

## LAW UPDATES

## Service on Attorney General Is a Necessary Step in Filing Claims for Abuse of Vulnerable Person

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A malpractice pitfall is presented when representing a vulnerable person in abuse claims pursuant to ORS 124.100. ORS 124.100(6) requires that a person “commencing an action under this section must serve a copy of the complaint on the Attorney General within 30 days after the action is commenced.” According to the Oregon Court of Appeals, the failure to timely serve the Attorney General with a copy of the complaint alleging a claim for abuse of a vulnerable person is a jurisdictional defect requiring the dismissal of the claim. *Bishop v. Waters*, 280 Or App 537 (2016).

Such a pitfall can be difficult to navigate in a manner that will avoid damage to your client, particularly when a trial date is looming and given concerns about exposure to an attorney fee award and potential prejudice to other claims that may be time-barred and difficult or impossible to re-file if dismissed. Although ORS 124.130 provides a seven-year statute of limitations from discovery of the abuse, these claims are often accompanied

by claims for negligence, fraud, or other causes of action with a shorter statute of limitations. Ideally, if you are representing a client who is alleging a claim pursuant to ORS 124.100, you will have timely served the Attorney General with a copy of the complaint as required by ORS 124.100(6). If you have not done so and you are confronted with the potential for the dismissal of a client’s ORS 124.100 claim, we recommend that you immediately contact the Professional Liability Fund to seek input and assistance in navigating a possible solution.

The good news is that a legislative fix to this pitfall is on the horizon. Senate Bill 783, enacted during the 2019 legislative session, amends ORS 124.100(6). Amended ORS 124.100(6) continues to require service of a copy of the complaint on the Attorney General. However, ORS 124.100(6), as amended, no longer imposes a 30-day deadline for the mailing of such notice and no longer requires dismissal of the action as long as the notice is mailed prior to entry of the judgment. In this regard, the amended

version of ORS 124.100(6) provides: “A person commencing action under this section shall mail a copy of the complaint or other initial pleading to the Attorney General at the time the action commences. Failure to mail a copy of the complaint or pleading is not a jurisdictional defect and may be cured at any time prior to entry of judgment. A court may not enter judgment for the plaintiff until proof of mailing is filed with the court. Proof of mailing may be by declaration or by return receipt of mailing.” The amended version of ORS 124.100(6) will apply to all actions under ORS 124.100 commenced on or after January 1, 2020.