

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

**October 13, 2023
Hybrid meeting in Astoria, Oregon**

Board Chair Steve Hill called the open session meeting of the Board of Directors to order at 9:05 a.m. Present in addition to Mr. Hill were board members Gina Johnnie, Valerie Saiki, Chris Karlin, Michelle Johansson, Ali Hilsher, and Harshi Waters. In addition, OSB President Lee Ann Donaldson attended open session (via Teams) and OSB CEO Helen Hierschbiel attended open session in person. Also present were PLF staff members Megan Livermore, Betty Lou Morrow, Matt Borrillo, Cindy Hill, Emilee Preble, Tanya Hanson (via Teams), Kyra Hazilla, Hong Dao, Amy Hoven, and Maureen DeFrank (via Teams).

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 (Mr. Hill)

Mr. Hill welcomed all those in attendance.

(A) Approval of Open Session Minutes

- i. 2023-08-16 Draft Open Session Minutes (BOD)

Approval of Executive Session Minutes in Open Session

- ii. 2023-08-16 Executive Session Minutes (BOD/Claims)
- iii. 2023-09-14 Executive Session Minutes (Standing BOD Meeting)

Ms. Johnnie moved, and Ms. Waters seconded that the open session minutes of August 16, 2023, and executive session minutes of August 16, 2023, and September 14, 2023, be approved as written. Motion passed 7-0 (2 vacancies).

(B) Committee Minutes

- i. 2023-08-07 Finance and Investments Committee Minutes

There was no discussion and no action required.

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

(A) General Claims Report

Mr. Borrillo reported that the Claims Committee met just prior to today's meeting and the estimated claim count for the year is 627 claims. This low file count is good as it helps us weather the storms of a bad market and low investment returns.

We are continuing to see more lawyers in crisis and are not sure if it is a trend at this time.

Mr. Borrillo reported that we are losing a couple of long-term defense panel members, but they informed us early on and we are hoping to find replacements soon. Our relationships with defense panel members remain stable.

Next year's defense panel conference will be held August 22-24 at the Riverhouse on the Deschutes in Bend, Oregon.

3. General Counsel Report (Ms. Livermore)

(A) 2024 Bylaws and Policies

Ms. Livermore referred the board to the materials. There were changes submitted earlier in the year to support Licensed Paralegals. Those changes were approved by the BOD and BOG. In order to reduce confusion with the LP-related changes, we saved housekeeping updates to be presented at this meeting. Ms. Livermore asked for approval of the recommended housekeeping revisions for the 2024 Bylaws and Policies.

Ms. Johnnie moved, and Ms. Saiki seconded that the revisions to the 2024 PLF Bylaws and Policies be approved. Motion passed 7-0 (2 vacancies).

4. Financial Reports (Ms. Morrow)

Ms. Morrow reported that our new general ledger accountant, Iranzi, is doing a great job and we are very excited to have him on board.

(A) 2023-August 31 Financial Statements

Ms. Morrow gave the financial report. The following is an overview of her report.

Statement of Net-Position (page 2 of Ms. Morrow's materials). Comparing total assets this year versus last year, the net fixed assets line indicates a \$10.738 million balance this year vs. \$368,495 last year. About \$10.5 million of that amount is a right of use lease with the Oregon State Bar (represents value of lease until 2032). We are not sure why that time frame was determined appropriate since the lease ends in 2029, but we will be discussing it with our auditors. When looking at the increase in liabilities compared to last year, the only difference is the right of use lease.

YTD Income/Loss. Last year, there was a \$10.5 million loss in-year; this year at the end of August, we have a \$3.3 million surplus. We are hopeful that 2023 will be a modest year of improvement. We saw some modest gains in the market earlier on, but we are seeing some volatility and losses again. This reinforces the wisdom of approving the increase to our assessment.

Changes in Net Position. We budgeted for 6,425 full-pay attorneys. At this time, we have 6,544 full-pay attorneys (up by 129 attorneys). The decline in full-pay attorneys has been a slow erosion over time. This uptick is a good sign. We are optimistic there is more interest in attorneys getting into private practice.

Investment Return. YTD return is 6.8%. We budgeted for a 2.3% return. The budget was done last year when the market was not good.

Claims. We are predicting claims to be around 635 for the year (there is usually a fall-off in claims near year-end due to holidays, etc.). We budgeted 720 claims at \$23,000 per claim. At the beginning of the year, the cost per claim was at \$23,500, then mid-year it was reduced to \$23,000. We are ahead by approximately \$2.3 million.

Excess. Looking at the ceding commission for the Excess Program, there is some confusion with a journal entry. It looks like we are under budget by \$132,000. The actual is \$35,000. There was a journal entry for August that had not been posted. These are great results for the Excess Program.

Balance Sheets. Ms. Morrow noted that there is a \$200,000 difference with the primary and excess balance sheets. This is related to some cash that was moved but did not make it on the report.

Mr. Hill asked where we are at with the ISI software implementation. Ms. Morrow stated that we are at stage 3 of 5 stages. Jason Ouellette (part of our IT team) is leading the PLF implementation team comprised of volunteer staff from each department. Mr. Hill asked if we have an idea of when the project will be complete. Ms. Morrow stated that if we get started in February, she expects to be done in June of 2025. We have estimated 15 to 21 months. Ms. Morrow expects Mr. Ouellette to attend some future board meetings to report on the implementation process, along with other information. Mr. Karlin said that change management is very important so that people are not surprised. Ms. Livermore stated that we budgeted for some temporary staff, if needed, to jump in while the regular staff is getting up to date on the new system.

Ms. Morrow reported that the fiscal team members went to Toronto for the ISI user conference, along with several other members of the PLF implementation team. The team reports the sessions were valuable, and we are excited about moving forward with ISI.

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

(A) PMAP Update

Ms. Dao reported that Kalia Walker has been hired as our newest PMA (replacing Isaac Alley who returned to private practice). Ms. Walker begins work on Monday, October 16, 2023. She brings energy and enthusiasm and is a good dynamic for the team. Ms. Walker received her BBA from the University of Michigan Ross School of Business and earned her JD from the University of Oregon School of Law. She is a member of the Oregon State Bar and previously served as a Board member for Oregon Women Lawyers and the University of Oregon

Law School Alumni Association. Ms. Walker was in private practice for seven years. Her practice focused primarily on employment and general commercial litigation matters throughout the Pacific Northwest.

Swearing in Ceremony. Staff attended the October 5, 2023, swearing in ceremony in Salem, to welcome the new admittees. There were 296 new admittees this year. Ms. Dao is hopeful they will sign up to attend Learning the Ropes (Ropes) in November. The planning for Ropes is in full swing and we are currently recruiting judges for the lunches.

inBrief. The August issue of *inBrief* is out and we are looking forward to the December legislative updates.

Publications. Ms. Dao gave an update on the various practice aids and other documents that have been updated or are in the final phases of updating. They are also working on updating practice aids/resources for LPs (engagement letters, etc.). Ms. Dao, in conjunction with the OSB, will be creating checklists for LPs at the end of the year, following *Ropes*.

Planning for 2024. There is an operational planning meeting scheduled in December, for 2024.

6. Oregon Attorney Assistance Program (OAAP) (Ms. Hazilla)

(A) OAAP Update

Ms. Hazilla reported that it has been a wonderfully robust autumn at the OAAP.

Bar Bulletin Article. Ms. Hazilla reported that she was invited to participate in a cover story about civility in the August/September Bar Bulletin. The article discussed the general level of stress in the legal community. There was great collaboration with the OSB writer on that.

Workshops and Group Meetings. Ms. Hazilla is happy to report that Kirsten Blume is back from parental leave. She is working on special workshops coming up for winter and spring. The Lawyers in Transition/Mindfulness groups will be returning to the calendar. The regular groups are running and there is now a special divorce group. Ms. Hazilla gave a list of the groups that regularly meet.

7. Excess Program (Ms. Preble)

(A) Excess Program Update

Ms. Preble reported that the excess renewal is coming up. The reinsurance talks are finished and the expected increase is an average of 4%. Many firms will not see much change; those that are higher risk will have a larger increase. The applications are going out next week and include some enhancements. Ms. Preble discussed some examples of questions that were added, including the question of how many are using AI (Artificial Intelligence). Additional information will be provided in December.

(B) Administrative Update

There was no administrative update.

8. Communications Program (Ms. Hanson)

(A) Communications Department Update

inBrief. Ms. Hanson reported that the August issue of *inBrief* was published. She thanked Ms. Dao for her ChatGPT article. The team is working on the legislative alerts issue in collaboration with the OSB. It will be published in December.

inSight. Ms. Hanson reported that the summer issue of *inSight* was also published.

Both publications (*inBrief* and *inSight*) are in the board materials.

Publications. The team is working on updating three handbooks, *A Guide to Setting Up and Running Your Law Office*, *A Guide to Setting Up and Using Your Lawyer Trust Account and Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*. The redesigned and updated handbooks will be unveiled at a future meeting.

Licensed Paralegals (LPs). The team is working on adapting language on our websites, forms, marketing materials, and other internal and external content to be more inclusive of the newest OSB members. We are looking at creating a web page or section that is devoted to them, explaining their coverage, etc.

Accounting. The team is working on assisting the accounting department with outreach to promote PLF Quick Pay as a secure, convenient option for covered parties and firm administrators paying their assessments that will hopefully avoid unwanted late fees. Ms. Morrow thanked Ms. Hanson for the valuable work she is doing.

Assessment. Ms. Hanson reported that the team is working on language for the assessment increase. The December *inBrief* will focus on that.

AI (Artificial Intelligence). We are working on getting a handle on what firms are doing regarding AI. PLF IT is purchasing a testing laptop (unconnected to the server) for the Communications team to use for this purpose.

Conferences. Ms. Hanson reported that she and Emily Massey will be attending the Public Relations Society of America for Communications Professionals Conference, being held in Nashville. They will attend different breakout sessions and will update the Board at future meetings.

9. CEO Report (Ms. Livermore)

(A) CEO Update

AI Risks. Ms. Livermore reported that the PLF is determined to be well versed in understanding the risks and best practices related to generative AI, both for internal use and for covered parties. It appears we are ahead of the game compared to our NABRICO colleagues. We are exploring how lawyers are using AI to better understand the risk and have asked our reinsurers for a clause in our contract that they will not use AI when auditing our files. We have received some pushback on it this year but hope that is not the case next year.

Ms. Saiki asked for an example of how attorneys and the PLF are using our project using AI. Ms. Livermore said that for the PLF, we do not know how we will use it yet. We are in the exploratory phase of what we will allow in our system. The PMAP and Communications have laptops that are not connected to the PLF system to allow them to experiment with different generative AI platforms. Regarding covered parties, we are collecting information about how it is being used by lawyers and best practices for use to mitigate risk.

Ms. Saiki asked if we have had any claims related to this yet. Ms. Preble said we have not.

Ms. Morrow indicated that feedback from Aon regarding our AI efforts is that the reinsurers were amazed at how far ahead of the curve we are in recognizing concerns.

Ms. Hilsher asked how the OSB is handling this issue. Ms. Hierschbiel said that the Legal Ethics Committee has a workgroup/subcommittee looking at AI from an ethics perspective. She feels they could collaborate with the PLF on this issue. She just got back from a bar leaders conference and AI was discussed there as well. The OSB wants to do a full issue of the *Bar Bulletin* that discusses AI issues and would love to collaborate with the PLF on that as well.

Ms. Livermore is excited about Oregon being a leader in innovation. She asked if the OSB knows if the Oregon courts are going to implement rules regarding using generative AI, as has been done in other jurisdictions. Ms. Hierschbiel said she does not know. Ms. Hierschbiel would like the joint BOG/BOD meeting to include this topic.

(B) New Board Member Selections (terms beginning January 1, 2024)

Ms. Livermore announced that Oren Haker resigned from the BOD due to a conflict of interest. Steve Hill has agreed to serve as Chair again next year. We currently have two lawyer member positions. Ms. Johnnie has offered to stay another year to replace Mr. Haker. We need a vote from the BOD regarding Ms. Johnnie, as well as the two lawyers listed in the materials. They are John Bachofner (to fill the last two years of Akeem Williams' term) and Mark Johnson Roberts for the other position. Ms. Livermore gave some background information on both of them, and both have agreed to serve. She said that it is difficult to find people who have time and the inclination to serve. We have some great people in the pipeline for the future.

We do not have a public member yet but hope to have one by the December 1 board meeting. Ms. Saiki said she could stay longer if we need her but is not able to do a five-year term. Ms. Livermore will continue working on this but appreciates her willingness to stay on.

Michelle Johansson moved and Ali Hilsher seconded that the board approve the three names listed above, Gina Johnnie for one year (to complete Oren Haker's term), John Bachofner (to fill the last two years of Akeem Williams' term), and Mark Johnson Roberts for the other position (a five-year term). Motion passed unanimously 7-0 (2 vacancies).

10. Liaisons' Report (BOG)

(A) BOG Update

OSB President, Lee Ann Donaldson, reported that the HOD agenda was finalized by the BOG. They added a resolution on supporting wellbeing which tracks with the conference of wellbeing of stakeholders that was presented earlier this year. The OSB and OAAP prepared the report earlier this year and the resolution asks the HOD to approve that report.

ONLD Rural Practice Area Report. There was a tour of rural areas in June and the ONLD is moving forward on a job career fair for rural practitioners. There will be an introduction to practice in rural communities in the fall of 2024 and a spring job fair with rural positions. They are looking at what the BOG can do with the Access to Justice Committee.

Swearing-In Ceremony. There were 296 new admittees this year and 85 to 100 new lawyers were sworn in. This is up to the traditional level of passage rates. Great news.

Upcoming Events. October 25, 2023, there is a Celebrate Oregon Lawyers event at the Sentinel in Portland honoring award winners and 40 to 50-year members. The HOD annual meeting will be held October 27, and an OLIO costume party will be held on October 28.

Tours. Ms. Hierschbiel and Ms. Donaldson are doing a second tour in Lane, Douglas, Jackson, Joseph, Curry, Yamhill, and other counties.

BOG Retreat. The annual BOG retreat will be held November 16-18, 2023, at Surfsand in Cannon Beach. The focus is on mindfulness. President-elect David Rosen is planning that.

BOG Policy and Governance Committee. Ms. Hierschbiel reported that the BOG Policy and Governance Committee approved the new Bar rules of licensure for public comment. It has not gone to the Supreme Court yet. It includes a rule for filling the loophole regarding professional liability coverage for Oregon lawyers who are admitted by exam but whose principal office is out of state, requiring substantially equivalent coverage for all of those lawyers.

Following up on the wellbeing topic, Ms. Hierschbiel said that she wants to thank the OAAP staff for helping with developing that resolution and is excited about the resolution. The BOG is taking this topic very seriously, as are the PLF/OAAP and we need to develop a plan for the next steps. This topic will be discussed again at the BOG meeting in November.

Ms. Hierschbiel reported that regarding rural practices, the BOG has decided to engage in more targeted strategic planning around access to justice generally. They have a consultant to do an inventory of efforts happening now in the space that the OSB can influence. They are focusing on our area of influence, then will figure out the gaps, what they can do, and prioritizing those action items.

Ms. Hierschbiel reported that there are no decisions yet, but they are looking at the possibility of another product that is an online legal research tool, "Decisis." They currently have FastCase that is available free to OSB members. The nice thing about Decisis, based on the initial review, is that it is more user-friendly, there is

Shepards capability, and it is a subsidiary of LexisNexis. Internal staff looked at it and now want to engage a broader group of practitioners. If you know of people who would be interested in those focus groups, please let her know and she will share with Linda Kruschke.

Ms. Johansson thanked everyone who worked so hard on the NABRICO conference. The NABRICO members seemed very pleased. She felt it was valuable as a board member and thanked the PLF for inviting board members to attend. Ms. Hilsher seconded the comments.

11. Unfinished and New Business

There was no unfinished or new business to discuss.

12. Executive Session

Mr. Hill concluded the open session meeting and said they would move 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.

13. Adjournment

The meeting was adjourned at 10:36 a.m.

These minutes were approved by the PLF Board of Directors at its December 1, 2023, board meeting.