



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

**October 15, 2021
Sisters, Oregon**

Chair Gina Johnnie called the regular meeting of the Board of Directors to order at approximately 9:00 a.m. Present in addition to Ms. Johnnie were Directors Holly Mitchell (arrived after approval of the open and executive session minutes), Julia Manela, Harshi Waters, Michael Batlan, Steve Hill (via Zoom), and Chris Karlin. BOG liaison David Wade and OSB CEO Helen Hierschbiel attended open session. In addition, PLF staff members Megan Livermore, Betty Lou Morrow, Madeleine Campbell, Matt Borrillo, Cindy Hill, Hong Dao, Emilee Preble (via Zoom), Maureen DeFrank (via Zoom), and Kyra Hazilla (via Zoom) attended all or part of the meeting.

This meeting was noticed and conducted in compliance with the Oregon Public Meetings Law, ORS 192.610, et seq. and a quorum was verified.

1. CHAIR REPORT (Ms. Johnnie)

Ms. Johnnie apologized for canceling the Ashland board meeting. Because of COVID and the smoke in the area, it was the right thing to do.

Approval of Open Session Minutes.

Ms. Johnnie asked for a motion to approve the open session and executive session minutes below.

(A)i. Draft Open Session Minutes (08/20/21) Board of Directors Meeting:

Approval of Executive Session Minutes in Open Session.

(A)ii. Executive Session Minutes (08/20/21) Board of Directors Meeting:

(A)iii. Executive Session Minutes (09/08/21) Board of Directors Meeting:

Mr. Karlin moved and Mr. Batlan seconded that the August 20, 2021 minutes (Open and Executive Session) and the September 8, 2021 Executive Session minutes be approved. The motion passed 6-0 (3 absent).

(B) Committee Minutes (Open Session):

Ms. Johnnie referred the Board to the minutes below.

- i. September 15, 2021 Joint BOG/BOD Special Issues Committee re BarBooks

There was no discussion and no action was required.

(C) CEO Evaluation:

Ms. Johnnie reported that the Board would proceed with the CEO evaluation, despite Ms. Livermore only being at the PLF for a few months. Evaluations will be sent to the Board of Governors, Board of Directors, and PLF Staff next week.

2. CEO REPORT (Ms. Livermore)

(A) General Report:

Organizational Changes. Ms. Livermore reported on organizational changes. The Risk Management department (in name only) was eliminated. Instead, the PMAP and OAAP are now standing on their own, with their own directors. Ms. Dao is now the director of the PMAP and Ms. Hazilla is the co-director of the OAAP (along with co-director Doug Querin). Mr. Crawford, former director of the Risk Management department, has retired but is staying on part-time as HR manager to help with the transition and work on some HR issues.

Paraprofessional Licensing Implementation Committee (“PLIC”). Ms. Livermore reported that the PLIC has asked the PLF to propose how we might cover licensed paraprofessionals if the program goes forward. They are looking at a mandatory captive fund like that for licensed attorneys, but the Supreme Court ultimately decides. Mr. Karlin asked if it has to be a separate Fund. Ms. Livermore said that she does not know at this time. If it were a separate fund, their assessment would be lower because their risk is lower. They are looking at all options. Mr. Karlin questioned the administrative costs and tracking information.

Ms. Manela asked if the PLF has looked at the practice areas that will be licensed and what the potential exposure would be. She understands that keeping the assessment at a minimum is important but, on the claims side, wonders if it looks any different regarding exposure than for an attorney. Ms. Livermore said we would reach out to other jurisdictions with similar programs to see what they have done. Ms. Hirschbiel said they

are hopeful that a final report will be presented to the BOG at its November meeting. They will then begin drafting rules, etc. The goal is to present it to the Supreme Court at its February/March meeting next year.

(B) 2022 Election of Officers:

Ms. Livermore recommended next year's officers as Gina Johnnie (Chair), Oren Haker (Vice-Chair), and Chris Karlin (Secretary-Treasurer).

Ms. Mitchell moved and Ms. Waters seconded that the Board approve the recommended officers listed above. Motion passed 7-0 (2 absent).

(C) 2022 Committee Preferences:

Ms. Livermore referred the Board to the memo in the materials and asked that board members complete the preference form and return to Ms. Hill.

3. General Counsel Report (Ms. Campbell)

(A) PLF Coverage for Lawyers Admitted to Temporary Practice in Oregon:

At the Bar's request, Ms. Campbell asked the Board to approve the concept of allowing the PLF to sell coverage to lawyers temporarily admitted to practice, in the event the Supreme Court approves a rule requiring such coverage. Under this rule, lawyers would be temporarily admitted to practice pending their application for bar membership. The PLF would need to make some changes to the PLF Bylaws and Policy Manual to do so.

Ms. Johnnie moved and Mr. Karlin seconded that the Board approve the concept of allowing the PLF to sell coverage to lawyers temporarily admitted to practice in the event the Supreme Court approves a rule requiring such coverage. Motion passed 7-0 (2 absent).

(B) Approve Changes to Claims Expense Allowance in the Primary and Pro Bono Plans and changes to Exclusion 6 in the Primary Plan:

Ms. Campbell referred the Board to the materials and requested that the Board approve the proposed changes to the PLF Primary Plan and Pro Bono Plan, raising the claims expense allowance from \$50,000 to \$75,000. Ms. Johnnie asked if the PLF had done a study to find out how many cases would have exceeded the \$50,000 expense allowance. Ms. Morrow said she did a study and the \$350,000 would be enough for the majority of claims. When we get a \$300,000 demand, we want to investigate those cases. Defense costs are reasonable, but they have increased. Ms. Morrow said the PLF gets an average of six limits claims per year and it is climbing, but the exposure is minimal relevant to the benefit.

Mr. Karlin moved and Ms. Manela seconded that the Board approve the proposed changes to the PLF Primary Plan and Pro Bono Plan increasing claims expense allowance from \$50,000 to \$75,000. Motion passed 7-0 (2 absent).

Ms. Campbell discussed an error made in 2019 to the language of Exclusion 6 (Business Interests) in the Primary Plan and requested the Board's approval to correct the error. See materials for specific information. Assuming the PLF BOD approves the correction to the error, the same information would be presented to the BOG for their approval. If approved, the correction would be included in the 2022 PLF Primary Coverage Plan.

Ms. Johnnie moved and Ms. Mitchell seconded that the Board approve the corrections to the language of Exclusion 6 of the Primary Coverage Plan. Motion passed 7-0 (2 absent).

(C) Adopt the three PLF Coverage Plans for 2022 (Primary, Pro Bono, and Excess):

Ms. Johnnie moved and Mr. Karlin seconded that the Board approve the 2022 Primary, Pro Bono and Excess Plans. Motion passed 7-0 (2 absent).

4. CLAIMS REPORT (Mr. Borrillo):

(A) General Claims Report:

Mr. Borrillo reported that everything is going smoothly in the claims department. Evaluations continue to be positive. It appears we have an increase in vexatious litigants and a few more office closures that appear to be related to the pandemic. We are hovering around 700 claims for the year, which is still 150 to 200 less than traditional.

Mr. Borrillo reported there is an opening for another claims assistant who will help with sabbaticals and other departments.

Mr. Borrillo reported that the claims department is preparing for our every-five-year claims audit that will take place in a couple of weeks.

5. FINANCIAL REPORTS (Ms. Morrow)

(A) 2021-August 31 Financial Statements:

Ms. Morrow referred the Board to the balance sheet on page 99 of the materials. There is more cash this year than the same time last year because she moved money to the operating account to ensure funds availability while she was on vacation.

Assessments are behind budget by \$480,000. There is a slight uptick in covered parties but we remain concerned about the numbers. At August 31, 2021, ROI is at about 9% and at the end of September, barring the

real estate portfolio; we are down to 6.3%. While the market continues to be jittery and the cost of living continues to increase, we remain ahead of budget. Ms. Morrow did a rebalancing of the portfolio and moved \$250,000 into the real estate portfolio.

The annualized claim count as of October 14 is 684. We budgeted 846 for 2021.

Ms. Morrow budgeted \$21,000 for cost of claims. The actuaries set the cost of claims at \$23,000. Actuaries estimated higher severity. The claims expense portion of the budget reflects a large credit of \$340,000 that relates to settlements that have a receivable attached to them.

The Excess Program continues to do well. Ms. Morrow said that even if we did not have \$235,000 in investment revenue, we would still have a surplus in that program.

(B) 2022 Budget Revisions:

Ms. Morrow discussed amendments to the budget that include priorities we want to make clear to the Board. See report on page 108 of the materials. Ms. Morrow discussed the \$33,612 salary amendments, as well as a team-building event that will take place post-defense panel conference in the amount of \$6,300; and the \$239,106 added expense for the communications department (for ad displays, video production, publication expenses, brochures, etc.).

Ms. Morrow said there had been some confusion or misunderstanding regarding the \$300 discount on the annual assessment for those who are already receiving a discount and for mid-year admittees. Ms. Morrow wants to make it clear that for those who have prorated assessments, they will receive a prorated credit. For full-pay attorneys, they will receive a \$300 discount.

Mr. Batlan moved and Mr. Karlin seconded that the Board approve the amendments to the 2022 budget. Motion passed 7-0 (2 absent).

6. PRACTICE MANAGEMENT ASSISTANCE PROGRAM (PMAP) (Ms. Dao)

(A) Practice Management Assistance Program Update:

Ms. Dao reported that they have seen an increase in web contact as opposed to calling. They are busy and happy there is the option of calling or contacting via the website.

Ms. Dao gave a staffing update. She is pleased to be the director of the PMAP and has great plans. A new PMA was hired (Monica Logan) who started on October 1. Ms. Logan practiced in San Jose for about five years. She attended college in Oregon and has the soft and hard skills needed for this position. Ms. Logan plans to attend the December board meeting. They are hiring another PMA at the end of the year and will begin that process following Learning the Ropes.

Learning the Ropes (Ropes) will be held November 17 through 19 at the DoubleTree in Portland. Registration is open to all Oregon lawyers. A hybrid program is planned (partial in-person attendance, as well as remote attendance), depending on registrations for in-person attendance.

The PMAs continue with presentations at various associations and plan to provide outreach throughout Oregon. Law schools continue to ask for presentations. They are scheduled to do a road show in 2022. If the pandemic does not allow them to travel, they may have to present via Zoom, but at least it provides an opportunity to make people aware of the services we provide. The presentations are tied to CLEs.

7. OREGON ATTORNEY ASSISTANCE PROGRAM (OAAP) (Ms. Hazilla):

(A) OAAP Report

Ms. Hazilla reported that the OAAP attorney counselors continue to do outreach and work with the legal community. Much of this work is done via Zoom. Their presentation schedule is booked. They try to limit it to eight (two per person) presentations per month and generally get multiple calls afterward, reaching out for individual contact. It is a good way to reach people. The OAAP has been invited to collaborate on a lawyer wellness-related resolution to the HOD that will be coming up at the BOG meeting in November.

8. EXCESS PROGRAM (Ms. Preble)

(A) Excess Program 2022 Renewal Update:

Ms. Preble reported that the excess renewal is getting underway. There will be more to report in December and into 2022. Applications will be going out next week (700 firms; 1900 lawyers). Reinsurance renewals on treaties with reinsurers went really well and most firms will see a 5% increase in cost of excess coverage. In the last couple of years, many firms saw double-digit increases.

Mr. Wade asked about reinsurers and underwriting. The PLF generally uses the same reinsurers that commercial carriers use. Ms. Morrow and Ms. Preble provided information on underwriting and our rate sheet.

Mr. Wade asked how our excess rates compare to the commercial market. Ms. Preble said in some ways, it is hard to say because she does not always see quotes from other firms. Mid-size firms (10+) generally see better rates at the commercial market. The PLF focuses on smaller firms and solos because the commercial market does not write them. She feels we are competitive for those firms. Ms. Morrow said that 85% of our excess book is solo and small firm lawyers. The reinsurers do not look at broadening the risk but rather the book we have is a secure book. They renew books with the lowest exposure possible.

9. COMMITTEE REPORTS

(A) Nominations Committee (Ms. Livermore/Ms. Johnnie/Ms. Waters):

- i. BOD candidates for terms beginning January 1, 2022.

Ms. Livermore presented two names.

1. Michelle Johansson [Portland].

Ms. Johansson is a litigation attorney specializing in estates and trusts. She also represents fiduciaries in litigation. Ms. Johansson has the knowledge we are looking for since Ms. Mitchell will be leaving the Board. Claims staff recommended her. Her resume and bio are available in the email.

2. Alexandra Hilsher [Eugene].

Ms. Hilsher handles complex business litigation and real estate litigation. She also does appellate work. Ms. Hilsher is a partner at Hershner Hunter and has been practicing law for ten years. Ms. Hilsher is well respected and would bring a good perspective to the Board.

Ms. Mitchell moved and Ms. Johnnie seconded that the board approve the two candidates listed above. Motion passed 7-0 (2 absent).

10. LIAISONS' REPORT (BOG) (Mr. Wade/Ms. Hirschbiel):

Mr. Wade reported that access to justice is consuming a lot of BOG time.

Portal Project – There is a portal project that is a collaboration between the Oregon Judicial Department, the Oregon State Bar, and legal aid organizations. The idea is to combine resources into a high-powered portal that can guide people through many areas of law all in one place. Each of the aforementioned groups specializes in different areas of law, so combining them would be a great resource for pro se people. The above organizations are close to finalizing the project, but they need money. It was presented to the legislature, but they have not received a response yet. Grants are also a possibility. They are aggressively going after funding and are optimistic.

Paraprofessional Licensing – They are waiting for a final report from the task force (hopefully at the BOG meeting in November) and will begin drafting rules thereafter. It would then go before the Supreme Court early next year. There is push back from some lawyers. That pushback has actually been somewhat helpful in fine-tuning the program.

Alternatives to the Bar Exam – The Supreme Court appointed a committee of Board of Bar Examiners (BBX), recommending unanimously that law schools change their curriculum to third year being strictly clinical. They

have received backing from two out of three law schools. Another option is to allow people who go through law school but do not want to take the bar exam to apprentice with a lawyer for about 1,500 hours. In either instance, the BBX decides whether individuals who use one of these paths to licensure are sufficiently competent to be licensed without having to take the bar exam. The options were sent to the Supreme Court. The Supreme Court returned questions that are being answered now. It goes back to the Supreme Court in December.

Diversity Action Plan – The BOG adopted the Plan. This is a tremendous achievement by OSB staff and stakeholders who have provided input. At the HOD meeting, they will ask to make the DEI program permanent, as opposed to renewing every 15 years. There would be a fixed 9.5% of license fees and it would become part of the general operating expenses.

Mr. Wade reported the Chief Justice of the Oregon Supreme Court wants a Plan B in the unlikely event the current Bar litigation results in a requirement to de-unify the Bar. Mr. Wade is appointing a committee for this topic and PLF board member Oren Haker has agreed to participate on that committee. Ms. Livermore said she and Ms. Campbell would also be involved with the committee. The Chief Justice will also be on the committee.

The BOG Nominations committee nominated Lee Ann Donaldson as president-elect for 2022.

Mr. Wade reported that the Appellate Screening Committee interviewed 28 candidates for three positions in two weeks.

Ms. Hirschbiel made some staffing announcements:

General Counsel - Ankur Doshi is the new General Counsel. Mr. Doshi came from TriMet serving as employment/labor counsel. Prior to that, Mr. Doshi worked at Pamplin Media Group. He has also served on the Legal Ethics Committee.

Chief Access to Justice – Keren Farkas is Chief Access to Justice Director.

Oregon Law Foundation - Bill Penn is the Executive Director of the Oregon Law Foundation.

Ms. Hirschbiel reported an increase to the maximum to be paid on any one claim from \$50,000 to \$100,000 from the Client Security Fund (CSF). Despite this increase, the CSF assessment was reduced this year because there are some large cases ending.

Legal Aid received millions of dollars in funding to assist with the landlord-tenant issues regarding evictions. They have created 24 positions statewide to handle the eviction cases. Legal Aid will handle the training.

11. UNFINISHED AND NEW BUSINESS:

There was no unfinished or new business to discuss.

12. EXECUTIVE SESSION

See separate executive session agenda. Executive Session materials require a password.

Ms. Johnnie called the meeting into executive session at approximately 11:45 a.m., pursuant to ORS 192.660(2)(f) and (h) to discuss claim matters and other executive session issues. See separate executive session minutes.

13. ADJOURNMENT

The meeting adjourned at approximately 11:31 a.m.

These minutes were approved by the PLF Board of Directors at its December 10, 2021 board meeting.