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March 14, 1995

Karin S. Phalen
Hallmark, Keating & Abbott, P.C.
800 Benjamin Franklin Plaza
One Southwest Columbia
Portland, OR 97258-2095

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

Dear Ms. Phalen:

This letter is the Attorney General's order on your petition for disclosure of records under the Public Records Law, ORS 192.410 to 192.505. Your petition, which we received on March 8, 1995, asks the Attorney General to order the Oregon State Bar (OSB) and its employees to make available for inspection or to produce copies of "the factual findings of any investigation pertaining to the unauthorized practice of law conducted by the Oregon State Bar pursuant to claims made to the Bar regarding Robin S. Smith or People's Paralegal Services, Inc. during the years 1986 through 1994." For the reasons that follow, we respectfully deny your petition.

The Public Records Law confers a right to inspect any public records of a public body in Oregon, subject to certain exemptions and limitations. *See* ORS 192.420. However, the Attorney General may order a state agency to disclose records only if the agency first has denied a request for public records. ORS 192.450(1).

We are advised by Jeff Sapiro, Director/Disciplinary Counsel, OSB Regulatory Services, that the only records OSB has with investigative factual findings pertaining to claims of unauthorized practice of law regarding Robin Smith or People's Paralegal Services, Inc. consist of: (a) two reports to the OSB Unlawful Practice of Law Committee, and (b) certain other investigative materials.

With respect to the reports to the Unlawful Practice of Law Committee, Mr. Sapiro informs us that you have been provided copies of the reports, except for certain paragraphs that were deleted. We have reviewed those reports. The deleted paragraphs do not contain factual findings, but rather an analysis of the facts and the recommendation to the committee.

Because you have been provided with all the factual findings in these reports, we deny your petition as to these documents as moot.

With respect to the other investigative materials, Mr. Sapiro informs us that those records were prepared after the Board of Governors authorized litigation against Ms. Smith for the unauthorized practice of law, first at its meeting of April 29, 1989, and later at its meeting of March 11-12, 1994, and that the records were prepared for the purposes of the litigation. ORS 192.501(1) exempts from disclosure

> Records of a public body pertaining to litigation to which the public body is a party if the complaint has been filed, or if the complaint has not been filed, if the public body shows that such litigation is reasonably likely to occur.

The OSB investigative materials come within this exemption. Litigation was not only specifically authorized by the Board of Governors prior to the preparation of the investigative materials, but the cover letter to your petition states that OSB has filed a complaint against Ms. Smith, alleging that she has engaged in the unauthorized practice of law. ***See Lane County School District v. Parks***, 55 Or App 416, 419, 637 P2d 1383 (1981) (exemption applies only to records compiled for use in litigation).

The exemption from disclosure in ORS 192.501(1) applies "unless the public interest requires disclosure in the particular instance." You have identified no "public interest" in disclosure in this particular instance. "Generally, the availability of ordinary tools of discovery would negate any need for an individual to use the Public Records Law to gain access to records for purposes of pursuing private litigation." ATTORNEY GENERAL'S PUBLIC RECORDS AND MEETINGS MANUAL (1993) at 19. Accordingly, with respect to the other investigative materials, we deny your petition because the records are exempt from disclosure under ORS 192.501(1).

Sincerely,

Elizabeth S. Harchenko

ELIZABETH S. HARCHENKO
Special Counsel to the
Attorney General

ESH:AV/JGG0B40B
c: Jeff Sapiro, Director/Disciplinary Counsel, Oregon State Bar