

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
House Committee On Judiciary

MEASURE: HB 2327
CARRIER: Rep. Barton

Fiscal: No Fiscal Impact
Revenue: No Revenue Impact

Action Date: 02/04/15

Action: Do Pass.

Meeting Dates: 02/04

House

Yeas: 7 - Barker, Barton, Greenlick, Williamson, Olson, Post, Lininger

Exc: 2 - Krieger, Sprenger

Prepared By: Laura Handzel, Administrator

WHAT THE MEASURE DOES:

Allows Oregon State Bar (OSB) to petition court *ex parte* (by or for one party) to take immediate jurisdiction over attorney's law practice in certain cases where attorney has died, is disbarred, suspended from active practice of law, is incarcerated, or has abandoned the practice. Authorizes court to take immediate jurisdiction over affected practice as court determines necessary. Mandates that courts appoint OSB as custodian and that immediately upon appointment, OSB assume possession and control of all property falling within the court's assumed jurisdiction. Mandates that financial institutions holding funds in lawyer trust account release funds to OSB. Outlines process for distributing funds and managing papers and files. Revises process of notice and opportunity for hearing for affected attorney. Declares emergency, effective upon passage.

ISSUES DISCUSSED:

- Oregon State Bar (OSB) overview, structure, and primary function as attorney regulatory agency
- OSB Discipline Board, open system subject to Public Records Act
- Timing of when OSB should take custodianship
- Limits to OSB's involvement
- Notice requirement
- Client funds and files; problems presented by wills
- Due process for attorneys at issue
- Court oversight
- Changes to custodianship law in 2013 that amended payment priorities
- Applicability to attorneys with disability
- Biggest problems with current system; lack of clarity and efficiency of notice requirement

EFFECT OF COMMITTEE AMENDMENT:

No amendment.

BACKGROUND:

Oregon law presently contains a mechanism allowing Oregon State Bar (OSB) to appoint counsel when an attorney becomes incapable of performing.

House Bill 2327 clarifies and refines this process. It states that this process is to be used specifically for an attorney that has died, is disbarred or suspended from the active practice of law, is incarcerated or has abandoned the practice and has either failed to

make arrangements or appoint an individual that can adequately protect client's interests. House Bill 2327 also changes the notice and hearing process. It authorizes OSB to petition the court *ex parte* to take immediate control over an affected attorney's practice. OSB must then serve a copy of the order by regular mail to the last-known address of the attorney or his or her duly appointed fiduciary. The attorney or representative must request a hearing to challenge the order within 10 days of service. House Bill 2327 additionally requires any financial institutions holding funds in a lawyer trust account for the affected attorney to release the funds to OSB, who must determine ownership and distribute funds as directed by the client(s). House Bill 2327 further outlines OSB's requirements for retention of client materials, and clarifies rules regarding representation, confidentiality, compensation and expenses.