. CHAIR REPORT

### (A) Updates:

Bob Newell stated that this is his last scheduled meeting and he is sad to be leaving the Board. He feels the PLF is a great organization. He gave personal appreciation to the claims department and asked that this message be passed on to those who were not in attendance.

Mr. Newell commented that he was very ignorant in the work of loss prevention/OAAP. He has learned so much and appreciates their work very much. He spent a few days on the road with Barbara Fishleder and it opened his eyes to the great work done by this department.

PLF staff exited at 11:05 a.m. for the CEO evaluation to be discussed in Executive Session.

## 9. \*EXECUTIVE SESSION

Bob Newell 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 14, 2016:

*Teresa Statler moved and Julia Manela seconded that the executive session minutes of October 14, 2016 be approved as revised. Motion passed unanimously 7-0 (2 absent).*

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

Bob Newell and Teresa Statler met with Carol Bernick on December 2, 2016 to discuss her evaluation.

*Tim Martinez moved and Teresa Statler seconded that Ms. Bernick receive a 3% salary increase, effective January 1, 2017. Motion passed unanimously 8-0 (1 absent).*

## 11. ADJOURNMENT

The meetings adjourned at approximately 11:48 a.m.

**These minutes were approved by the Board of Directors at its February 3, 2017 board meeting.**