

**Testimony before the Senate Judiciary Committee
On House Bill 4067-A
On Behalf of the Oregon State Bar
February 22, 2016**

Chair Prozanski, members of the committee:

My name is Amber Hollister and I am the General Counsel for the Oregon State Bar. I'm here today on behalf of the Oregon State Bar Board of Governors to provide background on an attorney's ethical duty of confidentiality and the attorney-client privilege.

The Oregon State Bar welcomed the opportunity to discuss HB 4067-A with Representative Buehler. The Bar also appreciated the efforts made on the House side to acknowledge attorneys' duty of confidentiality and the attorney-client privilege in the proposed legislation.

Encouraging Oregonians to utilize attorneys as trusted advisors regarding questions of law and appropriate conduct strengthens our communities by helping Oregonians understand their legal rights and responsibilities, and mitigate their past mistakes.

As noted by the Oregon Supreme Court, "[a] lawyer's duty to protect a client's confidential information lies at the heart of the lawyer-client relationship." *Frease v. Glazer*, 330 Or 364, 370 (2000). Because clients trust lawyers to maintain their confidences, clients are encouraged to seek out legal assistance, and to communicate fully and frankly with their lawyers even as to embarrassing or legally damaging matters. This open communication provides lawyers the opportunity to advise clients on what the law requires and how they can refrain from wrongful conduct.

In Oregon, the duty of confidentiality is codified in both ORS 9.460(3) and in Oregon Rule of Professional Conduct 1.6. Oregon Rule of Professional Conduct 1.6 prohibits lawyers from revealing information relating to the representation of a client. "Information relating to the representation of a client" includes information protected by the attorney-client privilege and "other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." RPC 1.0(f). Thus, a lawyer's ethical duty of confidentiality extends beyond the protection afforded to client communications by the attorney-client privilege codified at ORS 40.225.

If the legislature considers any additional amendments to the bill, we would encourage legislators to weigh whether the amendments will have a chilling effect on consultations between attorneys and clients. The purpose of the duty of confidentiality is not just to encourage full and frank discussion —

such that clients share not only the good, but the bad and the ugly — but also to facilitate a relationship of trust between the lawyer and client, such that the client, confident of the lawyer's loyalty, can hear and accept both good and bad news and heed the lawyer's advice.

As noted by both the Oregon Supreme Court and the United States Supreme Court, preserving the attorney-client privilege and attorney's ethical duty of confidentiality lies at the very foundation of our system of justice. The nature of the attorney-client relationship "promotes the broader public interests in the observance of law and administration of justice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client." *State ex rel Oregon Sciences University v. Haas*, 325 Or. 492, 500, 942 P.2d 261 (quoting *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981)).

Thank you for your time.