

**Testimony in Support of HB 2565
Helen Hirschbiel, Oregon State Bar
Before the House Judiciary Committee**

February 6, 2013

I am appearing on behalf of the Oregon State Bar Board of Governors in support of HB 2565, a bill that deals with two distinct problems.

The first involves the circumstance when a lawyer either abandons his or her practice or is incapable of devoting the time and attention the practice requires. In such a situation, the bar can petition the court to take jurisdiction over the lawyer's practice. When the court takes jurisdiction, it appoints a custodian to take possession and control of the practice and to take steps to protect the interest of the lawyer's clients and the public. The custodian is entitled to a judgment for his or her reasonable compensation and expenses in acting as the custodian, and the judgment is a lien against all nontrust funds (that is, non-client funds) and other property of the law practice. This process is set forth in ORS Chapter 9 at ORS 9.705-9.725.

The custodian's lien for expenses, however, is "subordinate to nonpossessory liens and security interest [sic] created prior to its taking effect." ORS 9.735. In other words, the custodian gets paid for his or her efforts to clean up the lawyer's abandoned practice only after other creditors with security interests and nonpossessory liens are paid. As a practical matter, this means that the custodian is highly unlikely to be reimbursed for expenses, let alone compensated for his or her time and effort.

Section 1 of HB 2565 addresses this problem by giving the custodian first priority in payment for the custodian's reasonable compensation and expenses. This will greatly improve the bar's ability to recruit lawyers to act as custodians.

The remainder of the bill amends several sections of the bar act to align certain due dates for member compliance and to allow the executive director of the bar to provide notice of administrative delinquency to members by e-mail instead of by registered or certified mail. The bill would in effect establish the same due dates for payment of bar membership fees, payment of assessed contributions to the bar's Professional Liability Fund, and certifying compliance with the Interest on Lawyer Trust Account (IOLTA) program. In 2012 the bar spent \$2400 to mail delinquent fee notices and \$2600 to mail IOLTA non-compliance notices. All active bar members are required to maintain an e-mail address for official bar communications.