

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

**February 3, 2017
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 10:30 a.m. at The Professional Liability Fund in Tigard, Oregon by Chair, Teresa Statler. Present in addition to Ms. Statler were Directors Tim Martinez, Dennis Black, Saville Easley, Rob Raschio (via telephone), Molly Jo Mullen, Tom Newhouse, Holly Mitchell (via telephone) and Megan Livermore. Present during open session was OSB President-elect, Vanessa Nordyke. Also present during all or part of the meeting were PLF staff members Carol Bernick, Barbara Fishleder, Bruce Schafer, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Emilee Preble (via telephone), John Berge, Brad Tompkins, Sarah Troutt, Sharnel Mesirow, Shari Gregory, and Mike Long.

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

Ms. Statler welcomed new board members, Holly Mitchell and Megan Livermore and asked people to introduce themselves.

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 (12/09/16):

Tim Martinez moved and Tom Newhouse seconded that the minutes be approved as written. Motion passed unanimously 9-0 (1 absent).

(C) Committee Minutes:

There were no committee minutes.

2. PLF REPORT

(A) General Report:

Ms. Bernick welcomed Vanessa Nordyke, OSB President-elect. She also announced that Teresa Statler and Cindy Hill both became engaged over the holidays.

Ms. Bernick reported that the Idaho and Nevada Bars are exploring mandatory insurance coverage. In Idaho, a resolution was submitted to members that passed. Right now, the plan is to use the commercial market. Over the years, a number of states have looked at the mandatory concept but none has implemented it. Tim Martinez asked if there is any way the PLF could take on the mandatory coverage in other states and wondered if there is a way to reduce Oregon rates by taking on other states. Betty Lou Morrow and Carol Bernick will consider this further and report back.

There have been numerous calls on various Listservs asking for help with immigration problems. Ms. Bernick thanked Barbara Fishleder and her team for doing a great job of getting information on the front page of the website on how to help without incurring unnecessary risk. Ms. Fishleder thanked Teresa Statler for her assistance.

Ms. Bernick reported on two items she is exploring for possible BOD approval at a future meeting: Accepting credit cards for excess payments and changing the settlement approval levels for individual Board 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) Lodging Poll 2017:

Carol Bernick asked that Board members and staff return their lodging polls to Cindy Hill as soon as possible.

Ms. Bernick also asked everyone to pay attention to deadlines and to respond in a timely manner to polls and other correspondence.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Bruce Schafer gave the claims report.

Mr. Schafer reported that as of December 31, 2016, the PLF opened 839 new claims and 359 suspense files. A certain percentage of suspense files become claims. In 2014, we had 913 new claims. In 2015, we had 808 new claims. As of Wednesday, February 1, 2017, the PLF had

opened 70 new claims and 19 new suspense files, which would extrapolate to 798 new claims and 217 new suspense files in 2017, assuming the pace remained the same. Given how early it is in the year, it is too early to predict the numbers for 2017.

The pending claim count at the end of 2016 was 746; at the end of 2015, it was 764 and the end of 2014, it was 848. The claims attorneys are doing a great job of moving cases.

Bruce Schafer announced that Amy Hoven joined the PLF as its newest claims attorney mid-January. Ms. Hoven did defense panel work through Kennedy Watts prior to coming to the PLF. We are happy to have her on our staff.

(B) 2016 Claims Attorney & Defense Counsel Evaluations:

Mr. Schafer referred the board to the evaluations. We have been sending evaluation forms for about 20 years and 40 to 50% of covered parties respond. The numbers are extraordinarily good and consistent with all years. 0.25% of the respondents regarding the claims attorneys were “not satisfied,” meaning the rest (99.75%) were either “very satisfied” or “satisfied.”

4. Financial Reports

(A) Draft December 31, 2016 Financial Statements:

Betty Lou Morrow referred the Board to the materials on page 20 for the statement of net position. As of December 31, 2016, the net position is \$10.6 million. If we remove the PERS liability, our net position is \$12.5 million.

Ms. Morrow explained that the cash balance is higher than this time last year. It is a timing issue involving payment from reinsurers.

Ms. Morrow provided support for the \$2.6 million year-end surplus.

1. Claims in the second half of the year were significantly lower than the first half;
2. Return on investments increased substantially from the first half of the year; and
3. There was a positive actuarial adjustment of claims liabilities.

Carol Bernick noted that Ms. Morrow’s predicted claim count was off by one claim. That is pretty remarkable. We ended at 839 claims and Ms. Morrow predicted 838.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) 2016 4th Quarter Report and Loss Prevention Update:

Ms. Fishleder referred the Board to the materials beginning on page 29.

Barbara Fishleder reported on some of the highlights. PMA, Sheila Blackford, published a Trust Accounting book through the ABA. Rachel Edwards and Hong Dao each published articles in the December *In Brief* that was picked up by a bar in Australia.

Ms. Fishleder announced that Rachel Edwards recently had a baby girl; Jennifer Meisberger is due in April; and Kyra Hazilla is on parental leave.

Ms. Fishleder announced that the new PLF blog, *InPractice*, has been launched and she encourages board members to subscribe to it.

Barbara Fishleder gave kudos to Julie Weber, our CLE order desk coordinator and video replay facilitator. She identified a problem with downloads that was costing us unnecessarily. We fixed the problem (with some expense) but believe we will save money in the end.

Ms. Fishleder reported that our shred days used to cost the PLF virtually nothing. The cost has skyrocketed. We will have to rethink the shred days. It is a wonderful benefit for the lawyers. Tom Newhouse suggested the idea of charging lawyers for the service. Ms. Fishleder expressed concern that charging might “undo” the good will aspect of the “shred days.”

Ms. Fishleder reported the OAAP has continued to look at more effective ways to keep information at the OAAP, including recently testing out software programs designed for counseling programs. The new OAAP support group for persons of color and/or religious minorities started this quarter. Judge Ortega is co-facilitating the support group with Shari Gregory.

(B) 2016 Year-End Report:

Barbara Fishleder reported (for the benefit of new members) that the OAAP has space downtown in order to keep it separate from the PLF. A separate location instills confidence in our confidentiality and also reduces awkward encounters.

Ms. Fishleder informed the new board members of the Oregon Lawyers Conference Room, located in the same building as the OAAP. She noted that the space is available for use at no charge and that it is especially helpful for lawyers who have “virtual offices” and who mostly work from their home. She explained that many new lawyers use this model of practice as a way to reduce costs.

Vanessa Nordyke noted her concern for the next generation of lawyers is her priority as Bar President in 2018.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Dennis Black reported the Claims Committee had to cancel their meeting scheduled prior to the board meeting today (because of inclement weather). The annual Claims Committee meeting will be rescheduled and a report will be provided following that meeting. Carol Bernick stated that we expect to have the meeting at 8:00 a.m. prior to the April 14, 2017 board meeting. Mr. Black reported we had our quarterly conference call in January to discuss high reserve cases.

(B) Coverage Committee:

Molly Jo Mullen stated that there is nothing to report.

(C) Excess Program Committee: Renewal Update:

Saville Easley turned this portion of the meeting over to Jeff Crawford and Emilee Preble.

Ms. Preble reported that the 2017 renewal went very well overall. We moved up the application deadline to mid-December, as opposed to January 1 (as in the past). We had weather challenges but were able to stay on top of it. As of today, we are covering 664 firms and 2,000 lawyers. We expect this number to increase over the next couple of weeks as the late applications bind coverage. We have received 727 applications to-date this year. At this time last year, we had received 710 applications.

There was a significant premium increase in 2017 for most law firms. The increase was necessary because of the number of large dollar excess claims in past years involving Oregon securities. To address this issue directly, we created a new business law supplement and follow up interview process for some firms with consultant, Dan Keppler, from our defense panel. We believe this will better identify risks and educate lawyers about the risks they are undertaking.

Ms. Preble reported that we added an additional cyber limits option. About 20 firms took advantage of the application process and seven firms purchased the additional coverage. The additional limits bound were between \$250,000 and \$1 million. We expect more firms to seek this coverage in the future.

Jeff Crawford noted that because of the overall price increase this year, we were concerned with losing a considerable number of firms but our renewal rate is similar to prior years.

(D) Finance:

Tom Newhouse reported that the committee met January 24, 2017. He turned this portion of the meeting over to Betty Lou Morrow.

Betty Lou Morrow reviewed the actuarial report beginning on page 72 of the materials.

Motion

Ms. Morrow stated that every six months, we work with the actuaries to determine what our claims are expected to cost. Their analysis results in quantifiable estimates that the Finance Committee is recommending, as follows:

1. Adopt the following liabilities for primary claims as of December 31, 2016:

Indemnity Liabilities	\$13.4 million
Expense Liabilities	<u>\$13.6</u> million
Total Liabilities	<u>\$27.0</u> million

2. Adopt an average claim cost figure of \$22,500 (\$10,500 indemnity and \$12,000 expense) to be used to calculate claim liabilities for new claims for the first six months of 2017.

3. AOE, ERC, and Suspense liabilities are calculated annually by PLF staff using information derived from the claim database software. The same methodology for calculating these liabilities has been applied consistently dating back prior to 1999.

AOE (Adjusting and Other Expense) Liability – increase by \$200,000 to \$2.6 million (9.63% of claims reserve – recommended between 5-10%)
ERC (Extended Reporting Coverage) Liability – remains the same at \$3.1 million
Suspense Liability – remains the same at \$1.6 million

Tim Martinez moved and Tom Newhouse seconded that all of the above recommendations be approved as written. Motion passed unanimously 9-0.

Carol Bernick stated that she and Betty Lou Morrow plan to look at the AOE reserve of \$2.6 million to decide if the number is correct for next year.

(E) Investments:

Tim Martinez stated that there is nothing to report.

(F) Long Range Planning/Communications:

Holly Mitchell stated that there is nothing to report.

(G) Special Issues:

Megan Livermore stated that there is nothing to report.

7. LIAISONS' REPORT (BOG) – Draft BOG Minutes: 01/06/17

Vanessa Nordyke stated that the new president for 2017 is Michael Levelle. She said that he is the first African-American OSB president. His focus will be diversity and inclusion.

The OSB is in the black financially. Looking at the horizon, it is concerned that the average age of bar members is getting higher. We are not adding as many new members as in the past. There is growth but not what it used to be. There is concern that not enough will be entering the profession, which will create a decrease in OSB revenue. The OSB is looking into programs and services that encourage law school attendance.

Teresa Statler asked about bar exam changes. Ms. Nordyke stated that the OSB would be taking on the Uniform Bar Exam (UBE), but there will still be an Oregon essay section. The first UBE exam is in July.

Jeff Crawford asked if there is much concern about the passage rate. Ms. Nordyke stated that there is. The passage rate for July was 58%. The rate has been that low in the past, but not for decades. The BBX is having conversations about this as well. The BBX answers to the Supreme Court and they have their own process. She is not privy to what they are doing. It is not unique to Oregon. It is a complex, national issue.

Molly Jo Mullen asked if we are doing anything as a Bar to address the issue of student loans. Ms. Nordyke described a program (LRAP) available only to people in public service. It is helpful to the few who get it every year. Ms. Mullen stated that it is very different from other professional programs and it does not make much of a dent in their loans.

Megan Livermore asked if there has been any discussions with law schools regarding their rates. Ms. Nordyke was not aware of any such discussions.

Tim Martinez asked if applications for the new Supreme Court justice is closed. Ms. Nordyke stated that it is closed. The BOG Appellate Screening Committee meets when there are vacancies. Recommendations are given to the Governor. The Governor makes the decision. The list of recommendations does become public at some point.

8. CHAIR REPORT

(A) Updates:

Teresa Statler stated that she is honored to be serving in this position and is looking forward to a good year. She thanked board members and staff in advance for their support and help.

Ms. Statler noted for the benefit of new members that staff takes a lot of time scheduling conference calls. A quorum is required for all meetings. She encourages board members to be attentive and please let staff know if you are unable to participate.

Teresa Statler, Barbara Fishleder and Carol Bernick met with Mike Long regarding proposed changes to the OAAP.

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: 12/09/16:

Tim Martinez moved and Saville Easley seconded that the minutes of December 9, 2016 be approved as written. Motion passed unanimously 8-0 (1 absent).

Rob Raschio moved and Tim Martinez seconded a motion to reaffirm the PLF's commitment to ensuring the utmost confidentiality of information about individuals who access the OAAP and belief that the use of a database to track information for OAAP internal purposes only is consistent with that commitment and the other PLF policies pertaining to the OAAP. Motion passed unanimously 8-0 (1 absent).

11. ADJOURNMENT

The meetings adjourned at approximately 2:55 p.m.

These minutes were approved by the PLF Board of Directors at its April 14, 2017 board meeting.