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DEPARTMENT OF JUSTICE

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June 22, 2009

Steven Reynolds, SID #8814592
3920 E. Ashwood Rd.
Madras, OR 97741

Re: Petition for Public Records Disclosure Order:
Oregon State Bar Records

Dear Mr. Reynolds:

On June 15, 2009, the Attorney General received a petition from you seeking an Order directing the Oregon State Bar (the Bar) to disclose to you certain public records. Specifically, you are seeking

> 1. [A] copy of the employee contract that was signed by Deputy District Attorney Rebecca Schaleger OSB #00377 with Clackamas County and if there is no contract that was signed * * * a copy of her signature that was used on any government or county form.
>
> 2. [A] copy of the Oregon State Bar Exam that was given to [Ms. Schaleger].

For reasons explained below, your petition must be respectfully denied.

Oregon's Public Records Law, ORS 192.410 to 192.505, confers upon any person the right to inspect the public records of any public body in Oregon, subject to express statutory exemptions and limitations. ORS 192.420. A person denied the opportunity to inspect a record of a state agency may petition the Attorney General to determine whether the record is properly withheld from disclosure. ORS 192.450.

Following receipt of your petition, Assistant Attorney General Michael Kron contacted Sylvia Stevens, General Counsel to the Bar. Ms. Stevens forwarded to Mr. Kron an email from Jennifer Brand, the Bar's Public Records Coordinator to Ms. Stevens, indicating that the Bar does not have a record of your request, and that Ms. Brand does not recall it. The Attorney General does not have authority to order a state agency to disclose records under the Public Records Law if the agency has not denied a request for the records. ORS 192.450. Nevertheless, we will assume for the sake of this Order that you did request these records from

the Bar and that the Bar denied your request. Even under that assumption, we are compelled to deny your petition.

As described above, you are seeking an employment contract pertaining to Ms. Schaleger's employment or some other record showing her signature, and a copy of the Bar exam administered to Ms. Schaleger.

The Bar does not employ Ms. Schaleger and does possess any employment contracts pertaining to Ms. Schaleger. Moreover, Ms. Brand's email to Ms. Stevens reports that "We have no records for Ms. Schaleger on file. She has not been subject to any complaints or discipline; there is nothing in her membership file that has her signature."

The Bar also is not the custodian of the Bar exam administered to Ms. Schaleger. The Oregon Supreme Court is responsible for the admission of attorneys to practice in Oregon, and the Board of Bar Examiners must "examine applicants and recommend to the Supreme Court for admission to practice law those who fulfill the requirements prescribed by law and the rules of the Supreme Court." ORS 9.210. The process is governed by the "Rules for Admission of Attorneys in Oregon" promulgated by the Oregon Supreme Court. Among those rules is Rule 2.15, Disclosure of Board Records:

> (1) Unless expressly authorized by the Court or by these rules, the Board shall not disclose any of its records, work product or proceedings in carrying out its duties.
>
> (2) The Board may release an applicant's admissions file to:
>
> > (a) A special investigator appointed under Rules 9.15 to 9.20;
> >
> > (b) The Oregon State Bar's Disciplinary Counsel when an applicant seeks Court review of an adverse admissions recommendation;
> >
> > (c) Counsel appointed by the Board when an applicant initiates civil proceedings against the Board in connection with the applicant's application; or
> >
> > (d) Admissions authorities in other jurisdictions which guarantee the confidentiality of applicant files to the same extent as required under Oregon law. Further, the Board may release only to an applicant a true copy of that portion of the application form which was completed and submitted by the applicant. The Board may charge a reasonable administrative fee to an applicant for providing the true copy.

Not only is the Bar not generally the custodian of Admissions-related materials, such as the bar examination, but under this rule, the Board of Bar Examiners generally cannot provide such materials to the Bar. Ms. Stevens confirms that, consistent with the applicable statutes and rules, the Bar is not in possession of the bar examination you seek.

We must respectfully deny your petition. The Bar does not have records responsive to your request, and we cannot order the Bar to disclose records that are not in its custody.

Sincerely,

MARY H. WILLIAMS
Deputy Attorney General

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c: Sylvia Stevens, General Counsel, Oregon State Bar