



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

August 18, 2022

Hood River, Oregon and via Zoom telephone

Chair Gina Johnnie called the regular meeting of the Board of Directors to order at 9:11 a.m. Present in addition to Ms. Johnnie were board members Harshi Waters, Valerie Saiki, Oren Haker, Steve Hill, Chris Karlin, Michelle Johansson, and Ali Hilsher. Board member Akeem Williams did not attend the meeting. BOG liaison Katherine Denning and OSB CEO Helen Hierschbiel attended open session, as did OSB President Kamron Graham via telephone. In addition, PLF staff members Megan Livermore, Betty Lou Morrow, Madeleine Campbell, Matt Borrillo, Cindy Hill, Hong Dao, Bryan Welch, Emilee Preble, Tanya Hanson, Marci Sasik, and Sharnel Mesirow 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)

(A) Approval of Open Session Minutes.

- i. 2022-06-24 Draft Open Session Minutes (BOD)

Approval of Executive Session Minutes in Open Session.

- ii. 2022-06-24 Draft Executive Session Minutes (BOD/Claims)
- iii. 2022-06-24 Draft Special Executive Session Minutes (BOD)
- iv. 2022-07-28 Draft Executive Session Minutes (Standing BOD Meeting)

There was a motion and second that the above open session minutes of June 24, 2022, and executive session minutes of June 24, 2022, and July 28, 2022, be approved as written. Motion passed 6-0 (1 absent; 1 absent from vote; 1 abstention).

(B) Committee Minutes (Open Session):

- i. 2022-06-13 Final Finance/Investments Committee Minutes

There was no discussion and no action required.

(C) Board News:

Ms. Johnnie announced birthdays for Michelle Johansson, Harshi Waters, and Akeem Williams.

2. Claims Report – Open Session (Mr. Borrillo)

(A) General Claims Report:

Mr. Borrillo reported.

The claim count is on track for 650 files for the year. This number is still low (we typically open 850 to 900 claims annually). The numbers are steadily creeping up. We anticipate a busier fall, but that remains to be seen.

We continue to receive positive evaluations.

3. General Counsel Report (Ms. Campbell)

(A) Approval of 2023 Coverage Plans (Primary, Excess, and Pro Bono):

Ms. Campbell announced that she is retiring at the end of October.

Ms. Campbell presented the 2023 Primary, Excess, and Pro Bono Coverage Plans to the Board for approval. Revisions for the Primary Plan were previously approved by the Board at its June 24, 2022, board meeting in Bend.

Mr. Karlin moved, and Ms. Saiki seconded that the three 2023 coverage plans be approved as written. Motion passed 7-0 (1 absent; 1 absent from vote).

4. Financial Reports (Ms. Morrow)

(A) 2022-June 30 Financial Statements:

Ms. Morrow reported that PERS numbers are not official yet. The audited financial statements will be presented at the October board meeting. There will be an adjusted PERS entry. Ms. Morrow noted \$180,000 to \$200,000 will be showing up as an adjustment and will be communicated on statements from what was originally presented to the auditors (no longer collectable).

Statement of Revenue and Expenses. Return on Investments (ROI) indicate a 14% loss in the portfolio. We budgeted 4.5% so there is a variance of \$11 million between actual and budget. Assessments are down vs.

budget by about 14 full-pay attorneys. We are at about 654 claims annualized. We budgeted 720; therefore, there is a variance in the cost of claims.

Operations. Administration is always the largest portion of operating costs. The PERS entry is budgeted to administration (\$700,000 budget). Next year, the PMAP and OAAP teams will be bifurcated with their own separate line items. There is an approximate \$11 million deficit in net position, but the net position remains solid.

Excess Program. The excess program has suffered due to losses in our investment portfolio. We are now in a deficit program.

Mr. Karlin asked what happened to the depreciation lines (variance of over \$18,000). Ms. Morrow said that we purchased a lot of equipment and depreciation is always hit and miss.

(B) Approval of PLF lump-sum payment to PERS:

Ms. Morrow reminded the Board there was previously a discussion regarding the lump-sum payment to PERS and is now seeking formal approval for the \$500,000 payment to pay down unfunded actuarial liability. There is a 25% match from the State for these payments. The Payment is not due until March of 2023, but Ms. Morrow would prefer to make the payment this year.

Mr. Karlin moved, and Ms. Johansson seconded that the Board approve the \$500,000 lump-sum payment to PERS.

There was a question of how much liability is paid down with the \$500,000. Ms. Morrow thinks it is \$500,000. There is a 3% cap, and we are well within that.

Motion passed 7-0 (1 absent; 1 absent from vote).

5. Practice Management Assistance Program (PMAP) (Ms. Dao)

(A) Practice Management Assistance Program Update:

Ms. Dao reported that the statistics on number of people who accessed the program and presentations can be found in the materials. Three CLEs were presented on Avoiding Malpractice in Family Law, PDFing for Success, and Staffing for Solos and Small Firms. There was a total of approximately 800 attendees. See materials for additional information.

Shredding Events. The PLF held five free shredding events this year. The last one was last Saturday. Over 700 boxes of materials were shredded. Ms. Shields is looking for new locations for fall shredding.

The department is working with Ms. Morrow and IT to develop a customized CRM software program. The program will allow them to better collect data on lawyers accessing the PMAP.

6. Oregon Attorney Assistance Program (OAAP) (Mr. Welch)

(A) OAAP Report

Mr. Welch said that Ms. Hazilla sends her regards. Looking at the materials, the highlights are:

1. In the first six months of 2022, the OAAP served the legal community with 1,140 individual contacts with lawyers, judges, and law students. That number continues to be high. There are concerns of burnout, people feeling overwhelmed and becoming disengaged from their work. Many people are feeling anxiety about returning to the office.
2. 20 CLEs have been presented so far this year. The schedule is booked through the end of December.
3. The OAAP has hired a new attorney counselor.
4. The OAAP lease is expiring soon and negotiations with the current building owners and another potential space are ongoing.

7. Excess Program (Ms. Preble)

(A) Excess Program 2022 (for 2023) Renewal Update:

Ms. Preble reported that the renewal for 2022 is closed at this point. We are looking forward to the 2023 renewal.

The PLF hired Melanie Hughes as the Excess Program Underwriter. She joined the PLF in early July. Melanie has claims background in insurance.

Negotiations with reinsurers are underway. Contracts will be signed with reinsurers soon with an October 1 renewal date. We are anticipating a 5% to 10% increase. Inflation in reinsurance markets is causing losses in revenue and there is pressure for increased rates. Last year, the increase was 5%. We hope to keep it steady.

8. Communications Program (Ms. Hanson)

Ms. Hanson reported regarding the ongoing work with the Oregon State Bar for production of the Statutory Time Limitations Handbook project (aka Red Book). The OSB came in under budget. There are additional costs for the publication in addition to the OSB fees.

(A) 2021 Annual Report:

The annual report was recently posted online. A copy is included in the board materials for board members' review.

9. Committee Reports (Board Members)

(A) Finance/Investments Committee (Ms. Morrow/Mr. Karlin)

Mr. Karlin reported that the committee met last week to discuss the budget for next year. They discussed the detailed assumptions that Ms. Morrow and colleagues put together for the budget. Mr. Karlin referred the board to the actuarial recommendations on page 139 of the materials. Their recommendations are as follows:

- i. 2022-June 30 Finance/Investments Committee Actuarial Memo.
 - (a) Adopt **liabilities for claims** as of June 30, 2022, in the amount of **\$22.5 million** (indemnity liabilities \$12.9 million; Expense liabilities \$9.6 million). This amount is based on 50% confidence;
 - (b) Approve the **cost of new claims**. Amount remains at **\$22,500** (\$11,500 indemnity; \$11,000 expense) for the final six months of 2021; and
 - (c) Approve the 2023 Primary Program Assessment of \$3,300 (unchanged from 2022).

See above.

- ii. 2022 – June 30 Rudd and Wisdom Actuarial Analysis.

- iii. 2023 Budget Memo to Board of Directors.

- (a) Approve the **2023 annual budget as presented**;
- (b) Approve a **6.5% COLA increase** for 2023;
- (c) Approve an **8.0% increase** in healthcare premiums for 2023;
- (d) **PERS employer contributions will increase by 0.44% and 3.88% for Tiers 1 and 2; and OPRSP respectively**;
- (e) Approve **cost of new claims** for 2023 of **\$22,500**;
- (f) Approve the **2023 assessment of \$3,300**;
- (g) Approve the use of **6,425 full-pay covered parties** in calculating assessment revenue for 2023;
- (h) Approve **ROI of 2.00%** for 2023;
- (i) Approve a claim count of **720 for 2023**; and
- (j) Approve **general operating and capital costs as presented**.

Highlights from the 2023 Budget Memo are as follows:

There is a \$4.8 million deficit. Reserves will cover it. This is why we need an adequate net position. There will be a more in-depth conversation regarding the net position in the fall.

We are looking for a 6.5% COLA increase. The Bar is moving ahead with the same amount, if approved by the Board of Governors.

The materials reflect nothing from PERS yet. Historical trends: Tier 1 and Tier 2 are historically expensive. We are recommending 5%. OPSRP contribution is going up and we are recommending 4%. The OSB will make the same recommendations.

The surplus/net position dictates no increase in the assessment.

We are down 3.7% full-pay covered parties. We are estimating 6,425.

We are sticking with 720 for claim count in 2023.

General Operations. There are few operational costs outside of occupancy and compensation.

Excess Program. FTE is the single biggest driver in the cost of the program. We are hoping to stick at 92% retention.

Mr. Karlin moved, and Ms. Saiki seconded that all requests listed above be approved (see 9(A)i. and 9(A)iii). Motion passed 8-0 (1 absent).

iv. 2023 Budget.

See above.

10. CEO Report (Ms. Livermore)

(A) CEO Update:

Ms. Livermore said she is looking forward to the Defense Panel Conference and expressed her appreciation for Matt Borrillo, Marci Sasik, Cindy Hill, and the Claims team for all of their hard work.

Reopening of the Office. The PLF office will open to the public on September 12. It will be a hybrid setting with mandatory two days in the office and the remainder at home.

Reinsurance Meetings. Ms. Livermore reported that the Excess team is gearing up for the reinsurance meetings in September. These meetings are a precursor to finding out what the rates will be for 2023.

Excess Program Audits. We recently completed two audits from two reinsurers and received positive comments and everything is in order. The practices and procedures are up to date and there were no major negative comments.

Management Training. Ms. Livermore thanked the Board for giving the management team the opportunity to participate in the training. The entire team attended, and it was very beneficial to everyone. They plan to continue the training in the coming years, as well as a team building exercise.

CEO Evaluation. Ms. Livermore reported that she plans to work on formalizing procedures for the CEO Evaluation. The purpose is so board chairs know what to expect and what to do. She will provide more detailed feedback on what she is doing.

Licensed Paralegals Program. The program is expected to be up and running by July 31, 2023. The PLF is working on putting together a coverage plan. Details will be worked out the beginning of next year and we hope to have a plan by the February board meeting.

Ms. Saiki asked if we are offering excess coverage for this program. Ms. Livermore said that we are not offering it at this time. We need to wait and see how things go with this new program. Ms. Morrow said that part of what actuaries and reinsurers want is data set to come up with conclusions.

Ms. Johansson asked if there is any idea of how many people will participate in this program. Ms. Hirschbiel said that the short answer is no, but they put together an estimated budget of 10 each year. She expects anywhere from 10 to 40 the first year.

11. Liaison's Report (Ms. Denning/Ms. Hierschbiel/Ms. Graham)

(A) BOG Update:

Ms. Denning reported that there were two areas of focus at the last BOG meeting: (1) paralegal licensing program; and (2) Comity Rules.

Paralegal Licensing Program. There was a public meeting on July 19, 2022, in which the Oregon Supreme Court approved a request for rule changes (MCLE rules and other rules). Ms. Hierschbiel said that the Bar still has a lot of work to do to implement the new license and they have put together a plan that affects every piece of the Bar. There will be a paralegal assessor committee. She is looking for lawyers with landlord/tenant and family law experience to participate.

Comity Rules. On July 19, 2022, the Supreme Court approved a Comity Rule to direct how the OSB admits licensed attorneys from other jurisdictions. The rule expands jurisdictions from which licensed and experienced attorneys can be admitted without taking the bar exam, while retaining most other requirements. There is a requirement that they need 2 years of active practice within the last 4 years; no active disciplinary actions and none at all for the last 60 months. They are trying to get more lawyers into our state.

Budget and Finance Committee. It is likely there will be an increase in member dues due to rising inflation. The proposal is to set the increase at 8% now vs. 5%. They are still working on the numbers.

Ms. Hierschbiel said she cannot thank the PLF enough for the contribution to BarBooks. It was launched in late spring and over 4,000 people have set up accounts. They have received almost all positive feedback. People love the "notes" feature, and it has been a great benefit. The OSB plans to hire a half-time staff person who will focus on just the "notes" feature. Right now, the Bar is focused on legislative changes. They are about half to two-thirds through the books doing that; then they will focus on other changes. The PLF staff has administrative access so they can add notes as well that reflect changes in the law to provide real time changes through the legislature. Ms. Hierschbiel again thanked the PLF.

Policy and Governance. Continuing to discuss the issue of defining attorney's principal place of business for the purposes of BOG candidate eligibility and service.

The HOD meeting is on October 28, 2022.

Ms. Hierschbiel reported on the issues related to Oregon's public defense services.

Ms. Hierschbiel discussed the "substantially equivalent" coverage loophole for out of state attorneys serving Oregon clients. Policy and Governance is looking at how to close that loophole and they would love input from the PLF on this topic. Staff is generating a handful of options for the committee to take a first look at, at the September meeting. Once it is narrowed down, they will bring it internally to PLF staff for input.

Ms. Hierschbiel said that the joint meeting had interesting topics and they are moving forward based on the conversations.

12. Unfinished and New Business

There was no unfinished or new business to discuss.

13. Executive Session

Ms. Johnnie concluded the open session meeting at 10:39 a.m. Ms. Johnnie said they would move into executive session at approximately 11:00 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.

14. Adjournment

The meeting adjourned at approximately 10:39 a.m.

These minutes were approved by the PLF Board of Directors at its October 7, 2022 board meeting.