

**MINUTES OF WORKERS' COMPENSATION SECTION  
EXECUTIVE COMMITTEE  
February 9, 2018**

**I. CALL TO ORDER**

Chair-Elect Katherine M Caldwell called the meeting to order at 12:06. Attendance was as follows:

<b>Name</b>	<b>In Person</b>	<b>By Phone</b>	<b>Absent</b>
John M Oswald (Chair)			X
Katherine M Caldwell (Chair-Elect)	X		
Jenny Ogawa (Past Chair)	X		
Linda D Conratt (Treasurer)		X	
Bruce D Smith (Secretary)		X	
Bin Chen		X	
Philip Harry Garrow		X	
Keith Semple		X	
Geoffrey G Wren		X	
Joe Di Bartolomeo			X
Martin M Fisher		X	
Christine Coffelt Frost		X	
Colin Rockey Hackett	X		
John Klor	X		
Allison B Lesh		X	
Jovanna L Patrick		X	
Carrie D Wiplinger		X	
Colin George Andries (BOG)			X
Christine Ford (Bar Liaison)	X		

**II. MINUTES**

The December 8, 2017, and January 12, 2018 minutes were unanimously approved.

**III. CHAIR REPORT**

EC members whose terms are set to expire this year are: John Oswald, Kate Caldwell, Jenny Ogawa, Linda Conratt, Geoff Wren,

Phil Garrow, Keith Semple, Bruce Smith, and Bin Chen. Keith, Geoff, and Bin have indicated that they are not going to continue once their terms expire at the end of 2018. Heather Holt, Mark Mills, and Vincci Lam have been nominated to replace them. We will vote on the nominees at our next meeting.

Katie Krametbauer has asked the EC for input concerning potential topics for this year's Bench Bar Forum. Jovanna suggested that we recommend some topics directly related to workers' compensation issues, rather than another child/elder abuse topic. Keith agrees. Linda does not agree – she would like a presentation on elder abuse, access to justice, or child abuse, because she does not often get these credits elsewhere. Keith suggested a presentation covering how to handle medical liens at the time of claim settlement. Colin agrees that this would be a good topic. We will discuss this issue further at our next meeting.

Kate reported that on the evening of February 22, 2018 Perkins Coie and the Lewis & Clark Black Law Student Organization will jointly host a speed-networking event. Kate will forward the link to that event for those who might be interested.

#### **IV. TREASURER REPORT**

Linda noted that she had sent all EC committee members an email on January 22, 2018, which included a pdf copy of the Bar's 2017 year-end financial report, including the Workers' Compensation Section Statement of Revenue and Expense For the Twelve Months Ending December 31, 2017. A copy of that one-page report (omitting the detail page) is attached, marked Exhibit A.

#### **V. COMMITTEE REPORTS**

##### **A. Professionalism Award**

Jenny asked whether anyone knows how we are supposed to do the Section survey for the professionalism award. Keith believes that it was done last year using Survey Monkey. Kate will find out.

## **B. Access to Justice**

Bin will attend the February 15, 2018 meeting of the Workers' Compensation Board, where the Board will address the two proposed rule concepts advanced by the Access to Justice Committee concerning: (a) translation of non-English written evidence at hearing; and (b) requiring that certain documents be distributed to injured workers along with a separate notice in multiple languages advising the workers of the importance of the document and possible avenues for assistance.

Bin reported that Access to Justice is also looking into whether barriers to vocational retraining currently exist; and whether the Lawyer Referral Service modest income program is adequate.

The next Access to Justice meeting is scheduled for Monday, February 26, 2018, at noon.

## **C. Salishan/Annual Meeting**

There was no report from the Salishan Committee

## **D. Bench Bar Forum**

Allison is the EC liaison for the Bench-Bar Committee, and reports that they are close to picking a date for this year's program.

## **E. Going Forward**

Kate (for Going Forward liaison John Oswald) reported that the committee has scheduled a meeting for Monday, February 26, 2018 at noon, but may change to another date because the Access to Justice Committee is scheduled to meet at the same time. (All the committees use the same conference line.) Kate will follow up with Chair Oswald, and will recommend that they move the Going Forward meeting if necessary.

## **F. Legislative and Rules**

Keith reported that Phil Garrow is on the Legislative and Rules Committee, in addition to those identified in the January 12, 2018 meeting. Since Carol Parks and Ray Smitke are no longer on the committee they now need more members.

Keith reported that at its January 26, 2018 meeting MLAC discussed SB 1535, regarding average weekly wage calculations for temporary disability benefits. MLAC noted that the department had undertaken rulemaking efforts designed to obviate legislative action to correct the bill, which was not drafted as its proponents had intended. On February 8, 2018 the department issued a temporary rule that will take effect on February 21, 2018.<sup>1</sup>

MLAC also discussed pending bills regarding amateur hockey players (HB 4093); and home care workers (SB 1534). MLAC reminds us that April 2, 2018 is the deadline for presenting new legislative proposals. (The Workers' Compensation Section currently has no pending proposals.)

## **VI. OLD BUSINESS**

There was no old business.

## **VII. NEW BUSINESS**

John Klor is on the Bar Legal Ethics Committee, which met last Saturday. The committee wants the Executive Committee to consider whether an ethics opinion is needed for a situation in which an injured worker asks the lawyer to file a new or omitted condition claim (or appeal the denial of one) where the lawyer believes that the claim is without merit. The Legal Ethics Committee wants to know whether we think that the lawyer has an ethical duty to (a) file the claim; or (b) appeal the denial. When asked to clarify what the Legal Ethics Committee wants from us, John indicated that they want to know whether this situation arises frequently enough to justify a formal ethics opinion.

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<sup>1</sup> The temporary rule can be found at: [http://wcd.oregon.gov/laws/Documents/New\\_rules/60-18050t.pdf](http://wcd.oregon.gov/laws/Documents/New_rules/60-18050t.pdf)

Colin commented that this would be a problem only if the attorney makes the wrong decision. Chris Frost noted that each situation is unique, and that the lawyer will generally have to appeal if there is any reasonable chance of success. She recommended that we have John tell the Legal Ethics Committee that no broad-based ethics opinion is needed. Phil agreed that no new rule is needed, pointing out that the lawyer has an affirmative duty to refrain from pursuing a frivolous claim, regardless of what the client wants. Geoff agrees that no new ethics rule is needed.

Keith added that the question posed implicates both legal and general ethics. He feels that the lawyer should give the injured worker his or her opinion concerning the merits of the claim, and if the worker insists on pursuing a meritless claim the lawyer should decline (or withdraw from) representation, taking reasonable steps to protect the legal rights of the injured worker. Keith agrees that no formal ethics opinion is needed.

Although no formal motion was made, the consensus of the EC members present was that no formal ethics opinion is needed.

## **VIII. ADJOURNMENT AND NEXT MEETING**

The EC meeting adjourned at 12:38 p.m.

The next meeting is tentatively scheduled for noon on March 9, 2018 at the OSB offices. The date, however, is subject to change because there is a workers' compensation CLE that day, and a number of EC members are planning to attend. Kate will follow up with John Oswald about changing the date for the EC meeting.

**OREGON STATE BAR**  
**Workers' Compensation - 830**  
**Statement of Revenue and Expense**  
**For the Twelve Months Ending December 31, 2017**

Description	December 2017	YTD 2017	Budget 2017	% of Budget	December Prior Year	YTD Prior Year
<b>REVENUES</b>						
Annual Event		\$29,917	\$30,500	98.1%		\$30,456
Membership		8,200	8,275	99.1%		8,300
Sponsorship		1,850	1,850	100.0%		1,850
Registrations -		145	100	145.4%		112
<b>Total</b>		<b>40,112</b>	<b>40,725</b>	<b>98.5%</b>		<b>40,718</b>
<b>EXPENSES</b>						
Annual		27,674	32,000	86.5%		28,758
Committee -	82	778	1,300	59.8%		256
Computer -			200	0.0%		146
Conferences /		8,193	7,000	117.0%	1,450	7,995
Contributions		200	150	133.3%		
Contributions -		500	500	100.0%		500
Contributions -		500	500	100.0%		500
Gifts &		241	200	120.4%		161
Telephone -	80	416	420	99.2%	75	506
OSB Support		2,728	2,720	100.3%		2,760
<b>Total</b>	<b>162</b>	<b>41,230</b>	<b>44,990</b>	<b>91.6%</b>	<b>1,525</b>	<b>41,582</b>
<b>Net</b>	<b>(162)</b>	<b>(1,118)</b>	<b>(4,265)</b>		<b>(1,525)</b>	<b>(864)</b>
<b>Beginning</b>		<b>17,986</b>				
<b>Ending Fund</b>		<b>16,868</b>				
<b>Section</b>		<b>328</b>				<b>332</b>
<b>Section</b>		<b>16</b>				<b>17</b>
<b>Section</b>		<b>344</b>				<b>349</b>

**EXHIBIT**     A