

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

**June 9, 2017
Cannon Beach, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at Haystack Gardens in Cannon Beach, Oregon by Chair, Teresa Statler. Present in addition to Ms. Statler were Directors Tim Martinez, Dennis Black, Saville Easley, Rob Raschio, Molly Jo Mullen, Tom Newhouse, Holly Mitchell, and Megan Livermore. Present during open session was OSB BOG liaison Guy Greco and Oregon State Bar Executive Director, Helen Hirschbiel. Also present were PLF staff members Carol Bernick, Barbara Fishleder, Bruce Schafer, Betty Lou Morrow and Cindy Hill.

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

Carol Bernick introduced BOG liaison, Guy Greco (also a former PLF board member).

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 (04/14/17):

Rob Raschio moved and Dennis Black seconded that the open session minutes of April 14, 2017 be approved as written. Motion passed unanimously 9-0.

(C) Committee Minutes: 04/06/17 (Finance) and 04/14/17 (Claims):

There were no comments regarding the minutes. No action is required.

2. PLF REPORT

(A) General Report:

Mandatory Coverage in Other States

Ms. Bernick reported that she is participating in a conference call next week with the Nevada Bar to discuss adopting a mandatory malpractice fund.

DRI

Ms. Bernick is writing an article for DRI titled "A Case for Mandatory Malpractice."

Current BOD Composition as of January 2018

Ms. Bernick referred the BOD to the handout and asked for feedback about the Board's needs. We are missing representation from a large full-service firm and a solo. We are lacking racial diversity as well. Ms. Bernick has reached out to specialty bars and talked to chairs and directors of those bars about our desire to have representation from a diverse set of people. She has encouraged applications.

Molly Jo Mullen asked what kind of feedback Carol is receiving from the specialty bars. Ms. Bernick stated that she receives comments that each bar will send the information out, that it sounds great and that they feel people would be interested, but has had no applications. She plans to do additional follow up. Ms. Bernick welcomes suggestions.

Helen Hirschbiel recommended Ms. Bernick reach out to the hiring partner at K&L Gates. Molly Jo Mullen recommends Angela Lucero (moved here from New Mexico). She is chair of OWLs next year, so she suggests contacting her in a couple of years. Mr. Martinez recommends Louis Martinez, a solo lawyer in Salem.

In the public member front, Tom Newhouse recommends Jack Freeman. He is retired from Providence Health Plan. He currently does consultant work from home and has a lot of insurance experience.

(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) Related Claims Allocation Policy:

Ms. Bernick explained that we need a more formalized policy for allocating coverage when there are multiple Covered Parties, notifying the affected Covered Parties and giving them an opportunity to appeal. We will work with this policy and make changes if necessary as we see how this works in practice.

3. CLAIMS REPORT

(A) General Claims Report (Open Session):

Bruce Schafer presented the Open Session Claims Report. As of Wednesday, June 7, 2017, the PLF had opened 365 new claims and 120 new suspense files. Extrapolating these figures at the same pace for the rest of the year would suggest 843 new claims and 277 new suspense files

in 2017. These numbers are close to budget (870 claims). One remarkable note is that the numbers have been consistent. In the past, there has been much more fluctuation.

The pending count as of April 30, 2017, was 790. The end of last year, the pending count was 747. There is always a push at the end of each quarter. Claims attorneys are keeping up and doing well. Mr. Schafer does not see any big trends, although there is an uptick in cases involving estate planning.

Mr. Schafer mentioned that the Claims Department was close to completion of revamping the Claims Department forms and integrating them with the Document Locator paperless system. He noted Madeleine Campbell and Marci Sasik were the primary persons performing these tasks, along with Jason Ouellette and Ted Cave in the IT Department.

(B) 2017 Defense Panel Conference – Schedule and Agenda:

Mr. Schafer referred to the materials. He invites all board members to attend some or all of the conference. The conference is three half-days of CLEs (lawyer professional liability topics). You must sign in each day in order to receive CLE credit.

Bruce Schafer noted that the Board meeting will be held on Thursday morning, August 24. The conference begins with lunch at noon on Thursday.

This conference is an opportunity for defense lawyers to understand PLF culture. The first day focuses on third parties. Friday and Saturday involves more substantive law and strategies. Saturday will include a presentation from a Covered Party's point of view on getting through a claim (a claim we won).

Ms. Mullen commented that it looks like a great substantive program.

Mr. Schafer noted that the claims attorneys have played a big role in putting it together. Every topic includes a claims attorney.

Teresa Statler asked each board member to turn in their registration forms to Cindy Hill, if they have not already done so. Cindy Hill noted that lodging arrangements have been made for all board members, unless they requested to make their own arrangements.

(C) Other Business:

Bruce Schafer announced he is retiring at the end of the year. It is a hard decision but feels it is time. Mr. Schafer reported that claims attorneys are taking a more active role in the defense panel conference and a more active role in policies and decisions. He feels it will be a smooth transition.

Carol Bernick commented that Bruce has spent a lot of this last year handing over more responsibilities. Madeleine Campbell has taken on a significant role. This allows claims attorneys to see a different leadership structure. Ms. Bernick will evaluate a potential restructure of the

department and will talk with each Claims Attorney individually. She anticipates making an announcement in early October.

4. FINANCIAL REPORTS

(A) April 30, 2017 Draft Financial Statements:

Betty Lou Morrow gave the financial report. She referred the Board to page 25 of the materials and noted there is a narrative explaining the financial statements. Tim Martinez stated that he appreciates the narrative and Dennis Black concurred.

Ms. Morrow discussed the May financial statements and reported there are fewer attorneys than budgeted, but the difference is small (34 attorneys year-to-date).

As of May 31, 2017, we are on track for 823 claims annualized (870 budgeted). While we are short on revenue generated from assessments, we have fewer claims expenses.

As of May 31, 2017, investment return was at 5.2%. We budgeted 3.5%.

(B) Paperless Assessment Update:

Ms. Morrow reported that we are on track to make the entire assessment and exemption process paperless. Going paperless saves about \$32,000. Ms. Morrow referred the Board to the memo in the materials outlining the many steps we are taking to inform the bar membership of the change. Tim Martinez asked if there are any concerns with specific sections of the Bar. Carol Bernick said she would notify the Small and Solo Firm Section personally.

Ms. Morrow reported we are looking at ACH (Automated Clearing House) to be made available to members to make assessment payments. Ms. Bernick reported there are many costs involved and we need to decide if we are willing to lose that money in order to accommodate. When members pay their assessment via credit card, we save labor, but it costs the PLF in merchant fees.

Ms. Morrow reported that the PERS employer contribution numbers for the biennium beginning July 2017 have been published. At Tier 1, Tier 2 and OPSRP, the increase is between 4 and 5 percent. This is significantly less than what was projected by Ms. Morrow in 2015, so this is good news.

5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT

(A) Loss Prevention Update:

Ms. Fishleder reported on the CLE held the day before. It was a small group but they were all happy that we held the CLE. Many stayed for the reception as well.

In addition to the report, the loss prevention department is doing some additional replays. We have added a couple more shred days as well for Multnomah, Washington and Clackamas counties. The In Practice blog is gaining traction. A couple more states have asked to reprint our Planning Ahead in the Event of Death or Disability publication.

Ms. Fishleder gave kudos to Shari Gregory who is on a portion of her sabbatical. She did a great job of lining things up in her absence. An outside counselor, Virginia Terhaar, is stepping in and Kyra Hazilla will be working in a part-time capacity. Jennifer Meisberger is on leave and will be back in about a month. Rachel Edwards is back from her maternity leave.

There are some big projects coming up. It is a legislative year. This means we are updating about 400 practice aids as well as the Statutory Time Limitations Handbook. We will have assistance from the OSB regarding the Statutory Time Limitations Handbook.

We are also working to make the OAAP more credit card friendly for CLEs and event sign-ups. We are also hoping to do a facelift for the OAAP's logo, brochure and website.

See materials for specific information and statistics from each program.

Rob Raschio requested shred days in various areas up the Gorge.

6. COMMITTEE REPORTS AND ASSIGNMENTS

(A) Claims Committee:

Dennis Black stated there is nothing to report at this time. A quarterly meeting is expected to be scheduled in July.

(B) Coverage Committee:

Molly Jo Mullen stated that there is nothing to report.

(C) Excess Program Committee:

Saville Easley stated there is nothing to report.

(D) Finance:

Tom Newhouse stated there is nothing to report at this time.

(E) Investments:

1. April 30, 2017 RVK Performance Report.

Tim Martinez referred the Board to the materials beginning on page 57.

2. RVK Custodial Banking Recommendation (RVK participated via telephone).

Betty Lou Morrow reported that as Carol Bernick's memo outlines, there are two proposals by RVK: (1) engage services of a custodial bank; and (2) RVK will take on a different role in directed consultations.

RVK participated via telephone and explained the two options. Following the discussion, Ms. Bernick informed RVK that we would end the call and get back with them next week.

Ms. Bernick does not feel these options need a BOD vote, as they are administration decisions, but she wanted Board input. Tom Newhouse agreed that it is an operational issue and that once Ms. Morrow has all her questions answered, she should make the decision. The Board concurred.

(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: 02/10/17 and 03/17/17

Guy Greco reported that there has been a lot of turnover on the appellate courts. He is on the appellate screening committee that reviews and advises on highly qualified candidates. In January, they interviewed 16 people for one position and 13 were highly qualified. The 13 names were given to Governor Brown who makes the appointments. They just concluded additional interviews for the three openings on the Court of Appeals. Mr. Greco stated that being on the committee has been very time consuming, but satisfying.

Mr. Greco reported that he is pleased with the work Mr. Levelle is doing. There have been good generative discussions. Mr. Levelle recently set aside 2 hours to discuss diversity and it was a very positive discussion. Helen Hierschbiel said that having the generative discussions is part of the BOG wanting to be more strategic in their governance. Two additional meetings have been scheduled (one in July and another in September).

Helen Hirschbiel reported that the bar exam results for February 2017 show 67% passing. The BBX has made recommendations to reduce cut score (now at 274 – higher than neighboring states, but not as high as it was).

Ms. Hirschbiel reported that the number of members practicing in Oregon has fallen, as Betty Lou Morrow mentioned earlier. Net growth in the 70's, 80's, and 90's was about 4 percent. It has now gone flat. The BOG is paying attention as fees might be increased to make up the difference.

At the BOG meeting on June 23, they will consider the Futures Task Force report and recommendations. Recommendations of changes to the Rules of Professional Conduct have been made. There is a recommendation to begin licensing paraprofessionals. Paraprofessionals would have the ability to do more in helping self-represented parties.

Ms. Hirschbiel also expects a recommendation from the Innovations Committee for an incubator program. Ms. Hirschbiel thanked PLF employee Hong Dao for her participation on the Innovations Committee.

Rob Raschio asked about paraprofessionals and the need for malpractice insurance. Mr. Raschio asked what role the BOG has with regard to the PLF and paraprofessional coverage. Helen Hirschbiel said that the recommendation from the committee is to move forward with setting up this program. There will be discussions about what the insurance model should look like. They may get coverage through commercial carriers. ALPS is providing coverage to the Washington LLLTs. The committee is working on this and they invite people from the PLF to participate. Washington says risk is very low because of limited practice areas. It is new, with only about 20 people participating and most are paralegals who have been doing it for 20+ years. Mr. Greco commented that he has been on two task forces regarding this issue (one in 1992 and one when on the PLF board) and he has a lot of skepticism. The aspirational goal is to provide low cost legal services in a limited way and yet, when you regulate and insure it, he is not sure that goal can be met. He questions if services can be provided at a reduced rate with added overhead costs. The OSB feels a model should be developed similar to the medical profession (tiered services – at different prices).

Bruce Schafer asked when this would go into effect. Ms. Hirschbiel said a decision would be made at either the June or the September BOG meeting. The decision, if they move forward, would have an Implementation Committee and she does not expect it to go into effect until 2019 at the earliest. The Implementation Committee would consider coverage needs. There may be an experiential component (rather than a bar exam) to be certified. This eliminates 90% of the cost of regulation. She does not anticipate adding OSB staff. The proposed recommendation is not the Washington model.

Rob Raschio commented that this is what Legal Aid Services was for in Oregon, but it is not funded properly. Helen Hirschbiel commented that Legal Aid Services is for poverty-level people, not moderate-level people. This model would benefit legal aid as well. They could have

paraprofessionals in their offices. She agrees that legal aid is underfunded and does not think there is one answer.

Mr. Raschio stated his concern about the notion of setting up a class-based system of justice – the poor can have a paraprofessional and the rich can have a lawyer. Ms. Hierschbiel noted that many others agree with him.

Tim Martinez asked about Exhibit F in the OSB materials regarding changes to Article 23 (Professional Liability Fund). Carol Bernick stated that this is an OSB bylaw, not PLF. This was a clean up of their policies to make them match PLF policies. Ms. Bernick worked with Amber Hollister at the OSB to make sure the BOG policies match PLF policies.

8. CHAIR REPORT

(A) Updates:

Teresa Statler reported that with the help of others, including Carol Bernick, the Parting Thoughts column in the recent issue of the Bar Bulletin was written. See handout. The article was a refresher of what the PLF is and what we do for members.

Rob Raschio commented that the majority of claims in 2015 were from solos. Ms. Statler feels there is still a lot of confusion about who the PLF is and who the Bar is – who does what and why. Ms. Bernick feels there are pluses and minuses to that. There are many similar services from both organizations.

Carol Bernick and Teresa Statler thanked the OSB for allowing them to put this article in the Bar Bulletin.

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: 04/14/17 and 05/12/17:

Rob Raschio moved and Tim Martinez seconded that the minutes of April 14, 2017 and May 12, 2017 be approved as written. Motion passed unanimously 8-0 (1 absent).

11. ADJOURNMENT

The meetings adjourned at approximately 12:55 a.m.

These minutes were approved by the Board of Directors at its August 24, 2017 board meeting.