

Testimony before the House Judiciary Committee
In support of HB 2327
On behalf of the Oregon State Bar
February 4, 2015

Chair Barker, members of the committee:

My name is Helen Hirschbiel. I am the General Counsel for the Oregon State Bar. I'm here today on behalf of the Oregon State Bar Board of Governors in support of HB 2327.

ORS 9.705—9.755 (“Custodianship Statute”) provides a process by which the Oregon State Bar can, with the court’s approval and oversight, assume responsibility for and control of a lawyer’s practice when the lawyer is no longer able to do so. The purpose of the statute is to protect the lawyer’s clients and ensure that property in the custody of the lawyer is returned to its rightful owner.

In most cases, when attorneys retire or otherwise close their law practices, they will have taken care of their clients. This usually means working with clients to have their cases transferred to other attorneys, and wrapping up as many matters as possible before they close their practice. In some cases, an attorney may suddenly cease practicing with little or no advance warning, or have simply failed to make arrangements for the orderly suspension or termination of the practice. In these cases, clients with important and time sensitive legal matters pending before the court could be prejudiced if another attorney is not able to quickly step in.

Until recently, the bar has used the custodianship statute very sparingly. In the last two years, however, the need for custodianship proceedings has risen dramatically, primarily because lawyers have died unexpectedly or without making arrangements for the wind-up of their practices. In an effort to assist with wrapping up these lawyers’ practices, the bar has noticed limitations within the current statute.

HB 2327 makes four key improvements to the Custodianship Statute. First, HB 2327 clarifies that custodianship proceedings may be initiated upon a lawyer’s death or disbarment. Second, it eliminates the requirement of notice to the affected lawyer as a prerequisite to filing the petition; instead it provides notice to the affected lawyer (or representative) after the court has assumed jurisdiction, and gives the lawyer the opportunity to request a hearing. Third, it clarifies that, once appointed custodian, the bar has the authority to take control of trust account funds, and the responsibility to determine ownership of those funds and distribute them accordingly. Finally, it sets out requirements for how the bar is to handle client files, which may include returning files to clients when possible, destroying them when necessary, or retaining them when they include wills.

Importantly, HB 2327 retains the requirement that the bar account to the court for its actions as custodian.

Thank you for your time and your consideration, and I’d be happy to answer any questions.