

House Bill 2327

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies statutes relating to custodianship of practice of nonperforming attorney.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to custodianship of practice of nonperforming attorney; creating new provisions; amending
3 ORS 9.705, 9.710, 9.715, 9.720, 9.725, 9.730, 9.735, 9.750 and 9.755; repealing ORS 9.722; and de-
4 claring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1.** ORS 9.705 is amended to read:

7 9.705. As used in ORS 9.705 to 9.755:

8 (1) "Affected attorney" means a member or former member of the Oregon State Bar whose law
9 practice is placed within the jurisdiction of the court **under ORS 9.720** or as to whom a petition
10 has been filed to place such law practice within the jurisdiction of the court **under ORS 9.715**.

11 (2) "Law practice" means a practice conducted by an individual, a partnership or a professional
12 corporation.

13 **SECTION 2.** ORS 9.710 is amended to read:

14 9.710. The circuit court of the county in which an attorney engaged in the practice of law in
15 this state maintains or has maintained a principal office [*shall have*] **has** jurisdiction as provided in
16 ORS 9.705 to 9.755 whenever [*such*] **the attorney has died, is disbarred or suspended from the**
17 **active practice of law, is incarcerated or has abandoned the practice and:**

18 [*(1) Without good reason has ceased to devote or is incapable of devoting time and attention, per-*
19 *sonally or through another attorney, to the law practice of the attorney; or]*

20 [*(2) For any reason has ceased to devote or is incapable of devoting the time and attention, per-*
21 *sonally or through another attorney, to the law practice of the attorney which is necessary to protect*
22 *the interests of the clients of the attorney.]*

23 **(1) The attorney failed to make arrangements for the orderly suspension or termination**
24 **of the law practice of the attorney; or**

25 **(2) A duly appointed personal representative or other person assisting with the suspen-**
26 **sion or termination of the law practice is unable to adequately protect the interests of the**
27 **attorney's clients.**

28 **SECTION 3.** ORS 9.715 is amended to read:

29 9.715. [*If the affected attorney fails to respond or respond adequately within seven days to an in-*
30 *quiry sent by registered mail or by certified mail with return receipt from the bar to the last-known*
31 *address of that attorney regarding the alleged failure of the affected attorney to serve and protect ade-*

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 quately the interests of that client of the attorney, either personally or through another attorney, the
 2 board of governors] **When the Oregon State Bar determines that one of the circumstances**
 3 **listed in ORS 9.710 exists, the bar** may petition the court **ex parte** to take **immediate** jurisdiction
 4 over the **affected attorney's** law practice [of an affected attorney] as provided in ORS 9.705 to 9.755.
 5 [Notice of the filing of the petition, and a copy thereof, shall be served upon the affected attorney, or
 6 if appropriate, upon the heirs of the affected attorney, personal representatives or conservators together
 7 with notice of time and place for hearing upon said petition. Service may be made by personal or
 8 substituted service as provided by law for service of a summons, or in the alternative, may be made
 9 by certified or registered mail, return receipt requested, addressed to the affected attorney at the latest
 10 address shown on the official membership records of the Oregon State Bar or to the personal repre-
 11 sentative or conservator of the affected attorney at the latest address shown in the probate proceeding.
 12 The court may prescribe additional alternative methods of service as it deems necessary to protect the
 13 interest of the affected attorney. Hearing upon said petition shall be held not sooner than five days, nor
 14 more than 15 days, after the filing of the petition.]

15 **SECTION 4.** ORS 9.720 is amended to read:

16 9.720. If [after notice and an opportunity to be heard] the court finds that it has jurisdiction and
 17 finds that the assumption of such jurisdiction is necessary in order to protect the interest of the
 18 clients of the affected attorney or to protect the public interest, the court may, by appropriate order,
 19 immediately take jurisdiction over the law practice of the affected attorney[, including] **to the ex-**
 20 **tent the court determines is necessary. The exercise of jurisdiction may extend only to the**
 21 **affected attorney's lawyer trust account or may include** all legal files, clients' trust funds,
 22 clients' property and all books, records, funds and property used in the law practice of the affected
 23 attorney.

24 **SECTION 5. ORS 9.722 is repealed.**

25 **SECTION 6.** ORS 9.725 is amended to read:

26 9.725. (1) If the court assumes jurisdiction under ORS 9.705 to 9.755, it shall appoint [one or more
 27 attorneys who are members in good standing of] the Oregon State Bar to act as custodian of the law
 28 practice of the affected attorney. Immediately upon appointment, [such custodian] **the bar** shall take
 29 possession and control of all property [comprising the law practice of the affected attorney] **over**
 30 **which the court assumed jurisdiction.** The court may order [any custodian appointed under ORS
 31 9.705 to 9.755] **the bar** to do one or more of the following:

32 (a) Examine the files and records of the law practice and obtain information as to any pending
 33 matters which may require attention;

34 (b) Notify persons and entities who appear to be clients of the affected attorney that the court
 35 has assumed jurisdiction and inform such persons that it may be in their best interest to obtain
 36 other legal counsel;

37 (c) Apply for extensions of time pending employment of other counsel by the client;

38 (d) File notices, motions and pleadings on behalf of the client where jurisdictional time limits
 39 are involved and other legal counsel has not yet been obtained;

40 (e) Give notice to appropriate persons and entities who may be affected, other than clients, that
 41 the court has assumed jurisdiction;

42 (f) Arrange for the surrender or delivery of clients' papers or property; and

43 (g) Do such other acts as the court may direct to carry out the purposes of ORS 9.705 to 9.755.

44 (2) The court [shall have] **has** jurisdiction over **that portion of** the files, records and property
 45 of the affected attorney for the purposes of ORS 9.705 to 9.755 **as established in the order,** and

1 may make all orders necessary or appropriate to protect the interest of the affected attorney, the
 2 clients of the affected attorney and the public.

3 **(3) Any financial institution holding funds in a lawyer trust account of the affected law-**
 4 **yer shall release the funds to the bar upon presentment of a copy of the order appointing the**
 5 **bar as custodian. The bar shall determine the ownership of the funds in the lawyer trust**
 6 **account and distribute the funds as directed by the interested client. Any funds for which**
 7 **ownership cannot be determined or for whom the owner cannot be located shall be turned**
 8 **over to the bar as provided in ORS 98.302 to 98.436.**

9 **(4) The bar may not be required to pay a filing fee for filing a petition under ORS 9.715.**

10 **SECTION 7.** ORS 9.730 is amended to read:

11 9.730. [*An attorney appointed as custodian under ORS 9.705 to 9.755, and any professional corpo-*
 12 *ration, partner, associate or person sharing office with such custodian shall be prohibited from ac-*
 13 *cepting employment by any client of the affected attorney as to any legal matter pending at the time of*
 14 *the custodian's appointment, provided, however, that any act done by such custodian pursuant to order*
 15 *of the court under ORS 9.705 to 9.755 shall not be deemed acceptance of employment.] **After ap-**
 16 **pointment as custodian of a law practice under ORS 9.725, the Oregon State Bar may engage**
 17 **the services of the Oregon State Bar Professional Liability Fund created under ORS 9.005 to**
 18 **9.755 or any active member of the bar to assist in the performance of the bar's duties as**
 19 **custodian. Acts performed by a member of the bar in assisting the custodian do not consti-**
 20 **tute acceptance of employment by any client of the affected attorney.***

21 **SECTION 8.** Sections 9 and 10 of this 2015 Act are added to and made a part of ORS 9.705
 22 **to 9.755.**

23 **SECTION 9. Service of order of custodianship.** The Oregon State Bar shall serve a copy
 24 **of an order appointing the bar as custodian of a law practice under ORS 9.725 on the affected**
 25 **attorney or any person assisting in the suspension or termination of the affected attorney's**
 26 **practice. The bar shall serve the copy of the order by regular mail to the last-known address**
 27 **of the affected attorney in the records of the bar or to a duly appointed fiduciary at the ad-**
 28 **dress provided in an official filing. The affected attorney or assisting person may, within 10**
 29 **days of the service, request a hearing to challenge the order. After the hearing, the court**
 30 **may vacate or modify the custodianship order as the court finds appropriate.**

31 **SECTION 10. Retention of client materials.** (1) Except as provided in subsection (2) of this
 32 **section or by court order, the Oregon State Bar may dispose of client papers and files that**
 33 **have not been claimed by a client of an affected attorney within six months after written**
 34 **notice to the client from the bar. The bar must dispose of the papers and files in a manner**
 35 **reasonably calculated to protect the confidentiality of the information contained in the pa-**
 36 **pers and files.**

37 **(2) The bar may dispose of an unclaimed original will as provided in ORS 112.815 and**
 38 **112.820.**

39 **(3) The bar shall maintain a log of all retained wills that is accessible to the public.**

40 **(4) Upon receipt of satisfactory proof of identity, the bar shall release a will belonging**
 41 **to a client to the client or to a duly appointed personal representative or conservator of the**
 42 **client.**

43 **(5) The bar may retain wills in digitized form, and a digitized copy, certified by the bar**
 44 **as a true copy of the digital document retained by the bar, shall be admissible in evidence**
 45 **to the same extent as the original.**

SECTION 11. ORS 9.735 is amended to read:

9.735. The court shall enter a judgment awarding reasonable compensation and expenses to *[any attorney who acts]* **the Oregon State Bar for acting** as custodian under ORS 9.705 to 9.755. The judgment shall be against the affected attorney or the estate of the affected attorney. The judgment is a lien upon all nontrust funds, office furnishings, supplies, equipment, library and other personal property used in the law practice of the affected attorney retroactive to the date of filing of the petition for jurisdiction under ORS 9.705 to 9.755. The judgment lien takes priority over all general unsecured creditors, nonpossessory liens and security interests that were unperfected on the date the court assumed jurisdiction, and may be foreclosed as provided in ORS chapter 87.

SECTION 12. ORS 9.750 is amended to read:

9.750. Persons examining the files and records of the law practice of *[the]* **an** affected attorney pursuant to ORS 9.705 to 9.755 shall *[observe the lawyer-client privilege]* **preserve the confidentiality of the information relating to the affected attorney's representation of a client** and shall make disclosure only to the extent necessary to carry out the purposes of ORS 9.705 to 9.755. Such disclosure is a disclosure which is reasonably necessary for the accomplishment of the purpose for which the affected attorney was consulted. *[The appointment of such custodian shall not affect the lawyer-client privilege which privilege shall apply to communications by or to the custodian]* **Communications between the Oregon State Bar or its designees and a client of the affected attorney are subject to the attorney-client privilege** to the same extent as it would have applied to communications by or to the affected attorney.

SECTION 13. ORS 9.755 is amended to read:

9.755. Whenever the purposes of ORS 9.705 to 9.755 have been accomplished with respect to the law practice of an affected attorney **for which the Oregon State Bar has been appointed as custodian under ORS 9.725**, the *[custodian attorney]* **bar** shall file with the court a final report and accounting of all funds and property coming into the *[custody of that attorney]* **possession or control of the bar as custodian and a petition for compensation and expenses of the bar for acting as custodian. The bar shall mail** a copy *[thereof]* **of the report and accounting** and a copy of the petition of *[custodian attorney]* **the bar** for compensation and expenses *[shall be mailed]* to all persons upon whom service was made pursuant to *[ORS 9.715]* **section 9 of this 2015 Act**. Upon approval by the court, an order shall be entered approving the final report and accounting, fixing the amount of compensation and expenses to be allowed to the *[custodian attorney]* **bar**, and discharging the *[custodian attorney]* **bar** from further duties.

SECTION 14. **The section captions used in this 2015 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2015 Act.**

SECTION 15. **This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.**