

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

**February 23, 2018  
Tigard, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at 9:00 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, Rob Raschio (via telephone), Molly Jo Mullen, Tom Newhouse, Holly Mitchell, Megan Livermore, and Susan Marmaduke. Also, present were PLF staff members Carol Bernick, Barbara Fishleder, Madeleine Campbell, Betty Lou Morrow, Cindy Hill, Jeff Crawford, Emilee Preble, Pam Stendahl, Amy Hoven, John Berge, Sharnel Mesirow, Rachel Edwards, Bryan Welch, and Karen Neri.

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 (12/08/17):**

*Megan Livermore moved and Rob Raschio seconded that the open session minutes of December 8, 2017 be approved as written. Motion passed unanimously.*

**(C) Committee Minutes: 02/05/18 (Finance and Investments):**

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

Mr. Black welcomed new board member, Susan Marmaduke, and asked people to introduce themselves.

## **2. PLF REPORT**

### **(A) General Report:**

Carol Bernick thanked Madeleine Campbell for taking on the Director of Claims position. She reported that Ms. Campbell hit the ground running in January with a much higher claim count than over the last several months. Ms. Campbell has done a great job with a seamless transition. We are not replacing Madeleine's claims attorney position at this time.

Carol Bernick reminded the Board that the annual dinner will be less formal. We are looking at venues and it appears we have more options if we hold the dinner on Thursday, as opposed to Friday. She asked if anyone had thoughts on this. Rob Raschio commented that he would prefer Thursday. There were no further comments.

### **(B) Outside Activities on Behalf of the PLF:**

Carol Bernick presented to the Washington State Bar Association's Task Force on Mandatory Malpractice. The Executive Director of the Idaho Bar presented on the implementation of Idaho's new requirement to maintain minimum malpractice insurance.

### **(C) Lodging Poll - 2018:**

Ms. Bernick asked board members and staff to return their lodging polls to Cindy Hill, if they have not already done so.

### **(D) PLF Policy 5.100 (Banking):**

Carol Bernick reported that notice to the Board is required when adding a check signer and, therefore, was notifying the Board that Madeleine Campbell has been added as a check signer. Ms. Campbell has no authority to sign checks relating to claims.

### **(E) OSB 2017 Economic Survey:**

Carol Bernick referred the Board to the latest OSB Economic Survey. She noted the below market rates most of our defense panel members charge us. Our defense panel members view their PLF work as a service to the Bar. They are committed to keeping their rates low. Dennis Black noted that in talking with defense panel members, they enjoy being on our panel.

## **3. CLAIMS REPORT**

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

Madeleine Campbell gave the claims report.

Ms. Campbell reported a very busy January. We received 80 new claims and closed 81. February has slowed down a bit. As of February 22, 2018, the PLF opened 123 new claims and

60 new suspense files. It is too early to predict for the year but extrapolating the numbers out for the rest of the year would suggest 847 new claims and 413 new suspense files in 2018. This number is similar to last year.

**(B) 2017 Claims Attorney and Defense Counsel Evaluations:**

Ms. Campbell referred the Board to the materials on page 26 and noted that the evaluations were very good. 93.05% of the covered parties responding were “very satisfied” with the handling of their claims by assigned Defense Counsel; the remainder were “satisfied.” 95.37% of the respondents were “very satisfied” with the handling of their claims by the assigned Claims Attorney and 4.63% were “satisfied.” Ms. Campbell stated this is a testament to the fine work of her colleagues and the PLF Defense Panel.

Madeleine Campbell noted that the PLF has been trying to analyze the diversity of our defense panel. Currently, 28% of panel members are women and about 28% of our annual spend is to women defense panel members. Carol Bernick noted that the Board asked the PLF to look into this issue. We are still analyzing the data. Ms. Bernick reported that she believes there is a perception that women are not on our defense panel. We need to keep bar members informed of the facts. That said, we want to always consider ways to improve and ensure equality in case assignments, looking at both frequency and severity in assignments. Tim Martinez said he is curious what the numbers are, based on age. Megan Livermore suggested that we look at other diversity issues, other than gender.

**4. FINANCIAL REPORTS**

**(A) December 31, 2017 Financial Analysis:**

Ms. Morrow referred the Board to the materials beginning on page 31 and noted that she will move straight to the financial statements.

**(B) December 31, 2017 Financial Statements:**

Betty Lou Morrow reported that assessment income was down due to the slow erosion of full-pay attorneys. We had 7373 covered parties in 2017 versus 7366 in 2016.

We budgeted 847 claims for 2017; actual was 827 claims. We released an unprecedented \$3.9 million in liabilities from claims reserves as a result of decreases in both frequency and severity of claims.

The year-to-date actual for operating costs were essentially as budgeted. Expenses have been reviewed with the Finance Committee. The Finance Committee will recommend that we approve these statements. The Net Position is currently \$20 million.

Mr. Morrow pointed out that the accounting department has done a great job of preventing adjustments on the audited financial statements throughout the years.

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

### **(A) 2017 4<sup>th</sup> Quarter Report and Loss Prevention Update:**

Barbara Fishleder noted there are two reports beginning on page 44 of the materials (the 4<sup>th</sup> quarter report and year-end report). Ms. Fishleder briefly reviewed each report.

Ms. Fishleder noted that the PMA office visits are up in 2017 because they were down in 2016 due to the loss of an experienced Practice Management Advisor. The OAAP numbers in 2017 are down due to less staff.

Ms. Fishleder introduced Karen Neri (the newest OAAP attorney counselor) and turned this portion of the meeting over to her.

Ms. Neri reported that she is enjoying the new work. Everyone is helping her onboarding with support, encouragement and training. She is co-facilitating with Shari Gregory a Meaningful Work group and a Creating Healthy Habits group with Doug Querin. She is scheduled to speak at PCC's paralegal program in March. Ms. Neri noted that her favorite part of her job is meeting with people in person. They are very grateful to have a safe space to talk.

Dennis Black explained to Ms. Neri that there was a discussion last year about the safety of client confidentiality at the OAAP. He asked if Ms. Neri had dealt with any concerns regarding this issue and, if so, was she able to address it successfully? Ms. Neri stated that she has not dealt with any of those concerns. She also noted that she makes sure to reiterate that our services are confidential when speaking with clients.

Barbara Fishleder thanked Emilee Preble and Bryan Welch for their hard work on redesigning the OAAP website. The OAAP is also redesigning its logo.

Ms. Fishleder reported that shred days would be scheduled in 2018.

Barbara Fishleder is working with the MCLE Committee to develop an MCLE rule amendment that mirrors the newly adopted ABA Model Rule for mandatory education on substance use and mental health issues. The Model Rule was adopted to make sure everyone was educated on the issues and to reduce the stigma of people seeking help. The MCLE Committee Chair is very supportive of the proposal to change the Oregon rule. Many states are adopting the ABA Model Rule requiring education on substance use and mental health issues. Some states adopted the rule as a stand-alone credit requirement; others, as a qualifying ethics credit. It is an important shift in thinking. For the OAAP, the rule change will be a wonderful opportunity to present directly on these important topics.

Barbara Fishleder noted that the PLF will continue with video replays; however, times are changing and they are less popular. Ms. Fishleder pointed out that Julie Weber's name was mentioned in her report because of her hard work during MCLE reporting time.

Ms. Fishleder stated that Karen Neri is doing an excellent job. Following her leave, Kyra Hazilla has agreed to facilitate some groups for the OAAP.

The PMAs are going around the state with their technology show. We have received very good feedback on this.

Access to the lawyer conference room at the OAAP has increased 28%.

Rachel Edwards stated that she is heading to Chicago for the Tech Show this year. The PMAs plan to roll out a Nano podcast (short how-to videos that PMAs will be creating). Recording begins in April.

Bryan Welch discussed the task force regarding attorney wellness, including law students. There is a shift in the culture and the thinking that lawyer health needs should start with law students. The new logo and new website will help the OAAP be more accessible. Mr. Welch began a support group for lawyers with ADHD. It is an interactive workshop. Interest has been very high.

Dennis Black commented that it is truly impressive, the deep rich body of information the two programs have generated over the years of their existence. They are a tremendous body of knowledge and resources available for Oregon lawyers. On behalf of Oregon lawyers, Mr. Black thanks the PLF and the OAAP.

**(B) 2017 Year-End Report:**

See above and see materials for specific information.

**6. COMMITTEE REPORTS AND ASSIGNMENTS**

**(A) Claims Committee:**

Dennis Black noted that the annual meeting scheduled for February 23 had been moved to April because of a conflict in the BOG schedule.

**(B) Coverage Committee:**

Holly Mitchell stated that there is nothing to report.

**(C) Excess Program Committee:**

Saville Easley stated that the committee has nothing to report and turned this portion of the meeting over to Jeff Crawford.

Jeff Crawford reported that the excess renewal cycle is winding down. The program has gone completely digital except for a couple of holdouts. It has been very well received and firms appreciate the convenience.

Mr. Crawford discussed some highlights of the Excess Program. We continue to evaluate securities risks. Overall, premiums have increased. Switching to electronic processing has resulted in administrative efficiencies (eliminating the data entry from the past, etc.). This has saved a lot of money. We are working on evaluating how much money we have saved.

Emilee Preble reported that the renewal rate was 91.5%. Last year it was 93%. We have a ten-day turn around goal for reviewing applications and the digital system has helped maintain a steady flow rather than big groups all at once. The application was revised and we received better information because of the revisions. About 90% of applications came in via the portal. We saw an increase in applications for additional cyber coverage. 37 firms requested higher limits than what is automatically included. ERCs are also up in the last two years.

**(D) Finance:**

Tom Newhouse reported that the Finance Committee met. Betty Lou Morrow reviewed the year-end report above.

Betty Lou Morrow reported that the accounting department went paperless for the 2018 Primary renewal and she was happy to say she did not receive one complaint. The process was seamless.

1. Review December 31, 2017 actuarial review of claim liabilities.

Ms. Morrow reported that our development of claims is less than the actuaries predicted (in frequency and severity). Carol Bernick noted that she feels there may be an uptick in severity within the last six weeks or so.

2. BOD to adopt the following (see materials beginning on page 104):

(a) The amount of December 31, 2017 claim liabilities - \$25.2 million (\$12.3 million Indemnity and \$12.9 million Expense).

(b) The value of the average cost of new claims made during the first six months of 2018 - \$20,000 (\$9,000 Indemnity and \$11,000 Expense). Ms. Morrow noted that the expense component has remained the same while the indemnity portion has decreased by \$1,000.

(c) December 31, 2017 values for liability for Extended Reporting Coverage (ERC) - \$2.9 million (this is a decrease of \$300,000).

(d) December 31, 2017 values for liability for Suspense Files - \$1.5 million (this is a decrease of \$100,000).

(e) December 31, 2017 values for liability for Adjusting and Other Expense (AOE) - \$2.3 million (this is a decrease of \$300,000 [9.13% of claims reserve – recommended between 5-10%]).

Dennis Black asked the Board to adopt the above recommended actions.

*Rob Raschio moved and Tom Newhouse seconded that the Board adopt the liabilities listed above. Motion passed unanimously 9-0.*

**(E) Investments:**

Mark Higgins of RVK introduced himself and Cole Bixenman. RVK has worked with the PLF for quite some time.

Mr. Higgins referred the Board to the 2017 year-end report in the materials.

2017 was a phenomenal year. The PLF had an average return of 12.85%. U.S. equities were up around 20%; international markets did even better; emerging markets were up almost 40%; and developing markets were up about 25%. The current portfolio allocation works for the PLF's long term financial goals.

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

Molly Jo Mullen reported that the committee would meet immediately following today's board meeting.

**(G) Special Issues:**

Susan Marmaduke commented that this committee's role is to take on issues as reported by the Board. No such issues exist at this time.

**7. LIAISONS' REPORT (BOG): Draft BOG Minutes: January 5, 2018**

Carol Bernick reported that the BOG liaisons and Helen Hirschbiel were unable to attend the meeting due to a conflict with the BOG meeting held at the same time.

Ms. Bernick referred the BOD to the BOG materials beginning on page 156.

Ms. Bernick noted that Vanessa Nordyke is the current Bar President and her focus is on new lawyers and the Bar's programs aimed at new lawyers. Ms. Hirschbiel asked Carol to look at

the number of claims filed against new lawyers and whether the numbers dropped after the mentoring program was initiated. We provided the information.

**8. CHAIR REPORT**

**(A) Updates:**

Dennis Black stated that he has nothing to report.

Rachel Edwards commented that the PMAs are planning a demo day with numerous software programs and vendors from around the country on September 26.

**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: December 8, 2017 and January 26, 2018:**

*Molly Jo Mullen moved and Megan Livermore seconded that the executive session minutes of December 8, 2017 and January 26, 2018 be approved as written. Motion passed unanimously 9-0.*

Rob Raschio thanked Patricia Nation and John Berge for their assistance in the trial he was in until late yesterday. He was happy to have people of their caliber and speed assist him.

**11. ADJOURNMENT**

The meetings adjourned at approximately 11:52 a.m.

**These minutes were approved by the PLF Board of Directors at its April 20, 2018 board meeting.**