

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

**October 20, 2017  
Ashland, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 9:00 a.m. at Ashland Springs Hotel in Ashland, Oregon by Chair, Teresa Statler. Present in addition to Ms. Statler were Directors Tim Martinez, Dennis Black, Saville Easley, Rob Raschio (via telephone), Molly Jo Mullen, Tom Newhouse, Holly Mitchell, and Megan Livermore (via telephone). Present during open session was OSB BOG liaison Kerry Sharp. Also, present were PLF staff members Carol Bernick, Barbara Fishleder (via telephone), Bruce Schafer, Madeleine Campbell, Betty Lou Morrow, Emilee Preble, and Sheila Blackford.

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:**

Ms. Statler verified a quorum and confirmed that the public meetings notices were done, as required by statute.

**(B) Open Session Minutes (08/24/17):**

*Tim Martinez moved and Teresa Statler seconded that the open session minutes of August 24, 2017 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(C) Committee Minutes: 08/15/17 (Finance) and 10/02/17 (Coverage):**

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

**2. PLF REPORT**

**(A) General Report:**

Carol Bernick introduced Sheila Blackford and congratulated her on a well-received CLE the evening before in Medford.

Ms. Bernick also welcomed Madeleine Campbell who will become the Director of Claims effective January 1, 2018. Ms. Campbell thanked the PLF for the opportunity to serve in this role.

**Reinsurance Visit – London**

Carol Bernick provided a summary of her recent trip to London to meet with the reinsurers. She, Betty Lou Morrow and Emilee Preble met with eight reinsurers for hour-plus meetings. Betty Lou and Emilee also met separately with Beasley's cyber team. Ms. Bernick announced that Dan Foley had left Aon and that Aon brought Steven Goode onto the team. The negotiations were successful. Among other things, the reinsurers agreed to increase our ceding commission to 15% (from 12%) for next year for Treaty Two. The reinsurers declined our request for an increase to the first layer ceding commission. We are hopeful that if this year's performance is repeated next year, the reinsurers will agree to an increase. In general, the reinsurers reported significant confidence in our management team and our rate page. All reinsurers stayed on the slip at the same level.

Ms. Preble added that we agreed to make a small change to the rate sheet that will increase the premium slightly. Further, the rate sheet is set up so that no firm will have a decrease, but the increases will be significantly less than last year. Ms. Preble showed everyone the ad on the back page of the Bar Bulletin advertising the new excess portal that will allow firms to complete applications online, get online quotes and get copies of Dec sheets. Finally, she explained that our business law supplement was further refined which we hope will make it easier to complete and will get us better information. We will again engage Dan Keppler to interview those firms who reach a certain threshold in the scoring of their supplement.

#### Paperless Project

Ms. Bernick showed the "Paperless" postcard that all Oregon lawyers should have received. The project is on track.

#### HOD Resolution

As previously explained, there is a resolution on the HOD agenda relating to potential discounts for certain groups of people: part-time, new lawyers and those who primarily represent the poor. The BOG voted to oppose the proposal. The BOG asked Ms. Bernick for information to include in its statement in opposition. Ms. Bernick and Ms. Statler will be at the HOD meeting and can provide additional information if needed. Mr. Black pointed out that if we begin underwriting these groups of lawyers, the PLF will incur additional costs in underwriting.

#### **(B) Election of Officers – 2018:**

Ms. Bernick referred the Board to the memorandum regarding election of officers.

*Mr. Martinez moved and Ms. Statler seconded a motion to approve the slate of officers: Dennis Black, Chair; Rob Raschio, Vice Chair; and Tom Newhouse, Secretary/Treasurer. The vote was unanimous 9-0.*

**(C) Committee Assignments – 2018:**

Ms. Bernick asked Board members to review and submit their request for committee assignments for 2018.

**(D) Resolution Honoring Exiting Board Member, Teresa Statler:**

Ms. Bernick acknowledged the resolution honoring Teresa Statler for her five years of service on the Board and her last year as chair. All agreed that she had done an excellent job.

**(E) ALPS White Paper re State Bars Contemplating Mandatory LPL Insurance Options:**

The Board discussed the ALPS white paper offering services to states looking to enact mandatory liability requirements. Mr. Schafer described his recent meeting in California. The California legislature charged the Bar to evaluate whether to adopt a mandatory malpractice requirement. He was surprised to learn that of the 250,000 California lawyers in private practice, about 30% do not have any coverage.

**3. CLAIMS REPORT**

**(A) General Claims Report (Open Session):**

Bruce Schafer reported that as of Wednesday, October 18, 2017, the PLF had opened 681 new claims and 254 new suspense files. Assuming the same pace for the remainder of the year, the numbers suggest a total of 854 new claims and 319 new suspense files for 2017. The PLF opened 839 new claim files in 2016. The pending count at the end of September was 821, compared to 747 at the end of 2016, an increase of 74. Mr. Schafer noted he feels the Claims Attorneys are doing a good job moving the cases and did not have a definitive explanation for the increase in the pending count.

**4. FINANCIAL REPORTS**

**(A) August 31, 2017 Financial Statements:**

Ms. Morrow referred the Board to the materials. In sum, the financial condition of the PLF is very strong. She anticipates our net position to be \$17 million at year-end, which represents a \$7 million increase this year. We are on track to have fewer claims than budgeted, which will further add to a positive year-end. She noted one trend that she is watching is the declining number of covered parties over the last few years. She does not anticipate that trend to change.

**(B) Internal Cyber Audit:**

Ms. Morrow reported on the Cyber audit that our cyber security firm, DaVinci conducted. Our overall grade was B+. In order to get an A, we would have to encrypt every document we have and would have to institute dual authentication to log onto our systems. The encryption step is far too burdensome and unnecessary for what we do. We are reviewing whether to move to dual authentication.

**5. PLF PERSONAL AND PRACTICE MANAGEMENT ASSISTANCE COMMITTEE REPORT**

**(A) 3<sup>rd</sup> Quarter 2017 Report and Loss Prevention Update:**

Ms. Fishleder announced that the OAAP is interviewing candidates to replace Mike Long. She described the recent Securities CLE, "So You Think You're Not Practicing Securities Law" as a great success. She was very impressed with the quality of the panelists and noted that it garnered more feedback than any other CLE she could recall.

Barbara further reported on the successful shred day in Eastern Oregon. Rob Raschio helped coordinate that effort. The next big event is *Learning the Ropes*, the first 3 days in November. Ms. Statler reported that at the reception the evening before, several newer lawyers reported how valuable they found the Learning the Ropes CLE.

Sheila Blackford reported on the CLE she put on the day before in Medford. It was well attended. She shared a few computer tips that she had shared with the group. Dennis Black reported that his office has officially gone paperless.

**6. COMMITTEE REPORTS AND ASSIGNMENTS**

**(A) Claims Committee:**

Dennis Black reported that there will be a quarterly meeting on Monday, October 23.

**(B) Coverage Committee:**

Ms. Mullen reported the committee met twice to review proposed changes to the Plan. Ms. Campbell summarized the proposed changes described in more detail in the materials:

1. Amend Plan to state that if a covered party is aware of a potential claim but does not report it to the PLF, the applicable plan year will be the year the attorney became aware of the claim, not the date reported to the PLF.

2. Amend Plan so that Plan Year for related claims may be different (if claims are made in different Plan Years), but the total limit will remain \$300,000.

3. Clarify that when the PLF spends money on a matter that is not a "claim" (e.g., defending someone in a deposition), if an actual Claim of negligence is later made that relates to the subject of the prior "claim" (e.g., deposition), the Plan Year for the Claim will be the year the

Claim was made. Whatever was spent in the previous matter will be applied to the total \$300,000 indemnity/\$50,000 expense allowance.

4. Amend Plan to add an exclusion to cover situation when lawyer is acting as an escrow agent, not a lawyer.

*Dennis Black moved and Molly Jo Mullen seconded approval of the three Coverage Plans: Primary, Excess and Pro Bono. Motion passed unanimously 9-0.*

**(C) Excess Program Committee:**

Saville Easley reported about the online application for excess coverage. There are no changes specific to the Excess Plan.

**(D) Finance:**

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

**(E) Investments:**

Tim Martinez stepped out of the meeting. Ms. Morrow reported on the success of the PLF portfolio. Euro stocks may go down next year, but emerging markets are strong.

**(F) Long Range Planning/Communications:**

Holly Mitchell stated that there was nothing to report.

**(G) Special Issues:**

Megan Livermore stated that there is nothing to report.

**7. LIAISONS' REPORT (BOG) – Draft BOG Minutes: 09/08/17 and 09/22/17**

Kerry Sharp gave an update on BOG activities. He reported on the HOD meeting in early November. There are a couple of resolutions that have garnered a fair amount of interest. The most discussed is an amendment to allow lawyers to use online (pay) referral services. There is also a proposed amendment to the RPC to allow lawyers to engage in discussion with potential clients via electronic communication. There is a proposal to eliminate the law school repayment assistance program, which the BOG opposes. The BOG also opposes the resolution suggesting a study to evaluate the impact of the PLF assessment on certain practitioners (particularly those who serve low income and those who want to work part-time).

The OSB is moving forward with appointment of a committee to examine whether to endorse a licensed limited practice paraprofessional program. The BOG hopes the committee's report will be finished in 2018.

There will be no fee increase for 2018. Vanessa Nordyke will be Bar president in 2018 and Chris Costantino was chosen as President-elect.

**8. CHAIR REPORT**

**(A) Updates:**

Teresa Statler noted she is attending the HOD meeting as PLF liaison. She also reminded everyone about the CEO evaluation document that will be disseminated to the BOD, BOG, and PLF staff. She asked everyone to mail their responses. The due date is November 8<sup>th</sup>.

**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: 08/24/17 and 09/29/17:**

*Teresa Statler moved and Dennis Black seconded that the August 24, 2017 and September 29, 2017 minutes be approved as written. Motion passed unanimously 8-0 (1 absent).*

Carol Bernick announced that Bruce Schafer's retirement party would be held on December 12 from 4:00 to 6:00 p.m. at the Bar Center.

**11. ADJOURNMENT**

The meetings adjourned at 11:05 a.m.

**These minutes were approved by the PLF Board of Directors at its December 8, 2017 board meeting.**