

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

**April 20, 2018
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at 9:05 a.m. at the Professional Liability Fund in Tigard, Oregon by Chair, Dennis Black. Present in addition to Mr. Black were Directors Tim Martinez, Saville Easley (via telephone), Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, and Susan Marmaduke. Also present during open session was BOG liaison, John Bachofner. In addition, PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Pam Stendahl, Maureen DeFrank, Brad Tompkins, and Matt Borrillo 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 (02/23/18):

Rob Raschio moved and Tim Martinez seconded that the open session minutes of February 23, 2018 be approved as written. Motion passed unanimously 7-0 (2 absent).

(C) Committee Minutes: 02/23/18 (Long Range Planning Committee):

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

2. PLF REPORT

(A) General Report:

Carol Bernick thanked everyone who attended the PLF 40th anniversary celebration. She was very happy with the turnout, including people from the past and present.

1. New BOD Website

Carol Bernick reviewed the new BOD website and thanked Emilee Preble for her work on it.

2. *When Lawyers Screw Up: Improving Access to Justice for Legal Malpractice Victims*, Kritzer & Vidmar

Carol Bernick introduced the above book to the board members. One of the authors contacted Ms. Bernick and together, Carol and Betty Lou Morrow contributed information included in the book. Ms. Bernick asked any Board member to let her know if they are interested in reading it.

Ms. Bernick reported that she has taken a more active role in claims; she is supervising five coverage files.

Carol Bernick reported that the ABA/LPL Conference in Washington, D.C. is coming up and Carol, Emilee Preble, Betty Lou Morrow, and Madeleine Campbell will be in attendance.

Ms. Bernick announced that the joint BOG/BOD working lunch will be held today and Deans from the three law schools will be there to discuss future of legal education including how they are responding to mental health issues among law students.

(B) Outside Activities on Behalf of the PLF:

See materials for Ms. Bernick's report.

(C) 2019 Draft Board Meeting Schedule:

Ms. Bernick asked board members to review the 2019 Meeting Schedule and let her know if there are any conflicts. The August board meeting will be held on a Thursday (August 22) in conjunction with the PLF Defense Panel Conference (location to be determined). Lodging will be reserved for board members on Wednesday, Thursday and Friday (departing on Saturday).

(D) BOD Attendance at CLEs When Board Meetings are Held Outside Tigard:

Carol Bernick reminded the Board of the Thursday events prior to our Friday board meetings (when meeting outside Tigard). We generally have a CLE on Thursday afternoon, followed by a local bar reception that evening. Ms. Bernick encouraged board members to attend both the CLE and the reception. It gives board members and local bar members an opportunity to connect.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Madeleine Campbell gave the claims report.

As of Thursday, April 19, the extrapolated claims count is 870 projected for the year. We have an increased number of complicated cases and particularly difficult people. The claims attorneys have been very busy. We had hoped not to hire another claims attorney to replace Ms. Campbell but have decided we need to. We are in the process of interviewing and hope to have someone in place by the time Matt Borrillo goes on Sabbatical (June 10). Carol Bernick concurred regarding the amount of time many of the cases are taking and noted that we have very good candidates in the pool of claims attorney applicants.

4. FINANCIAL REPORTS

(A) February 28, 2018 Financial Statements:

Ms. Morrow referred the Board to the materials beginning on page 18 (statements of revenues and expenses). We budgeted 6,951 full-pay attorneys for 2018 and have 6,859 (annualized) at this time.

We budgeted a 4.5% return on investments and at the end of February, the return was .31%. We budgeted 855 claims and at the end of February, the number was 834; however, just this week, we were at 870 (annualized). Ms. Morrow believes the claim count will be near 855 at the end of the year.

There was an actuarial adjustment reducing the cost of new claims by \$1,000 per claim (from \$21,000 to \$20,000) for the first six months of 2018.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) 2018 1st Quarter Report and Loss Prevention Update:

Barbara Fishleder referred the Board to the materials beginning on page 25.

Ms. Fishleder reported that she and two PMAs attended the Tech Show. It is by far the best conference regarding technology. The PMAs have presented a technology CLE around the state.

Barbara Fishleder announced that PMA, Jennifer Meisberger, is leaving the PLF for another position that is a great match for her. It is a very big loss for us. She is a very skilled, well-liked person. We are currently looking for a replacement for her position.

The OAAP website and logo are being updated and we expect both to be done by the end of summer.

The OAAP held its annual recovery dinner last weekend. It was very successful and well-attended. The Women's retreat is coming up next weekend and we have a record high registration.

Shred days have started. Last week was in Eugene and we have several more coming to Pendleton and other areas around the state.

Barbara Fishleder discussed CLEs in conjunction with the out-of-Tigard board meetings and noted that there will only be a reception in Hood River (no CLE). There will be a CLE at the Golf Club in Warrenton for the August board meeting (Astoria). For the October board meeting in Sisters, a CLE/local bar reception will be held in Bend. The location has not yet been established.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Dennis Black reported that the Annual Claims Committee meeting was held this morning at 8:00 a.m. It was well-attended and productive. Issues were discussed that come up in cases that are particularly troublesome and ideas on how to handle them were discussed.

(B) Coverage Committee:

Holly Mitchell stated that there was nothing to report.

(C) Excess Program Committee:

Saville Easley stated that the committee has not met and there is nothing to report at this time.

Carol Bernick noted that in terms of Plans, changes are expected to the plans and a committee meeting will be scheduled. She does not yet know if any of the changes will impact the Excess Plan.

(D) Finance:

Tom Newhouse turned this portion of the meeting over to Betty Lou Morrow.

a. February 28, 2018 Portfolio Flash Report.

The above report begins on page 54 of the materials. Ms. Morrow highlighted information on our investment returns.

b. Draft 2017 Audited Financial Statements.

Tom Newhouse complimented the accounting team for its performance during the audit. The auditors reported that the PLF is among very few of their clients who fully prepare the financial statements before the auditors arrive.

Ms. Morrow referred the BOD to the draft audit, beginning on page 63 of the materials. The PERS entries that recognize our liability (similar to claims liabilities) change over time which, in turn, alters the liabilities on our financial statements. The amount of expense for the changes in liabilities for 2017 was \$741,000. In 2016, there was a credit of \$109,000.

A 25% PERS debt paydown was approved by the Oregon legislature in 2017. The PLF needs to undertake an analysis to determine if it is to our fiscal advantage to accelerate the debt payments. A choice needs to be made prior to 2021. Ms. Morrow will provide the committee with this analysis in the coming months.

Ms. Morrow referred the Board to page 75 of the materials regarding statements of cash flows. The increase in cash is due largely to the increase in the PLF portfolio. Additionally, assessment payments increased and claims expenses decreased.

Ms. Morrow stated it was an excellent audit and financial year for the PLF.

Rob Raschio asked, other than the PERS status, what other debts we have. Ms. Morrow stated that, other than claims liabilities the PLF has no material debt.

c. Draft 2017 Governance Report.

Ms. Morrow referred the Board to the Draft Governance Report beginning on page 107 of the materials.

Molly Jo Mullen moved and Susan Marmaduke seconded that the 2017 audited financial statements be approved as written. Motion passed 7-0 (2 absent).

(E) Investments:

Tim Martinez referred the BOD to the February 28, 2018 flash report beginning on page 54 of the materials.

(F) Long Range Planning/Communications:

Molly Jo Mullen reported that the committee met and discussed the assessment. Ms. Morrow provided an interactive chart to allow the committee to test different assumptions. The second meeting is scheduled for May 16 at 1:30 at the PLF. The committee will continue looking at the net position and prior analyses to make a recommendation about the 2019 assessment for approval at the June board meeting. Carol Bernick noted that whatever assessment the Board approves will then be included in the 2019 Budget presented at the August board meeting.

Tim Martinez asked if the May meeting will include options and/or recommendations regarding the assessment. Ms. Bernick responded that the May meeting will include two things: Review again of the net position goal (so the committee fully understands what it is and what it protects us against); and she will present a couple of recommendations/proposals.

Mr. Martinez noted that it is important from his perspective that we should have some sort of template (steps to take when considering the assessment). Ms. Bernick reminded him that those steps were included in the materials presented at the last committee meeting.

Tim Martinez suggested factoring into the budget the idea of having a balanced budget. Ms. Bernick stated that the challenge with that is the number of claims is the biggest driver of our budget, which is difficult to predict.

Dennis Black commented that he feels Mr. Martinez is confusing the issue of a balanced budget. Mr. Black discussed the enormous benefits of reducing the assessment. It would be a positive message about the way this organization is being managed.

Rob Raschio noted that we are \$7 million above any reasonable financial position of where we should be. He is not sure it is not time to pay a dividend back to the lawyers who paid the fees, letting them know we are in a great position and we represent those lawyers and want to pass that on to them. He is not comfortable being this far ahead.

Tom Newhouse noted that we need to continue to do what Ms. Morrow has done: coming up with the very best claim count and investment return estimate she can. Then, if we have a “negative” budget, we can add funds from the net position.

(G) Special Issues:

Susan Marmaduke stated that there is nothing to report.

7. LIAISONS’ REPORT (BOG): Draft BOG Minutes: February 23, 2018

John Bachofner gave the BOG report.

Mr. Bachofner reported that the BOG is working on the following issues:

1. Continuing to review the Futures Task Force report and how to implement the recommendations;
2. Update the Diversity Action Plans;
3. Doing a general review of the New Lawyers Division programs;
4. Public Affairs Committee is looking at legislative updates, plus they expect a special session coming up;
5. Legislative Day – all sections will give a presentation regarding various items being submitted to the legislature;
6. Looking at child welfare standards of practice and potentially implementing;

7. Non-unanimous guilty verdicts in felony cases. Should they take a position? Maybe a cosponsor, offer support, or take no position at all?

8. Considering a review or audit of the disciplinary system; whether to implement a task force, committee or commission because of issues brought up in the last month;

9. Discuss feedback from the BOG's Statement on White Nationalism and Normalization of Violence and determine what action to take in response (whether to refund bar fees for publication of the statement and/or whether to publish a new statement that supports, withdraws, or clarifies the original statement).

Rob Raschio commented that Oregon is the only state in the United States with a B- rating and he hopes they will join the sponsors on non-unanimous guilty verdicts on felony cases. Mr. Raschio also noted that the Oregonian will be putting out articles on child welfare in Oregon in about two weeks. He thinks the Bar may want to consider how to handle that as well.

8. CHAIR REPORT

(A) Updates:

Dennis Black stated that he has nothing to report.

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: February 23, 2018:

There was a motion and a second that the executive session minutes of February 23, 2018 be approved as written. Motion passed unanimously 8-0 (1 absent).

11. ADJOURNMENT

The meetings adjourned at approximately 12:02 p.m.

These minutes were approved by the PLF Board of Directors at its June 8, 2018 board meeting.