

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

**June 8, 2018
Hood River, 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 Columbia Gorge Hotel in Hood River, Oregon by Chair, Dennis Black. Present in addition to Mr. Black were Directors Tim Martinez, Saville Easley, Rob Raschio, Molly Jo Mullen, Holly Mitchell, Megan Livermore, and Susan Marmaduke (via telephone). 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, and Jeff Crawford 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 (04/20/18):

Rob Raschio moved and Megan Livermore seconded that the open session minutes of April 20, 2018 be approved as written. Motion passed unanimously 7-0 (2 absent).

(C) Committee Minutes: 04/10/18 (Finance Committee); 04/20/18 (Claims Committee); 05/16/18 (Long Range Planning Committee); and 05/29/18 (Coverage Committee):

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

2. PLF REPORT

(A) General Report:

See (C) and (D) below.

(B) Outside Activities on Behalf of the PLF:

See materials for Ms. Bernick's report.

(C) National Insurance Directors Meeting (Montreal, QC – Canada):

Carol Bernick reported on the above conference. Many of the organizations that attend this conference are also members of NABRICO but they have their own meeting as well. Madeleine Campbell and Carol Bernick both attended and both agreed it was excellent. Some of the highlights are:

1. Several provinces use in-house counsel to litigate cases. This leads to a faster turnaround on claims.
2. There are wide differences on how provinces handle theft by lawyers and the innocent partner(s). Ms. Bernick and Helen Hirschbiel discussed how the OSB Client Security Fund and insurance overlap and create gaps.
3. The provinces arbitrate coverage disputes.
4. There was a lot more discussion among provinces about their duty to the public (they are all mandatory programs, like the PLF). Looking at the legislative history for the PLF, the primary rationale was difficulty in getting affordable insurance, but protection of the public was also a concern.
5. Some provinces have mandatory succession planning, requiring a lawyer to identify someone to take responsibility for files. Ms. Bernick has sent emails to some of the organizations that have these programs to obtain more information.
6. Madeleine Campbell noted that there were interesting solutions for handling fee claims (which is always a problem for the PLF). One company has a requirement where the covered party pays part of the defense when part of the claim is about fees. We want to look at their policies and compare them to ours.
7. One province (Ontario) has a sophisticated system for tracking claims expense. We are looking into more information on that.

Dennis Black commented that the topics looked interesting.

(D) Proposed amendment to ORS 9.080(2):

Carol Bernick reported that there were changes in 2015 to the Bar Act that affect the PLF. The materials were sent out separately. ORS 9.080(2)(a) has been in existence with few changes since the PLF began. It authorizes the OSB to create the Fund. It has always said that any such Fund shall be exempt from the Insurance Code. The only substantive change to this statute was

in the late 1980's when the statute was amended to allow the OSB/PLF to offer optional excess coverage.

The OSB proposed a clean-up bill in 2015 to accomplish changes having nothing to do with the PLF. Legislative counsel's office used that opportunity to add sub-paragraphs to ORS 9.080(2)(a) which caused unintended changes to the statute. We have submitted a proposed bill to remove the newly added paragraphs, returning ORS 9.080(2)(a) to its original format.

Tim Martinez asked what the best argument is that the excess program should not be treated as insurance. Ms. Bernick stated that the excess program was added for the same reason the original Fund was created: availability and affordability of excess insurance for small and solo firms. Subjecting the Fund to the Insurance Code would add substantial expense. Moreover, as a government entity, our information is already public.

Megan Livermore asked if we anticipated opposition. Carol Bernick stated that she is not aware of anyone who will oppose it.

Rob Raschio commented that excess coverage is important. We do not make money on it. It has been around since 1991. It is important to provide this coverage (a public benefit).

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Madeleine Campbell reported that as of June 7, the extrapolated claim count is 855 projected for the year (down from about 890 where we were for a couple of months).

We have hired a new claims attorney, Heather Bowman. Ms. Bowman came from Bodyfelt Mount and is a great addition to the PLF. Ms. Bowman is very curious, interested, intelligent, funny and a very nice person. We could not have done better.

4. FINANCIAL REPORTS

(A) April 30, 2018 Financial Statements:

Ms. Morrow referred the Board to the materials beginning on page 30. She noted a dip in the annualized claim count. Domestic equities have devalued by approximately \$300,000 YTD. Operational expenses are on budget.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) Loss Prevention Update:

Barbara Fishleder referred the Board to the materials beginning on page 39.

Ms. Fishleder reported that the search for a new practice management advisor is going well and interviewing will begin the week of June 18. Ms. Fishleder is optimistic we will find a good PMA.

She noted that this fall, the PLF is offering a software demonstration day at the OSB Center. The program will offer some CLE, but the primary focus will be on giving lawyers an opportunity to test-drive software for law offices. It is a new approach to helping lawyers with office systems.

The next issue of *InSight*, includes several articles written by OAAP attorney counselors. One is an overview of the Women's Retreat, written by Karen Neri. The other articles and sidebar provide law students information about conditional admission. The articles, written by Doug Querin and Bryan Welch, include OSB Admissions Manager Troy Wood's answers to questions law students often ask.

We have received positive feedback about the short "how to" videos created by the PMAs. The videos are on our CLE page and our *inPractice* blog page.

Ms. Fishleder reported that she is attending an MCLE committee meeting later this morning. The committee will take up continued discussions about requiring education on mental health and substance use. Consideration of a stand-alone requirement of this nature is one of the recommendations posed by the ABA National Task Force on Lawyer Well-Being. The concept behind making the requirement mandatory is to reduce the stigma of learning more about the topics and asking for help. Deputy General Counsel Mark Johnson Roberts recently discussed the report and some of its recommendations in his May 2018, Bar Counsel article. (See materials.)

Rob Raschio asked for more information about how to find the legal trends reports that were included in the materials. Ms. Fishleder stated that both reports were published by software vendors and can be viewed on the internet; however, early notice of the reports comes by subscribing to the vendors' site. Mr. Raschio noted that the information was very interesting and suggested that we publish portions in *In Brief*.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Dennis Black said there is nothing to report at this time.

(B) Coverage Committee: Proposed Amendments to Plan for 2019:

Holly Mitchell referred the Board to the handout pertaining to the above and asked if there were any questions regarding the proposed amendments to the 2019 Coverage Plan.

Saville Easley moved and Tim Martinez seconded that the proposed amendments be approved as written. Motion passed unanimously 8-0 (1 absent).

(C) Excess Program Committee: Oregon Securities Underwriting:

Saville Easley stated that the committee has not met. She turned this portion of the meeting over to Jeff Crawford.

Mr. Crawford reported that Emilee Preble prepared a memo regarding securities underwriting and he referred the Board to the materials.

While Oregon securities claims are infrequent, they are typically very large and very expensive to defend. We have paid \$8.5 million on claims connected to this risk. The PLF does not pay it, the reinsurers do. Thus, we needed to do better in identifying the risk. We created a detailed business law supplement. We hired a consultant (Dan Keppler) who does a lot of PLF defense work. Mr. Keppler interviewed some of the firms to find out what they are doing – looking for common threads in terms of how the firms are set up and the risks to help us make decisions about whether we should continue to cover these firms at the excess level. This has been a two-year process. We found that there are very specific indicators that show which firms are exposed to these higher risks (both based on questions we have asked and Mr. Keppler's inquiries, but also looking at excess claims themselves). Mr. Crawford referred the Board to the memo for some of the specific questions being asked (page 146 of the materials).

We also presented a CLE late last year, specifically about securities risks. Mr. Keppler participated in that as well. We are looking for more opportunities to educate firms.

Megan Livermore asked if there is a list of tips for these firms on how to manage the risk. Ms. Fishleder noted that the CLE materials has a list of questions and red flags.

Ms. Bernick stated the most important advice for firms is to scrutinize the client (developer) and the developer's investors and potential investors (who are they, what is their level of sophistication, how do you know them, etc.).

Mr. Crawford noted an emerging area of potential risk is helping clients with crowd funding (online funding sources). We are seeing this in the cannabis industry. Jeff Crawford noted that so far, claims against cannabis law firms have nothing to do with cannabis but are typical of any industry.

Carol Bernick reported that Hanover did an underwriting audit in early June 2018. It gave us a very good report. It is important to remember that Emilee Preble and Jeff Crawford have only done underwriting for three years and are largely self-taught. The reinsurers are very impressed with the great job done by both Emilee and Jeff. Hanover made one suggestion on using more information from the Primary Plan. The cannabis industry is a concern with the reinsurers as well because of federal law issues. Jeff Crawford noted that the underwriter felt our approach to it is similar to theirs.

Mr. Crawford reported that the outside underwriting audit also allows us the opportunity to find out how we compare to others. What are the norms in underwriting? How can we use our data better? The auditor felt we had improved since the last audit.

(D) Finance:

Dennis Black reported in Tom Newhouse's absence. Mr. Black stated that because of considering lowering the assessment, the finances are being looked at more closely. Mr. Black noted that the PLF has a strong net position and with the exception of investments, in year results are good.

(E) Investments:

Tim Martinez reported that there are several sets of materials in this section.

- i. 2018-March 31 – RVK Quarterly Performance Report

Mr. Martinez noted that we benefit from having a very wide-ranging portfolio.

- ii. 2018-April 30 – RVK Monthly Performance Report

This report was not discussed.

- iii. 2018-May – RVK Guggenheim Contingency Recommendation

Tim Martinez reported that there has been internal turmoil at Guggenheim. RVK recommends doing nothing right now. Betty Lou Morrow and Carol Bernick agree with that recommendation. Ms. Morrow feels confident we can liquidate Guggenheim assets quickly if we need to.

- iv. 2018-May – RVK Asset Allocation Review

RVK did an allocation review, given we have exceeded our net position goal and in light of a possible reduction in the assessment. RVK does not recommend any change to the current allocation. Mr. Martinez referred the Board to the materials that shows our current allocation will still preserve our net position even with a lowered assessment for the foreseeable future, given the forecasted economic conditions. Ms. Bernick and Ms. Morrow concur with that recommendation.

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

Molly Jo Mullen reported that the committee met on May 17. She referred the Board to the materials beginning on page 236. Ms. Mullen noted that she appreciates the work Carol Bernick and Betty Lou Morrow did on this subject.

The committee will recommend that the Board reduce the assessment from \$3,500 to \$3,300 per covered party. Carol Bernick noted that we are not asking for a motion today. We are waiting for the actuarial report through the end of June (we expect to receive this report in

early August). We want to be sure nothing has changed drastically, then would like to vote on the assessment at the August meeting.

Ms. Bernick referred the Board to the spreadsheet on page 265. She explained each of the assumptions we made (number of covered parties, claim count, cost of claims, etc.). Reducing the assessment to \$3,300 preserves the net position at least for the next three to four years using these assumptions.

Ms. Bernick asked that the reduction in the assessment not be discussed until we vote in August.

(G) 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 a few issues:

1. White Nationalism and Normalization of Violence membership fee issue. The BOG voted to refund a portion of bar dues attributable to the publication of the April issue of *OSB Bulletin*. The amount is \$1.12 plus statutory interest. Written requests must be submitted in order to receive reimbursement.

Megan Livermore asked for more information. Helen Hirschbiel explained that the BOG approved a statement that was really a statement of the values of the OSB. People did not have a concern about the statement itself. The specialty bars issued their own statement in support of the Bar statement and both were published side by side in the April issue of the *Bar Bulletin*. The specialty bar statement was more political than the Bar statement and included a derogatory remark about President Trump. Some people mistakenly believed that statement was part of the OSB's statement. It was not, but the OSB understood the confusion. The BOG agreed to refund the portion of the expenses in publishing it in the *Bulletin*. The OSB has received 22 requests so far.

Jeff Crawford asked how the refund approach has been received by those who complained. Ms. Hirschbiel stated the response was mixed.

2. The BOG agreed to co-sponsor an ABA Resolution urging Oregon and Louisiana to eliminate non-unanimous guilty verdicts in felony cases.

3. A general review of the New Lawyers Division program is ongoing. The BOG is taking an aggressive look at budgetary expenses.

4. The Lawyer Referral Service is doing particularly well this year.

8. CHAIR REPORT

(A) Updates:

Dennis Black reported that when he became the chair earlier this year, Carol Bernick contacted him, asking what he wanted to do this year. His biggest issue was reducing the assessment. Mr. Black encourages any board members who have a burning desire to bring an issue before the BOD, to contact him or Carol. It may not be resolved this year (if a complicated issue), but we can get it started.

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: April 20, 2018:

Molly Jo Mullen moved and Holly Mitchell seconded that the executive session minutes of April 20, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).

11. INFORMATION ITEMS

(A) Miscellaneous Articles/Other: June 2018 ABA Journal – Digital Dangers: Are you covered? Cyber insurance market is highly unstable and lacks uniformity.

Carol Bernick referred the Board to the ABA article quoting Emilee Preble, beginning on page 277 of the materials.

12. ADJOURNMENT

The meetings adjourned at approximately 10:44 a.m.

These minutes were approved by the Board of Directors at its August 24, 2018 board meeting.