

OREGON STATE BAR
Legislative Proposal

RE: Suspension of Statute of Limitations when Responsible Attorney Dies

FROM: OSB Procedure and Practice Executive Committee

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This bill would amend Chapter 12 of the Oregon Revised Statutes by providing a suspension of all related Statutes of Limitations for a period of six (6) months if the attorney who has been hired to pursue claim(s) dies less than six months before the Statute of Limitations on that claim runs. (Suggested placement of bill when becomes law: new ORS section 12.165.)

1. PROBLEM PRESENTED

Any client who hires an attorney trusts that attorney to handle the legal matters entrusted to them in a timely fashion. When such a lawyer later dies, the client's claims may not end up filed in court before their respective Statute of Limitations runs because of the lawyer's death. This situation may be even more of a concern in the case of lawyers who are sole practitioners, because a partner is not there to: (1) be aware of the lawyer's death; and (2) have the ability and the expertise to go through the lawyer's confidential client files in a timely manner to try to prevent such legal disasters from taking place. Oregon has a relatively high percentage of lawyers who are sole practitioners.

2. SOLUTION

When an attorney dies during his or her representation of a client, the Statute of Limitations on any of the client's claims that are a part of that representation shall be suspended and tolled for 180 days from the attorney's date of death, if but only if:

- a) the attorney's representation of the client is confirmed in writing by the attorney or the attorney's law office;
- b) the attorney's death occurs before the Statute of Limitations has run.

3. PUBLIC POLICY IMPLICATION

People and businesses will be able to pursue legal claims for which they sought legal counsel in time, but which were not timely filed because of their lawyer's death. Such

clients might otherwise entirely lose their ability to recover the damages they sought in these claim(s), as explained below.

In order to pursue a successful claim for legal negligence against their attorney for the damages lost, they should have to show that their attorney was negligence. Dying unexpectedly is not negligence. Therefore, in the absence of any other negligence by the attorney, the attorney's insurance company could deny such legal negligence claims in good faith, and could prevail in court on the same basis if the claim is still pursued in court.

Therefore, the proposed statute will help to protect and preserve legal rights of the public which might otherwise be lost when their attorney dies.