

**RECEIVED**  
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Oregon State Bar  
Executive Director

October 5, 2017

Dear Helen, Amber, Susan, President Levelle and members of the Oregon State Bar Board of Governors,

First, I would like to thank Helen, Amber and Susan for continuing the discussions with members of the Oregon Trial Lawyers Association regarding our serious concerns with the proposed changes to RPC 5.4.

We appreciate the work the Futures Task Force has put into the study of legal services and the way technological advances are altering lawyers' delivery of legal services to Oregon consumers. We know a lot of time has been put into this by many OSB members. From your perspective we are cognizant that OTLA's concerns are coming quite late in this process. As part of our longstanding concern about access to justice, OTLA leadership has been laser focused on undoing the damage from the Oregon Supreme Court decision in *Horton v OHSU*.

As we discussed over the past several weeks, members of OTLA and our Board have significant concerns about the proposed changes to RPC 5.4. When OTLA initially reviewed the amendment, we were immediately concerned about the lack of definitions for the terms "lawyer referral service" and "usual fees" in the context of fee sharing. Further, there is no mechanism to regulate such referral services and as Amber and Helen made clear, the OSB has no authority over such operations.

After further review, we identified several additional problems such as the proposed amendment does not address the prohibitions contained in ORS 9.500 and 9.505, which relate to the solicitation of personal injury cases and fee splitting with non-lawyers. OTLA has reached out to our national organization and all state trial lawyer associations, and we understand no other State Bar in the country has proposed and enacted rules similar to what is being proposed in Oregon. It appears Oregon will be the test case.

OTLA leadership discussed the proposed changes with OTLA members who practice in a variety of legal areas; many have raised concerns of unintended consequences too numerous to list here and have suggested this amendment needs further study. On our Wednesday phone call with Amber, Susan and Helen, OTLA Board members and longtime practitioners David Sugerman (representing consumers in class actions) and Steve Berman (representing consumers in securities litigation) discussed several problems this amendment would raise in their practice areas and the negative impact it could potentially have on consumers.

As we mentioned, we are concerned about the lack of regulation to protect consumers. At a minimum, the rules should be crafted so that lawyers cannot participate in such arrangements if the referring organization lacks insurance, does not ensure confidentiality, and does not screen to ensure that referring lawyers are diligent and competent to handle the particular type of case.

OTLA is wholeheartedly committed to providing all Oregonians access to justice. Our members spend countless pro bono hours in Salem advocating for consumers. We worked with the OSB to pass the legal aid cy pres funding bill that may well provide tens of millions of dollars in legal aid funding. In short, access to justice is part of our core mission. OTLA is willing to work with the OSB and other stakeholders in crafting rules that address the concerns raised in the Futures Task Force report, while at the same time minimizing the risk of unintended consequences through any rule change.

What OTLA is asking is for the OSB BOG to pull this matter from the House of Delegate agenda in November and appoint a task force that includes a wide range of practice areas, including lawyers who practice in criminal, consumer, personal injury, civil rights, employment, class action, domestic relations, landlord/tenant law to name a few. The OSB may also want to include representatives from consumer and legal advocate groups for their perspective.

We hope to continue engaging with the OSB on these issues to produce something that improves Oregonians' access to justice, while fully protecting Oregon consumers. That said, the current proposal does neither of those things, and consistent with another of our core missions--protection of Oregon consumers--we respectfully oppose the proposal in its current form.

Thank you in advance for your consideration.

Sincerely,



Greg Zeuthen  
President  
Oregon Trial Lawyers Association