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**TESTIMONY regarding SB 306 A-ENGROSSED —
AUTHORIZATION FOR NON-ATTORNEY ASSOCIATE MEMBERS OF THE
OREGON STATE BAR**

Before the House Committee on Judiciary, Oregon State Legislature
March 16, 2023

Submitted by:
Maureen McKnight, Senior Judge

On behalf of:
Oregon State Bar and Oregon Judicial Department

Chair Kropf, Vice-Chairs Anderson and Wallan, and Members of the Committee:

My name is Maureen McKnight and I am a Senior Judge. I am here today speaking for the Oregon State Bar and the Oregon Judicial Department.

We support SB 306 as an important access-to-justice initiative.

The bill is proposed by the Oregon State Bar and authorizes non-attorney associate members of the bar to practice law – within a limited but important scope. In other words, it allows trained and vetted legal professionals without law school degrees to assist clients in defined situations, subject to licensure, discipline, and insurance requirements that apply comparably to attorneys. The approach is similar to that developed successfully by the medical field, with nurse practitioners. The paraprofessional handles the routine, basic needs but referrals are made to the doctor (here lawyer) when the needs are more complex.

This bill is only an authorizing and harmonizing statute. It does not contain the details on how licensed paralegals (or associate members of the Bar) would function, the limits on their practice, and all the client protections that address their operations. The A-Engrossed bill before you does address a malpractice insurance issue, however, which I'll address in a minute. My overall introductory point is that the parameters for how associate bar membership would work have been developed and approved by the Oregon Supreme Court. And various bar committees are working now to implement the initiative. What the bill essentially does is change the related statutes in Chapter 9 and elsewhere in the Oregon Revised Statutes to authorize and regulate this associate bar status for its intended limited scope. And the bill also extends

laws applying to attorneys (such as recovery of fees and the application of client privilege) to these associate bar members.

I think the critical points about the initiative are threefold:

- The work of licensed paralegals would be **confined to family law and landlord-tenant law**. These are the areas of law with the highest overall rates of self-representation in Oregon and other states. Oregon Judicial Department data show that only 29% of spouses in Oregon divorce cases have an attorney and only 17% of tenants are represented in Oregon evictions. I am a former Chief Family Court Judge for the Multnomah County bench and a former career (22 year) Legal Aid attorney: I cannot underscore enough how great the need is for legal help in these two areas of law. We are talking here about the public trying to navigate a system not only complex to them but affecting very fundamental aspects of their lives – their personal status as married or single, their children’s welfare, their own and family financial support, and family housing. Understanding the language and process, much less the options and recommended approach, is critical. Oregonians marginalized by language, disability, transportation, and safety issues have a particularly difficult time getting legal help and we believe this bill will expand and diversify the pool of trained legal providers.
- **Limitations are also imposed on case-types and legal roles for associate bar members *within* those two designated areas**
The associate bar members will handle the basic and more routine matters. The more complex matters (prenuptial agreements, orders dividing pensions, military divorces, interstate modifications, for example) and roles (conducting examinations in depositions or the courtroom, for example) remain reserved for attorneys. And assessing an applicant’s knowledge about situations in which referral to an attorney is required is a focus of both competency for admission and compliance with disciplinary rules.
- **Consumer protection has been an overarching goal** in developing the proposal. Not only do paraprofessionals seeking admission have to meet **educational and clinical requirements** as well as document their competency through **portfolios and examination**, but they would also have **continuing legal education requirements**. Moreover, their conduct is not only regulated by Oregon State Bar **disciplinary rule** but they must carry **liability insurance** – as do attorneys – to protect the public in the event of malpractice claims. The OSB expects any claims regarding associate members to be substantially less than for attorneys due to the limited areas and functions authorized but agreed on the Senate side to set and adjust a coverage standard annually as well as report annually to the Legislature on this issue.

So what would these associate bar members be doing? They can review legal documents and provide legal advice in routine family law and eviction areas. (Legal advice is not something court facilitators are allowed to provide). In evictions, for example, knowledge about required and deficient notices from landlords is often the key issue in a defense. Associate members can help with preparing court forms, explaining the words and process and options available, preparing exhibits and child support worksheets, and preparing people for court – and mediation -- both practically and emotionally. They can even accompany clients to court for support and assistance. As I stated earlier, simply understanding the language used can put someone at ease, optimizing their opportunity to understand and participate in the proceeding -- particularly someone already stressed – much as the nonmedically- trained benefit from help when trying to navigate unfamiliar medical systems and medical records. And having a resource to help prepare the judgments and other documents needed to finalize a case is particularly important

in family law, where rulings are specific to a family and often require lengthy but clear terms prepared outside the courtroom.

I mention my Legal Aid and judicial background because during my time as practicing attorney and my tenure on the bench, I have been involved in numerous access to justice efforts in coordination with the Judicial Department— everything from creating and simplifying model court forms; to training on and incorporating the use of Plain Language; to encouraging unbundled legal services and Informal Domestic Relations Trials; to statutorily authorizing court staff as Facilitators to provide procedural assistance; and supporting efforts to increase attorney *pro bono* efforts. When we worked on model forms and facilitators, there were opponents who worried about people without attorneys using the those forms incorrectly to their disadvantage and facilitators taking away work from attorneys or providing incorrect procedural assistance. Those concerns have not materialized overall and each access effort that has been carefully planned and piloted, and provides protections for the consumer client, has been successful. Both the Oregon State Bar and the Oregon Judicial Department strongly believe that the associate bar member approach the OSB is developing is a carefully thought-out and valuable initiative.

We know that eighty-five percent (85%) of the civil needs of low-income Oregonians go unmet. Neither I nor anyone working in the access field would deny that having an attorney is the optimal choice. Some Oregonians choose to go without attorneys but the majority of litigants without lawyers do so because they have no other financial choice. And I want to be clear: associate bar members will not *satisfy* this tremendous legal demand in family law and eviction cases. No matter the case type, accessible court forms don't meet the demand, facilitators don't meet the demand, and *pro bono* work doesn't meet the demand. But my point is that **each separate tool has helped some people—often in significant numbers and with significant impact -- and so will associate bar members.** The access to justice gap won't be bridged with just one resource: it is the combination of approaches, working together in an interrelated fashion, that builds that bridge.

Passing the bill will allow the OSB's work on it to progress. Other witnesses today will detail the planning for this initiative and ongoing implementation work.

Thank you for considering my testimony.

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