

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

**August 24, 2017  
Sunriver, Oregon**

The regular meeting of the Board of Directors and the PPMAC meeting was called to order at approximately 8:30 a.m. at Sunriver Resort in Sunriver, Oregon by Chair, Teresa Statler. Present in addition to Ms. Statler were Directors Tim Martinez, Dennis Black, Saville Easley, Rob Raschio, Molly Jo Mullen (attended a portion of the meeting), Tom Newhouse, Holly Mitchell, and Megan Livermore. Present during open session was OSB BOG liaison Chris Costantino and Oregon State Bar Executive Director, Helen Hirschbiel. Also, present were PLF staff members Carol Bernick, Barbara Fishleder, Bruce Schafer, Betty Lou Morrow, Jeff Crawford and Cindy Hill.

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 (06/09/17):**

*Tim Martinez moved and Holly Mitchell seconded that the open session minutes of June 9, 2017 be approved as written. Motion passed unanimously 7-0 (2 absent).*

**(C) Committee Minutes: 05/31/17 (Investments) and 07/24/17 (Coverage):**

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

**2. PLF REPORT**

Carol Bernick thanked the Board of Directors for their donation to Southern Poverty Law Center, honoring her mother.

**(A) 2016 Annual Report:**

Ms. Bernick referred the Board to the materials.

**(B) 2018 Proposed Meeting Schedule:**

Ms. Bernick asked board members to look at the proposed meeting schedule for next year and to let Cindy Hill know within one or two weeks if there are any conflicts. Otherwise, we will go with the proposed schedule.

**(C) Assessment Issue – Richard Lancefield:**

Carol Bernick referred the Board to page 35 of the materials. Ms. Bernick reminded the Board that it should occasionally discuss the question of reduced assessment for new and/or part-time lawyers, as it is the most frequently raised request.

**(D) Congratulations Bruce Schafer!:**

Ms. Bernick referred the BOD to the letter from the OSB, honoring Bruce Schafer with the President's Membership Service Award. The OSB Annual Awards Luncheon is in November and the PLF will reserve two tables.

**(E) Other Topics:**

1. NABRICO

Ms. Bernick reported that she just returned from the NABRICO conference in Chicago. It was an excellent conference with a large range of topics. Carol Bernick and Betty Lou Morrow also met with Aon and Scor Re while in Chicago. They also met Steven Goode, a new member of the Aon team. The reinsurance program is very relationship-based. They expect hands-on meetings with the PLF. We go to London every other year to solidify these relationships.

2. Non-Profit Law Firms

Recently, we have seen an increase in non-profit law firms opening in Oregon. This is one way to bridge the access to justice divide. The question is whether they need PLF coverage. Teresa Statler asked if there is push back from these new entity law firms when we tell them they need our coverage. Jeff Crawford and Emilee Preble have done a great job of explaining why they do not meet the in-house exemption.

Helen Hirschbiel noted that one reason for growth of these law firms is that it enables lawyers who work for them to qualify for loan forgiveness.

Tim Martinez asked if those lawyers are able to utilize OAAP services. Barbara Fishleder stated that they are. The OAAP services are open to all Oregon lawyers, with or without PLF coverage.

### 3. Cyber Liability

The PLF is looking at purchasing a cyber liability policy and doing away with the fidelity bond. Betty Lou Morrow is working on this, including scheduling a cyber audit. She will report the results once we receive a quote.

### 4. OSB – Form for Lawyers

We are in early discussions with the OSB about creating a required filing for lawyers (similar to the IOLTA form) that addresses the issue of what happens to a lawyer's files if something happens to the lawyer. We have received a positive response from the OSB.

Carol Bernick gave a wedding gift to Board Chair, Teresa Statler. The gift was from the PLF Board members.

## 3. CLAIMS REPORT

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

Bruce Schafer presented the Open Session Claims Report. As of Wednesday, August 23, 2017, the PLF had opened 549 new claims and 175 new suspense files. Extrapolating these figures at the same pace for the rest of the year would suggest 856 new claims and 273 new suspense files in 2017. We budgeted 870 new claims so the number is close, but less than budgeted so far. A percentage of suspense files turn into claims.

The pending claim count at the end of December was 747 and the end of June was 792. This means we opened 45 more files than we closed. We have had several office closures. Office closures can generate many files and those files can be time consuming. We have had a few more office closures than normal at one time. Demographics are changing. Some office closures are due to aging.

Holly Mitchell asked how an office closure brings out claims. Bruce Schafer responded that there are numerous reasons that an office closure can create claims but most commonly, it occurs when the lawyer has health issues that impact the lawyer's ability to do the work. Mr. Schafer expects that the current office closures are age-related. The upcoming PLF Defense Panel Conference has a segment that addresses this issue.

Mr. Schafer reported that he believes severity is down. Ms. Morrow will discuss this later in the meeting. Next quarter will give us a better idea of year-end results.

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

Mr. Schafer encouraged board members to attend the conference.

### (C) Recap/Summaries of Trials and Other "Wisdom":

Bruce Schafer referred the Board to the materials beginning on page 44.

Rob Raschio commented on the stress and economics of a claim. He felt the PLF defense team did a great job of managing high emotion lawyers.

Tim Martinez encouraged board members to attend the last presentation on Saturday. It is a covered party's story and is fascinating how the process works from the lawyer's perspective.

Barbara Fishleder commented on the severity of claims for lawyers practicing over 36 years. Mr. Schafer commented that a few years ago, he asked for some statistics on the lawyers who had claims; 75 percent of lawyers practicing at least 10 years had some sort of claim. He feels it is logical that the longer you practice, the more severe cases you take on and, in turn, the bigger the risks.

Megan Livermore asked what lawyers should do if they are concerned about a lawyer's ability to practice law. Ms. Fishleder stated that the OAAP and practice management advisors can assist in some situations. She encourages people to call the OAAP or her directly.

#### **4. FINANCIAL REPORTS**

##### **(A) June 30, 2017 Financial Statements:**

Betty Lou Morrow gave the financial report. She referred the Board to the narrative in the materials, explaining the financial statements. The financial statements were inadvertently not included in the materials but will be sent to board members separately.

Ms. Morrow reported that we are having a very good year. Cash and investments are up approximately \$4.4 million over 2016; portfolio performance is ahead of 2016 by \$1.88 million. The combined net position is at \$15.6 million (\$2.3 million ahead of the net position goal). This is largely due to the positive actuarial adjustment for claim liabilities of \$3.1 million. The net position is up \$5.8 million over 2016. There is a shortfall of approximately 66 full-pay attorneys versus budget at June 2017 amounting to \$230,682. The approximate investment returns for the portfolio at June 30 are 6.5%. Our budgeted return was 3.5%. As of July 31, the extrapolated claims through the end of the year are 838. We budgeted 870 claims. The difference is 32 claims YTD, or \$720,000 in new claims expense. Ms. Morrow expects the PLF to end the year well positioned.

Betty Lou Morrow reported that the 2016 financial audit was mailed to all board members. If anyone did not receive it, please let her know.

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

##### **(A) 2<sup>nd</sup> Quarter 2017 Report and Loss Prevention Update:**

Ms. Fishleder reported that program access for the end of this quarter is similar to access in other years. See materials for statistical information for both the Practice Management Assistance Program and the OAAP. She noted that our PLF blog is very successful and the Oregon Lawyer Conference Room (OLCR) usage continues to grow. Additional shred days took place since the last board meeting and we are looking into other locations/options. Ms. Fishleder gave an overview of upcoming CLEs.

Barbara Fishleder noted that there is a new look to the PLF *In Brief*. We will continue to refine the new look, as we get feedback. The current issue will be mailed this week.

We recently arranged the payment by credit card option for OAAP events and we will offer this option beginning with our fall events.

Ms. Fishleder noted that page 88 of the materials includes the article written by Teresa Statler about the OAAP/OWLs Women's retreat.

## **6. COMMITTEE REPORTS AND ASSIGNMENTS**

### **(A) Claims Committee:**

Dennis Black stated there is nothing to report at this time.

### **(B) Coverage Committee:**

Carol Bernick stated that Molly Jo Mullen is in Sunriver, but not feeling well, so she gave the report in her absence.

Ms. Bernick stated that when Madeleine Campbell took on an additional role about a year ago, one thing she became responsible for was collecting questions and issues about our Coverage Plan; things to consider in terms of changes to the Coverage Plan. The Coverage Committee met to discuss these issues and agreed to some changes that will be presented at the October meeting. One outstanding issue relates to escrow agents and whether to exclude certain types of escrow conduct. We will finalize a recommendation on that before our October meeting.

### **(C) Excess Program Committee:**

Saville Easley stated there is nothing to report.

Jeff Crawford reported that the PLF has made a lot of progress on the excess portal, allowing firms to apply for coverage and look at documents online. We are also continuing to refine business law supplements regarding exposure and identifying risks.

**(D) Finance:**

Tom Newhouse reported that the Committee meet on August 15 and discussed the topics below. He turned the meeting over to Betty Lou Morrow to give an overview of the actuarial information.

Ms. Morrow referred the Board to the actuarial memo beginning on page 94 of the materials. In prior years, we provided a single document including current actuarial results as well as descriptions of actuarial terms. We are now providing two documents – one, a document containing only the current actuarial results and recommendations and the second, being a descriptive document outlining important terms and definitions in understanding actuarial results.

Ms. Morrow asks that the Board approve the following agenda items:

1. Values for June 30, 2017 claim liabilities in the amount of \$25.5 million. This includes \$12.8 million for indemnity liabilities and \$12.7 million for expense liabilities.

This represents a \$3 million decrease in liabilities. Ms. Morrow reported this is due to excellent claims development for all four reporting periods.

2. Value for the cost of a new claim beginning July 1, 2017 is \$21,000.

The previous cost of a new claim was \$22,500. The actuaries recommended reducing it to \$21,000 (a difference of \$1,500/claim) due to less than estimated frequency and severity.

3. 2018 PLF Primary Program Assessment remains at \$3,500.

The actuaries are recommending keeping the assessment at \$3,500. There was a detailed discussion regarding the assessment at the Finance Committee meeting and the Finance Committee agrees with keeping the assessment at \$3,500 for 2018.

Carol Bernick commented that, although the actuaries recommended keeping the assessment at \$3,500 for 2018, both claims development and investments have been very positive, so we have a significant surplus.

Ms. Bernick feels that given our current financial situation the BOD should begin discussions in early 2018 to identify criteria by which it would be determined what, if any, change be made to the assessment for 2019.

Rob Raschio asked when we last evaluated the coverage amount of \$300,000. Bruce Schafer gave some history on the assessment and the coverage amount over the years. Betty Lou Morrow noted that very few claims have gone to limits. Jeff Crawford noted that firms can purchase excess coverage on the commercial market if they need more coverage. Mr. Raschio is suggesting that if we are going to discuss the assessment, we should talk about limits as well as expense allowance.

Carol Bernick asked if this topic should fall under the Long Range Planning Committee or the Finance Committee to discuss the issue. Rob Raschio and Teresa Statler suggest the Long Range Planning Committee.

4. Net Position Goal of \$13.3 million.

The \$13.3 million net position goal is based on an 80% confidence level. \$10 million is set aside as reserves for adverse claims development and adverse investments development. The Board of Directors has asked that this goal be reviewed annually. Ms. Morrow referred the Board to the net position goal memo, beginning on page 161 of the materials.

Ms. Morrow asked for a motion and a second on the four items listed above.

*Tim Martinez moved and Rob Raschio seconded that the four items listed above be approved as written. The motion passed unanimously 8-0 (1 absent).*

5. PLF Budget for 2018.

There was no further discussion regarding the 2018 budget.

*Rob Raschio moved and Megan Livermore seconded that the 2018 budget be approved as written. Motion passed unanimously 8-0 (1 absent).*

**(E) Investments:**

Tim Martinez stated that there is nothing to report at this time.

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

Holly Mitchell stated that there is nothing to report.

**(G) Nominations:**

Teresa Statler reported that she, Carol Bernick and Dennis Black met via telephone to discuss the open BOD positions.

Ms. Bernick discussed the changes in demographics of our board with regard to firm size (see page two of Ms. Bernick's memo to the Board in the materials). With the departure of Ms. Statler at the end of the year and the fact that Saville Easley has left the Gevurtz Menashe firm and opened her own firm, we will not have large firm representation. The Nominations Committee identified its top three candidates as Susan Marmaduke, Oren Haker, and Susan Pitchford.

Ms. Bernick discussed each of the candidates and Board discussions followed.

Megan Livermore noted that in looking at the candidates, we did not do well in terms of finding diverse candidates. Ms. Bernick agreed. Carol Bernick did much outreach and expects it will take time. The question was asked as to the feedback she received. Ms. Bernick stated that comments were “burned out” and “already involved in many bar programs.” Also, many will not agree not to sue lawyers. It is a very small pool of people and they are pulled in many directions and asked repeatedly to participate on various boards. Many feel they are better served with other organizations.

*Rob Raschio moved that the following names be presented to the BOG in the following order: Haker, Marmaduke, and Pitchford.*

Mr. Raschio feels we should have someone from the largest firm to help with the Excess Program.

Bruce Schafer commented that most large firms do not purchase excess coverage from the PLF. He agrees that large firms have a huge investment with the PLF through their assessments and feels it is in their interest to be represented and in our interest to be tuned into that, but Harrang is more useful from an excess standpoint.

*After discussion, Rob Raschio withdrew his motion.*

*Dennis Black moved that we present the names of the Nominations Committee in the order listed (Marmaduke, Haker, and Pitchford). Tim Martinez seconded the motion. The motion passed unanimously 8-0 (1 absent).*

Carol Bernick discussed the candidates for the public member position.

Dennis Black noted that this year, we are on track to replace two departing board members (one lawyer and one public member). Next year, there will only be one departing board member (a lawyer). Mr. Black would like to propose that we push back the public member term cycle one year and only replace a lawyer member this year and keep Tim Martinez as a public member for one additional year. At the end of 2018, two board members would be exiting the board (one public member and one lawyer member). This would give Mr. Black an increased confidence level with experienced board members, especially taking on the assessment issue and coverage limits issue.

Teresa Statler asked if we have Tim Martinez serve one more year, then at the end of 2018, would we be looking at one public member and two lawyer members. The answer was no. We currently have one lawyer board member exiting at the end of 2018 and no public members, so with the addition of Mr. Martinez, it would be two board members total.

Ms. Statler asked if there was any further discussion regarding Mr. Black’s request to keep Tim Martinez on the Board for another year. She also asked if anyone wanted Mr. Martinez to leave the room during the discussion. Teresa Statler feels it is a good idea to keep Mr. Martinez on the board for another year considering we do not have a strong preference for either of the

two public members currently on the list. Tim Martinez has served for a long time and has done a great job. Mr. Martinez stated that he enjoys this board and would welcome another year.

Rob Raschio stated that from a board perspective, Tim's knowledge of this board is invaluable in our decision-making. He agrees with extending his term for another year.

Ms. Bernick stated that she feels we should include Batlan with the names being presented to the BOG.

*Rob Raschio moved and Teresa Statler seconded that the PLF present to the BOG for the public member position, the name of Tim Martinez to continue for a one-year term and Mr. Batlan as an alternate. Motion passed 7-0 (1 absent; 1 abstained – Martinez).*

**(H) 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**

Helen Hirschbiel introduced Chris Costantino.

Ms. Costantino gave the BOG report. She discussed the Futures Task Force Report. The purpose was looking at innovations and improvements to address access to courts and lawyers by low- and middle-income people. Part of the report involved a proposal for the paraprofessional program that Mr. Greco discussed previously.

The BOG is looking at the recommendations in the report. The paraprofessional program proposal focuses on certifying paralegals. There is an educational component, practical component, and having malpractice insurance. The question for the PLF is will the PLF provide coverage. Ms. Costantino stated that personally, she feels it will be a long process. The proposal presents all kinds of legislative changes.

Ms. Costantino asked Ms. Bernick to continue to be a part of the discussion. The area of law for paraprofessionals focuses on family and landlord-tenant, but it is expected it will branch out into other areas. Ms. Costantino feels conceptually it is an interesting idea but she has her own concerns over it. The courts are over run with self-represented litigants. She encourages everyone to think about it. The BOG would like comments (pros and cons). She is very impressed with the report.

Helen Hirschbiel stated that people could ask for hard copies of the report. A link was emailed to all bar members. The official report is much larger than the hard copies she has.

Rob Raschio mentioned his concern with limiting practice areas and whether it will be followed. Ms. Costantino said it was an excellent question and noted this is exactly the kind of feedback and thinking the BOG needs. Another question was "what about people being trained for 1500 hours, then they leave?" – Investment costs are significant. Ms. Costantino said this was

an excellent point as well. The OSB and BOG want to address these important issues and how that is done is just as important.

Ms. Hirschbiel added that in the process of putting together a proposed paraprofessional committee, she would like representation from the PLF.

Rob Raschio feels this is a Special Issues Committee topic. Ms. Bernick stated that, if she heard Ms. Hirschbiel correctly, they want to flesh out all issues, and then figure out the best mechanism for getting this to the PLF Board and the BOG to discuss. Ms. Bernick will talk to Ms. Hirschbiel to discuss PLF involvement in the Committee.

Barbara Fishleder referred to the term “self-navigator.” Ms. Costantino agreed but feels that is more people who use the internet for legal services (like Legal Zoom), rather than appearing in court on their own. Helen Hirschbiel said there is more of a do-it-yourself mentality because of the internet. She feels that, overall, people do not know what the value is for having a lawyer handle their case. Rob Raschio suggested relaxing the rules on lawyers as well – a mediation setting where one person represents both sides. Helen Hirschbiel noted that the Futures Task Force Report is dealing with other issues as well and they have met since the last BOG meeting of June 23, 2017. She suggests looking at the BOG minutes on the OSB website.

## **8. CHAIR REPORT**

### **(A) Updates:**

Teresa Statler offered Carol Bernick condolences on her mother’s death.

## **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: 06/09/17 and 06/26/17:**

*Molly Jo Mullen moved and Teresa Statler seconded that the minutes of June 9, 2017 and June 26, 2017 be approved as written. Motion passed unanimously 8-0 (1 abstained - Raschio).*

**11. INFORMATION ITEMS**

**(A) Miscellaneous Articles/Other: ALPS White Paper re State Bars Contemplating Mandatory LPL Insurance Options:**

Carol Bernick asked people to review her memo in the materials and the white paper listed above. These topics will be discussed at the October board meeting in Ashland. A thought is that the PLF might be interested in competing with ALPS. She is not making any recommendations, but wants to discuss with the Board.

**12. ADJOURNMENT**

The meetings adjourned at approximately 12:04 p.m.

These minutes were approved by the PLF Board of Directors at its October 20, 2017 board meeting.