

**OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part I – Legislative Summary**

Re: Pro Bono and Access to Justice

Submitted by: Consumer Law Section

Legislative Contact(s): Susan Grabe

Phone: 503-431-6380

E-mail: sgrabe@osbar.org

1. Does this amend current law or program? Yes **No** **Specify ORS 20.075**

Adds pro bono & access to justice factors to prevailing party fee applications.

2. Problem Presented:

Attorneys who work pro bono (including legal services organizations) on consumer-related claims with fee shifting statutes often get their fees reduced as a result of the pro bono representation or smaller amounts at issue. This discourages attorneys from taking pro bono with right to attorney fee cases and it prevents legal service organizations from providing the best representation for indigent clients.

3. Solution:

The purpose of the bill is to ensure courts take access to justice into consideration when determining the amount of attorney fees to award to a successful individual party who was represented pro bono. It gives a boost in fees to attorneys who take risks in representing their clients pro bono and ensures that attorneys are adequately compensated while expanding access to justice for Oregonians most in need.

OREGON STATE BAR
LEGISLATIVE PROPOSAL
Part II – Legislative Language

Please provide your legislative language below:

20.075 Factors to be considered by court in awarding attorney fees; limitation on appellate review of attorney fee award.

(1) A court shall consider the following factors in determining whether to award attorney fees in any case in which an award of attorney fees is authorized by statute and in which the court has discretion to decide whether to award attorney fees:

- (a) The conduct of the parties in the transactions or occurrences that gave rise to the litigation, including any conduct of a party that was reckless, willful, malicious, in bad faith or illegal.
- (b) The objective reasonableness of the claims and defenses asserted by the parties.
- (c) The extent to which an award of an attorney fee in the case would deter others from asserting good faith claims or defenses in similar cases.
- (d) The extent to which an award of an attorney fee in the case would deter others from asserting meritless claims and defenses.
- (e) The objective reasonableness of the parties and the diligence of the parties and their attorneys during the proceedings.
- (f) The objective reasonableness of the parties and the diligence of the parties in pursuing settlement of the dispute.
- (g) The amount that the court has awarded as a prevailing party fee under ORS 20.190.
- (h) Such other factors as the court may consider appropriate under the circumstances of the case.

(2) A court shall consider the factors specified in subsection (1) of this section in determining the amount of an award of attorney fees in any case in which an award of attorney fees is authorized or required by statute. In addition, the court shall consider the following factors in determining the amount of an award of attorney fees in those cases:

- (a) The time and labor required in the proceeding, the novelty and difficulty of the questions involved in the proceeding and the skill needed to properly perform the legal services.
- (b) The likelihood, if apparent to the client, that the acceptance of the particular employment by the attorney would preclude the attorney from taking other cases.
- (c) The fee customarily charged in the locality for similar legal services.
- (d) The amount involved in the controversy and the results obtained.
- (e) The time limitations imposed by the client or the circumstances of the case.
- (f) The nature and length of the attorney's professional relationship with the client.
- (g) The experience, reputation and ability of the attorney performing the services.
- (h) Whether the fee of the attorney is fixed or contingent.

(i) Whether the case was taken pro-bono or otherwise promotes access to justice.

(3) In any appeal from the award or denial of an attorney fee subject to this section, the court reviewing the award may not modify the decision of the court in making or denying an award, or the decision of the court as to the amount of the award, except upon a finding of an abuse of discretion.

(4) Nothing in this section authorizes the award of an attorney fee in excess of a reasonable attorney fee.