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December 28, 2020

VIA E-MAIL ONLY: wpco691@gmail.com

Thomas D. DeMartino
7182 SE Darling St.
Salem, OR 97317

Re: Petition for Public Records Disclosure Order
Oregon State Bar Professional Liability Fund
DOJ File No.: 993001-GA0123-20

Dear Mr. DeMartino:

This letter is the Attorney General's response to your petition under the Oregon Public Records Law, ORS 192.311 to 192.431. Your petition, which we received December 21, 2020, asks the Attorney General to order the Oregon State Bar's Professional Liability Fund (PLF) to disclose certain billing statements it received and documentation reflecting the PLF's costs to defend three attorneys in a 2010 legal malpractice suit filed by you. For the reasons discussed below, we respectfully deny your petition.

The Public Records Law confers the right to inspect public records in Oregon, unless such records are exempt under ORS 192.338, 192.345, or 192.355. ORS 192.314(1). The law is a disclosure law, and exemptions from disclosure must be express. Any person denied the right to inspect or to receive a copy of a public record of a state agency may petition the Attorney General to review the record and determine if it may be withheld. ORS 192.411(1). The agency carries the burden to sustain its actions. ORS 192.411(1).

Your records request to the PLF, dated December 7, 2020, generally sought the itemized billing statements from the Fetherston Edmonds Law Firm (the "firm") for defense services it provided in the 2010 civil suit. You also requested the itemized costs, fees and billable hours paid by the PLF to defend the three attorneys. The PLF's General Counsel, Madeleine Campbell, denied your request on December 10, 2020, asserting that the records you requested

are exempt from disclosure under ORS 9.080 and the attorney-client privilege. Your petition followed and generally asserts that the public interest requires disclosure in this instance.

We contacted Ms. Campbell regarding your petition. She explained that the PLF provides professional liability insurance coverage to attorneys engaged in the private practice of law in Oregon. An attorney in private practice who is alleged to have committed malpractice may file a claim with the PLF up to the coverage limit. Coverage also includes defense costs and expenses if an attorney in private practice is sued. Ms. Campbell explained that the financial information you have requested is part of the records of the claims made by the firm to the PLF for defense services. As such, the PLF asserts that any responsive records are expressly exempt from disclosure under ORS 9.080(2)(a)(E), which states that the "[r]ecords of a claim against the professional liability fund are exempt from disclosure" under the public records law. Ms. Campbell also explained that many of the records constitute confidential communications exempt from disclosure under the attorney-client privilege, particularly the itemized billing statements from the firm.

After reviewing examples of the records, you requested and discussing them with Ms. Campbell, we conclude that the PLF was permitted to withhold them from you. They reflect the firm's claims for reimbursement from the PLF for defense services, as well as disbursements related to those claims. As such, we find that they are records of a claim against the PLF and are therefore expressly exempt from disclosure under the public records law pursuant to ORS 9.080(2)(a)(E). You assert that the public interest requires disclosure in this instance. But we cannot order disclosure on the basis of the public interest in this instance because the application of ORS 9.080 is not conditioned upon the balancing of the public interest. We therefore respectfully deny your petition.[1]

Sincerely,

Frederick M. Boss
Deputy Attorney General

FMB:pjn
c via e-mail only: Madeleine Campbell (PLF)

[1] Because we conclude the records are expressly exempt under ORS 9.080, we need not address the PLF's separate claim that some of the records are also exempt as attorney-client privileged communications.