

Testimony before the Senate Judiciary Committee
In support of HB 4095
February 15, 2018

Chair Prozanski, members of the committee:

Good afternoon. My name is Amber Hollister and I am the General Counsel for the Oregon State Bar. I am here to testify in support of HB 4095, which would include lawyer referral services within the attorney-client privilege found in ORS 40.225 also referred to as Rule 503 of Oregon's Evidentiary Code.

Lawyer Referral Services - Since 1971, the Oregon State Bar has provided access to a lawyer referral service to any Oregonian looking for help or guidance on a legal matter by connecting them with either a lawyer or connecting them with the appropriate services. In 2016, the bar's lawyer referral service received almost 80,000 requests for referrals and approximately 47,000 Oregonians were connected with a lawyer. Many of those who did not connect with a lawyer were directed to social services, the Attorney General's office, Legal Aid services, the Oregon Judicial Department and/or county and state services. The bar's lawyer referral service has become a clearing house for Oregonians who need help but do not know where to turn or what resources are available.

The Oregon State Bar currently offers four programs within its lawyer referral services.

- In 2016 the **Lawyer Referral Service** (LRS) referred nearly 50,000 potential clients to member lawyers. LRS is a non-profit program that provides referrals statewide in every major area of law. Lawyers agree to provide LRS-referred clients with an initial, half-hour consultation for no more than \$35.
- The **Modest Means** program is a reduced-fee referral program designed to make Landlord-Tenant, Foreclosure, Family Law, and Criminal Defense legal services accessible to lower-income people who are ineligible to receive such help through Legal Aid or court-appointed counsel. In 2016 we referred almost 3,000 modest means clients to lawyers around the state. Lawyers who accept Modest Means referrals agree to charge no more than \$35 for an initial, half-hour consultation, and no more than \$60, \$80 or \$100 per hour (depending upon the applicant's income and assets) for any additional services.
- The **Military Assistance Panel** provides legal assistance to deployed military personnel and their families in Oregon. Lawyers volunteer to give at least one hour of advice and counseling to a client free of charge. Lawyers help clients with the Service members' Civil Relief Act and general legal issues such as Family Law, Consumer/Credit Law, Real Property/Landlord-Tenant Law and Estate Planning.
- The **Problem Solvers** program features lawyers who volunteer to help younger Oregonians (ages 13-17) with their legal questions. Lawyers agree to provide a free 30-minute consultation,

usually concerning Family Law issues, emancipation, and other areas of law pertinent to teens and young adults.

Attorney-Client Privilege – Under ORS 40.225/Rule 503 of the Oregon Evidentiary Code, Oregon law provides statutory authority for attorney-client privilege. Under the privilege, with limited exceptions, a lawyer may not disclose information shared by the client with the lawyer or his or her representative without the client’s consent. Exceptions include, but are not limited to, situations where the privilege would assist a client in committing a crime or in a situation when two clients have retained an attorney in common. The attorney-client privilege, first developed in English common law, is one of the core principles of the practice of law. It allows for the free exchange of information between a client and his or her lawyer solely to the benefit of the client.

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.

Lawyer Referral Service Privilege – Some Oregonians need help finding lawyers, and may choose to use a lawyer referral service (LRS) like the service operated by the Oregon State Bar. But there is some uncertainty about whether the attorney-client privilege would extend to information clients share with lawyer referral services in order to find a lawyer. Often people share personal information with a lawyer referral service in order to be matched with a lawyer with the right experience and practice area. When speaking on the phone to LRS staff, callers may be anxious, angry, and upset about their legal issues and often wish to explain their situation in great detail without prompting to do so. Information shared on a call or online may be highly personal and is often related to the legal issue at hand. Callers often ask whether the information they provide will remain confidential.

HB 4095 ensures that the attorney-client privilege found in Rule 503 of the Evidentiary Code includes communications between a lawyer referral service and its clients. Under HB 4095 the lawyer referral service privilege, like the attorney-client privilege, would be held by the client. This means the client ultimately controls whether this communications between the lawyer referral service and the client is kept confidential, not the lawyer referral service. The expansion of confidential communications to include lawyer referral services would ensure that information shared with a lawyer referral service would be protected beginning with the initial communication between the client and the lawyer referral service.

HB 4095 provides a definition of a lawyer referral service for the narrow purposes of this bill. Under the bill, a “lawyer referral service” is defined as an entity that, **as a regular part of its business**, refers potential clients to lawyers. This means that the bill does not impact work performed by court facilitators or by someone who works in a legal resource center who might suggest to a party that they should hire a lawyer, contact legal aid, or contact the OSB Lawyer Referral Service. Only

entities that are referring potential clients to lawyers on a regular basis as a part of their normal business practices would fall into this definition.

The passage of HB 4095 would allow lawyer referral services to continue to connect Oregonians to the services they need while assuring consumers of legal services in Oregon that seeking help through the assistance of a lawyer referral service will not prejudice them. The Oregon State Bar urges this committee to support this modification to Rule 503 of the Evidence Code. I am happy to answer any questions or provide additional information.