

## Oregon Code of Professional Responsibility

*(As approved by the Oregon Supreme Court through June 17, 2003)*

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Disciplinary Rule 1  
Maintaining the Integrity and Competence of the Legal Profession

**DR 1-101 Misconduct in Application for Admission**

(A) A lawyer is subject to discipline if the lawyer has made a materially false statement in, or if the lawyer has deliberately failed to disclose a material fact requested in connection with, the lawyer's application for admission to the bar.

(B) A lawyer shall not further the application for admission to the bar of another person known to the lawyer to be unqualified in respect to character, education, or other relevant attribute.

**DR 1-102 Misconduct; Responsibility for Acts of Others**

(A) It is professional misconduct for a lawyer to:

- (1) Violate these disciplinary rules, knowingly assist or induce another to do so, or do so through the acts of another;
- (2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;
- (3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (4) Engage in conduct that is prejudicial to the administration of justice;
- (5) State or imply an ability to influence improperly a government agency or official.

(B) A lawyer shall be responsible for another lawyer's violation of these disciplinary rules if:

- (1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
- (2) The lawyer has direct supervisory authority over the other lawyer and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(C) A lawyer is bound by the rules of professional conduct notwithstanding that the lawyer acted at the direction of another person.

(D) Notwithstanding DR 1-102(A)(1), (A)(3) and (A)(4) and DR 7-102(A)(5), it shall not be professional misconduct for a lawyer to advise clients or others about or to supervise lawful covert activity in the investigation of violations of civil or criminal law or constitutional rights, provided the lawyer's conduct is otherwise in compliance with these disciplinary rules. "Covert activity," as used in this rule, means an effort to obtain information on unlawful activity through the use of misrepresentations or other subterfuge. "Covert activity" may be commenced by a lawyer or involve a lawyer as an advisor or supervisor only when the lawyer in good faith believes there is a reasonable possibility that unlawful activity has taken place, is taking place or will take place in the foreseeable future.

**DR 1-103 Disclosure of Information to Authorities; Duty to Cooperate**

(A) A lawyer possessing knowledge that is not protected by DR 4-101 or ORS 9.460(3) that another lawyer has committed a violation of DR 1-102 that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform Oregon State Bar Disciplinary Counsel.

(B) A lawyer possessing unprivileged knowledge or evidence concerning another lawyer or a judge shall reveal fully such knowledge or evidence upon proper request of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers or judges.

(C) A lawyer who is the subject of a disciplinary investigation shall respond fully and truthfully to inquiries from and comply with reasonable requests of a tribunal or other authority empowered to investigate or act upon the conduct of lawyers, subject only to the exercise of any applicable right or privilege.

(D) A lawyer admitted to practice in this state shall, within 30 days after receiving notice thereof, report in writing to the disciplinary counsel of the Oregon State Bar the commencement against the lawyer of any disciplinary proceeding in any other jurisdiction.

(E) The provisions of DR 1-103(A) shall not apply to lawyers who obtain such knowledge or evidence while:

- (1) Acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee; or
- (2) Acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or
- (3) Participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.

(F) A lawyer who is the subject of a complaint or referral to the State Lawyers Assistance Committee shall, subject to the exercise of any applicable right or privilege, cooperate with the committee and its designees, including:

- (1) Responding to the initial inquiry of the committee or its designees;
- (2) Furnishing any documents in the lawyer's possession relating to the matter under investigation by the committee or its designees;
- (3) Participating in interviews with the committee or its designees; and
- (4) Participating in and complying with a remedial program established by the committee or its designees.

#### **DR 1-104 Entity Form of Practice**

(A) A lawyer may practice law in Oregon as a sole proprietor, or in any business entity authorized under Oregon law for use by lawyers in the practice of law, provided that the liability of the lawyer for the lawyer's own malpractice and for the malpractice of the other lawyers owning a direct or indirect interest in the entity is no less than that applicable to shareholders in a professional corporation. A lawyer may not practice law directly or indirectly in the form of a business corporation under the Oregon Business Corporation Act.

(B) DR 1-104 shall not preclude an out of state lawyer from being specially admitted to practice law in Oregon pursuant to, and subject to compliance with, ORS 9.241 and the rules adopted by the Supreme Court pursuant thereto.

#### **DR 1-105 Written Advisory Opinions on Professional Conduct; Consideration Given in Disciplinary Proceedings**

(A) The Oregon State Bar Board of Governors may issue formal written advisory opinions on questions under this code. The Oregon State Bar Legal Ethics Committee and General Counsel may also issue informal written advisory opinions on questions under this code. The General Counsel's Office of the Oregon State Bar shall maintain records of both OSB formal and informal ethics opinions and shall make copies of each available to the Oregon Supreme Court, Disciplinary Board, State Professional Responsibility Board and Disciplinary Counsel. The General Counsel's Office may also disseminate the Bar's advisory opinions as it deems appropriate to its role in education lawyers about this code.

(B) In considering alleged violations of this code, the Disciplinary Board and Oregon Supreme Court may consider any lawyer's good faith effort to comply with an opinion issued under subsection (A) of this rule as:

- (1) a showing of the lawyer's good faith effort to comply with this code; and
- (2) a basis for mitigation of any sanction that may be imposed if the lawyer is found to be in violation of this code.

(C) This rule is not intended to, and does not, preclude the Disciplinary Board or the Oregon Supreme Court from considering any other evidence of either good faith or basis for mitigation in a bar disciplinary proceeding.

Disciplinary Rule 2  
Advertising, Solicitation, and Legal Employment

**DR 2-101 General Rules Regarding Communications about a Lawyer or Law Firm**

(A) A lawyer shall not make or cause to be made any communication about the lawyer or the lawyer's firm, whether in person, in writing, electronically, by telephone or otherwise, if the communication:

- (1) Contains a material misrepresentation of fact or law, or omits a statement of fact or law necessary to make the communication considered as a whole not materially misleading; or
- (2) Is intended or is reasonably likely to create a false or misleading expectation about results the lawyer or the lawyer's firm can achieve; or
- (3) Except upon request of a client or potential client, compares the quality of the lawyer's or the lawyer's firm's services with the quality of the services of other lawyers or law firms; or
- (4) States or implies that the lawyer or the lawyer's firm specializes in, concentrates a practice in, limits a practice to, is experienced in, is presently handling or is qualified to handle matters or areas of law if the statement or implication is false or misleading; or
- (5) States or implies that the lawyer or the lawyer's firm is in a position to improperly influence any court or other public body or office; or
- (6) Contains any endorsement or testimonial, unless the communication clearly and conspicuously states that any result that the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate that similar results can be obtained for other clients; or
- (7) States or implies that one or more persons depicted in the communication are lawyers who practice with the lawyer or the lawyer's firm if they are not; or
- (8) States or implies that one or more persons depicted in the communication are current clients or former clients of the lawyer or the lawyer's firm if they are not, unless the communication clearly and conspicuously discloses that the persons are actors or actresses; or
- (9) States or implies that one or more current or former clients of the lawyer or the lawyer's firm have made statements about the lawyer or the lawyer's firm, unless the making of such statements can be factually substantiated; or
- (10) Contains any dramatization or recreation of events, such as an automobile accident, a courtroom speech or a negotiation session, unless the communication clearly and conspicuously discloses that a dramatization or recreation is being presented; or
- (11) Is false or misleading in any manner not otherwise described above; or
- (12) Violates any other disciplinary rule or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

(B) A lawyer who approves the use of a communication about the lawyer or the lawyer's firm shall keep or cause the lawyer's firm to keep a copy of any written or electronic communication and a recording of any communication by use of electronic media, including radio, television and microwave transmission, along with a record of when and where the communication was used, for a period of two years after its last dissemination.

(C) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must be clearly and conspicuously identified as an advertisement unless it is apparent from the context that it is an advertisement.

(D) A lawyer shall not initiate any personal, telephone, electronic or written communication with a person for the purpose of obtaining professional employment if:

- (1) The lawyer knows or reasonably should know that the physical, emotional or mental state of the person is such that the person could not exercise reasonable judgment in employing a lawyer; or
- (2) The person has made known to the lawyer a desire not to receive communications from the lawyer; or

(3) The communication involves coercion, duress or harassment.

(E) An unsolicited communication about a lawyer or the lawyer's firm in which services are being offered must clearly identify the name and post office box or street address of the office of the lawyer or law firm whose services are being offered.

(F) A lawyer may pay others for disseminating or assisting in the dissemination of communications about the lawyer or the lawyer's firm only to the extent permitted by DR 2-103.

(G) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with DR 2-101, DR 2-103 and DR 2-104 as to all involved lawyers or law firms. Notwithstanding this rule, a bona fide lawyer referral service need not identify the names and addresses of participating lawyers.

(H) Except as provided in DR 2-104, an unsolicited communication, including a communication sent via electronic mail, to a prospective client who is known to be in need of legal services with respect to a particular matter and who is not a close friend, relative, current client, or one with whom the lawyer has a current or prior professional relationship shall be identified: (1) for written communications, on the envelope and on the bottom of each page by the word "Advertisement," printed in at least fourteen point bold type, which shall be larger and darker than the type used for the address on the envelope and in the text of the written communication; and (2) for communications sent via electronic mail, by including the word "Advertisement," in type that is larger and darker than the type used for the text of the communication, if possible, or if that is not possible, then set off from the text at the beginning and end of the communication.

#### **DR 2-102 Special Rules Regarding Firm Names and Letterheads**

(A) A lawyer may use professional announcement cards, office signs, letterheads, telephone and electronic directory listings, legal directory listings or other professional notices so long as the information contained therein complies with DR 2-101 and other applicable disciplinary rules.

(B) A lawyer may be designated "Of Counsel" on a letterhead if the lawyer has a continuing professional relationship with a lawyer or law firm, other than as a partner or associate. A lawyer may be designated as "General Counsel" or by a similar professional reference on stationery of a client if the lawyer or the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

(C) A lawyer in private practice:

(1) Shall not practice under a name that is misleading as to the identity of the lawyer or lawyers practicing under such name or under a name that contains names other than those of lawyers in the firm.

(2) May use a trade name in private practice if the name does not state or imply a connection with a governmental agency or with a public or charitable legal services organization and is not otherwise in violation of DR 2-101.

(3) May use in a firm name the name or names of one or more of the retiring, deceased or retired members of the firm or a predecessor law firm in a continuing line of succession. The letterhead of a lawyer or law firm may give the names and dates of predecessor firms in a continuing line of succession and may designate the firm or a lawyer practicing in the firm as a professional corporation.

(D) Except as permitted by DR 2-102(C), a lawyer shall not permit his or her name to remain in the name of a law firm or to be used by the firm during the time the lawyer is not actively and regularly practicing law as a member of the firm. During such time, other members of the firm shall not use the name of the lawyer in the firm name or in professional notices of the firm. This rule does not apply to periods of one year or less during which the lawyer is not actively and regularly practicing law as a member of the firm if it was contemplated that the lawyer would return to active and regular practice with the firm within one year.

(E) Lawyers shall not hold themselves out as practicing in a law firm unless the lawyers are actually members of the firm.

(F) Subject to the requirements of DR 2-102(C), a law firm practicing in more than one jurisdiction may use the same name in each jurisdiction, but identification of the firm members in an office of the firm shall indicate the jurisdictional limitations of those not licensed to practice in the jurisdiction where the office is located.

**DR 2-103 Special Rules Regarding the Employment or Use of Others in Recommending Employment of a Lawyer or Law Firm**

(A) A lawyer may pay the cost of advertisements permitted by these rules and may hire employees or independent contractors to assist as consultants or advisors in marketing a lawyer's or law firm's services. A lawyer shall not otherwise compensate or give anything of value to a person or organization to promote, recommend or secure employment by a client, or as a reward for having made a recommendation resulting in employment by a client, except as permitted by DR 2-103(C) or DR 2-111.

(B) A lawyer shall not request or knowingly permit a person or organization to promote, recommend or secure employment by a client through any means that involves false or misleading communications about the lawyer or the lawyer's firm. If a lawyer learns that employment by a client has resulted from false or misleading communications about the lawyer or the lawyer's firm, the lawyer shall so inform the client.

(C) A lawyer or law firm may be recommended, employed or paid by, or cooperate with, a prepaid legal services plan, lawyer referral service, legal service organization or other similar plan, service or organization so long as:

- (1) The operation of such plan, service or organization does not result in the lawyer or the lawyer's firm violating DR 3-101 through 3-103, ORS 9.160 or ORS 9.500 through 9.520; and
- (2) The recipient of legal services, and not the plan, service or organization, is recognized as the client; and
- (3) No condition or restriction on the exercise of any participating lawyer's professional judgment on behalf of a client is imposed by the plan, service or organization; and
- (4) Such plan, service or organization does not make communications that would violate DR 2-101, DR 2-103 or DR 2-104 if engaged in by the lawyer.

**DR 2-104 Special Rules Regarding Personal and Telephone Solicitation**

(A) Subject to the provisions of DR 2-101, a lawyer may initiate personal contact with a prospective client for the purpose of obtaining professional employment only in the following circumstances:

- (1) If the prospective client is a close friend, relative, former client, or one whom the lawyer reasonably believes to be a client;
- (2) Under the auspices of a public or charitable legal services organization; or
- (3) Under the auspices of a bona fide political, social, civic, fraternal, employee, or trade organization whose purposes include but are not limited to providing or recommending legal services, if the legal services are related to the principal purposes of the organization.

(B) For the purpose of DR 2-104, "personal contact" means in-person or telephone contact or real time interactive communications such as conversations in internet chat groups and conference areas and video conferencing, with an individual or entity. Direct mail advertising and electronic mail are not considered "personal contact" under this rule, but are otherwise subject to the requirements of DR 2-101.

**DR 2-105 Compensation from Nonlawyers**

A lawyer shall not refer a client to a nonlawyer with the understanding that the lawyer will receive a fee, commission, or anything of value in exchange for the referral, but a lawyer may accept gifts in the ordinary course of social or business hospitality.

**DR 2-106 Fees for Legal Services**

(A) A lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.

(B) A fee is clearly excessive when, after a review of the facts, a lawyer of ordinary prudence would be left with a definite and firm conviction that the fee is in excess of a reasonable fee. Factors to be considered as guides in determining the reasonableness of a fee include the following:

- (1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

(C) A lawyer shall not enter into an arrangement for, charge or collect:

- (1) Any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of spousal or child support or a property settlement; or
- (2) A contingent fee for representing a defendant in a criminal case.

#### **DR 2-107 Division of Fees Among Lawyers**

(A) A lawyer shall not divide a fee for legal services with another lawyer who is not a member of the lawyer's law firm or law office, unless:

- (1) The client consents to employment of the other lawyer after full disclosure that a division of fees will be made; and
- (2) The total fee of the lawyers does not clearly exceed reasonable compensation for all legal services they rendered the client.

(B) DR 2-107(A) does not prohibit payments to a former firm member pursuant to a separation or retirement agreement, or payments to a selling lawyer for the sale of a law practice pursuant to DR 2-111.

#### **DR 2-108 Agreements Restricting the Practice of a Lawyer**

(A) A lawyer shall not be a party to or participate in a partnership or employment agreement with another lawyer that restricts the right of a lawyer to practice law after the termination of a relationship created by the agreement, except as a condition to payment of retirement benefits.

(B) In connection with the settlement of a controversy or suit, a lawyer shall not enter into an agreement that restricts the lawyer's right to practice law.

#### **DR 2-109 Acceptance of Employment**

(A) A lawyer shall not accept employment on behalf of a person if the lawyer knows or it is obvious that such person wishes to:

- (1) Bring a legal action, conduct a defense, or assert a position in litigation, or otherwise have steps taken for the person, merely for the purpose of harassing or maliciously injuring any other person.
- (2) Present a claim or defense in litigation that is not warranted under existing law, unless it can be supported by good faith argument for an extension, modification, or reversal of existing law.

#### **DR 2-110 Withdrawal from Employment**

(A) In general.

- (1) If permission for withdrawal from employment is required by the rules of a tribunal, a lawyer shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) In any event, a lawyer shall not withdraw from employment until the lawyer has taken reasonable steps to avoid foreseeable prejudice to the rights of the lawyer's client, including giving due notice to the lawyer's client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.

(3) A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.

(B) Mandatory withdrawal.

A lawyer representing a client before a tribunal, with its permission if required by its rules, shall withdraw from employment, and a lawyer representing a client in other matters shall withdraw from employment, if:

(1) The lawyer knows or it is obvious that the lawyer's client is bringing the legal action, conducting the defense, or asserting a position in the litigation, or is otherwise having steps taken for the client, merely for the purpose of harassing or maliciously injuring any other person.

(2) The lawyer knows or it is obvious that the lawyer's continued employment will result in violation of a Disciplinary Rule.

(3) The lawyer's mental or physical condition renders it unreasonably difficult for the lawyer to carry out the employment effectively.

(4) The lawyer is discharged by the lawyer's client.

(C) Permissive withdrawal.

If DR 2-110(B) is not applicable, a lawyer may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The lawyer's client

(a) Insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law.

(b) Personally seeks to pursue an illegal course of conduct.

(c) Insists that the lawyer pursue a course of conduct that is illegal or that is prohibited under these disciplinary rules.

(d) By other conduct renders it unreasonably difficult for the lawyer to carry out the lawyer's employment effectively.

(e) Insists that the lawyer engage in conduct that is contrary to the judgment and advice of the lawyer but not prohibited under these disciplinary rules.

(f) After reasonable notice from the lawyer, fails to keep an agreement or obligation to the lawyer as to expenses or fees.

(2) The lawyer's continued employment is likely to result in a violation of a Disciplinary Rule.

(3) The lawyer's inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal.

(4) The lawyer's mental or physical condition renders it difficult for the lawyer to carry out the employment effectively.

(5) The lawyer's client knowingly and freely assents to termination of the lawyer's employment.

(6) The lawyer believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal.

(7) The lawyer has sold all or part of the lawyer's practice in compliance with the requirements of DR 2-111. The selling lawyer shall comply with the requirements of DR 2-110(A) if the selling lawyer intends to withdraw from representation of the client even if the client objects to the transfer of its legal work to the purchasing lawyer.

**DR 2-111 Sale of a Law Practice**

(A) A lawyer or law firm may sell or purchase all or part of a law practice, including goodwill, in accordance with this rule.

(B) The selling lawyer, or the selling lawyer's legal representative, in the case of a deceased or disabled lawyer, shall provide written notice of the proposed sale to each current client whose legal work is subject to transfer, by certified mail, return receipt requested, to the client's last known address. The notice shall include the following information:

- (1) that a sale is proposed;
- (2) the identity of the purchasing lawyer or law firm, including the office address(es), and a brief description of the size and nature of the purchasing lawyer's or law firm's practice;
- (3) that the client may object to the transfer of its legal work, may take possession of any client files and property, and may retain counsel other than the purchasing lawyer or law firm;
- (4) that the client's legal work will be transferred to the purchasing lawyer or law firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and
- (5) whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.

(C) The notice may describe the purchasing lawyer or law firm's qualifications, including the selling lawyer's opinion of the purchasing lawyer or law firm's suitability and competence to assume representation of the client, but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion.

(D) If certified mail is not effective to give the client notice, the selling lawyer shall take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required in subsection (B).

(E) A client's consent to the transfer of its legal work to the purchasing lawyer or law firm will be presumed if no objection is received within forty-five (45) days after the date the notice was mailed.

(F) If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made.

(G) The fees charged clients shall not be increased by reason of the sale except upon agreement of the client.

(H) The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.

Disciplinary Rule 3  
Unlawful Practice of Law

**DR 3-101 Unlawful Practice of Law**

(A) A lawyer shall not aid a nonlawyer in the unlawful practice of law.

(B) A lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.

**DR 3-102 Dividing Legal Fees with a Nonlawyer**

(A) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:

- (1) An agreement by a lawyer with the lawyer's firm or firm members may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons.

(2) A lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that proportion of the total compensation which fairly represents the services rendered by the deceased lawyer.

(3) A lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

#### **DR 3-103 Forming a Partnership with a Nonlawyer**

(A) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.

### Disciplinary Rule 4 Confidences and Secrets of Clients

#### **DR 4-101 Preservation of Confidences and Secrets of a Client**

(A) “Confidence” refers to information protected by the attorney-client privilege under applicable law, and “secret” refers to other information gained in a current or former professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client.

(B) Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

- (1) Reveal a confidence or secret of the lawyer’s client.
- (2) Use a confidence or secret of the lawyer’s client to the disadvantage of the client.
- (3) Use a confidence or secret of the lawyer’s client for the advantage of the lawyer or of a third person, unless the client consents after full disclosure.

(C) A lawyer may reveal:

- (1) Confidences or secrets with the consent of the client or clients affected, but only after full disclosure to the client or clients.
- (2) Confidences or secrets when permitted by a Disciplinary Rule or required by law or court order or secrets which the lawyer reasonably believes need to be revealed to effectively represent the client.
- (3) The intention of the lawyer’s client to commit a crime and the information necessary to prevent the crime.
- (4) Confidences or secrets necessary to establish a claim or defense on behalf of a lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations concerning the lawyer’s representation of the client.
- (5) The following information in discussions preliminary to the sale of a law practice under DR 2-111 with respect to each client potentially subject to the transfer: the client’s identity; the identities of any adverse parties; the nature and extent of the legal services involved; and fee and payment information. A potential purchasing lawyer shall have the same responsibilities as the selling lawyer to preserve confidences and secrets of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

(D) A lawyer shall exercise reasonable care to prevent the lawyer’s employees, associates, and others whose services are utilized by the lawyer in connection with the performance of legal services from disclosing or using confidences or secrets of a client, except that a lawyer may reveal the information allowed by DR 4-101(C) through an employee.

Disciplinary Rule 5  
Conflicts of Interest and Mediation

**DR 5-101 Conflict of Interest: Lawyer's Self Interest**

(A) Except with the consent of the lawyer's client after full disclosure,

(1) a lawyer shall not accept or continue employment if the exercise of the lawyer's professional judgment on behalf of the lawyer's client will be or reasonably may be affected by the lawyer's own financial business, property, or personal interests. As used in this rule, "a lawyer's own financial, business, property, or personal interests" does not include serving in a pro tem capacity on any court, board or other administrative body where such service is occasional or for a limited period of time and compensation therefor is incidental to the lawyer's other sources of income;

(2) a lawyer related to another lawyer as parent, child, sibling, spouse or domestic partner shall not represent a client in a matter adverse to a person who the lawyer knows is represented by the other lawyer in the same matter.

(B) A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

**DR 5-102 Lawyer as Witness**

(A) A lawyer shall not act as an advocate at a trial in which the lawyer is likely to be a witness on behalf of the lawyer's client except where:

(1) The testimony relates to an uncontested issue.

(2) The testimony relates to the nature and value of legal services rendered in the case.

(3) Disqualification of the lawyer would work a substantial hardship on the client.

(4) The lawyer is appearing pro se.

(B) A lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness on behalf of the lawyer's client.

(C) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that the lawyer or a member of the lawyer's firm may be called as a witness other than on behalf of the lawyer's client, the lawyer may continue the representation until it is apparent that the lawyer's or firm member's testimony is or may be prejudicial to the lawyer's client.

**DR 5-103 Avoiding Acquisition of Interest in Litigation**

(A) A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

(1) Acquire a lien to secure payment of fees or expenses due or to become due.

(2) Contract with a client for a reasonable contingent fee in a civil case, subject to the limitations imposed by DR 2-106.

(B) While representing a client in connection with contemplated or pending litigation, a lawyer shall not advance or guarantee financial assistance to the lawyer's client, except that a lawyer may advance or guarantee the expenses of litigation, provided the client remains ultimately liable for such expenses to the extent of the client's ability to pay.

**DR 5-104 Limiting Business Relations with a Client**

(A) A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise the lawyer's professional judgment therein for the protection of the client, unless the client has consented after full disclosure.

(B) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

**DR 5-105 Conflicts of Interest: Former and Current Clients**

(A) Conflict of Interest. A conflict of interest may be actual or likely.

(1) An “actual conflict of interest” exists when the lawyer has a duty to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client.

(2) A “likely conflict of interest” exists in all other situations in which the objective personal, business or property interests of the clients are adverse. A “likely conflict of interest” does not include situations in which the only conflict is of a general economic or business nature.

(3) A conflict of interest is not present solely because one or more lawyers in a firm assert conflicting legal positions on behalf of different clients whom the lawyers represent in factually unrelated cases. If, however, a lawyer actually knows of the assertion of the conflicting positions and also actually knows that an outcome favorable to one client in one case will adversely affect the client in another case, the lawyer may not continue with both representations or permit the other lawyers at the same firm to do so unless all clients consent after full disclosure.

(B) Knowledge of Conflict of Interest. For purposes of determining a lawyer’s knowledge of the existence of a conflict of interest, all facts which the lawyer knew, or by the exercise of reasonable care should have known, will be attributed to the lawyer.

(C) Former Client Conflicts - Prohibition. Except as permitted by DR 5-105(D), a lawyer who has represented a client in a matter shall not subsequently represent another client in the same or a significantly related matter when the interests of the current and former clients are in actual or likely conflict. Matters are significantly related if either:

(1) Representation of the present client in the subsequent matter would, or would likely, inflict injury or damage upon the former client in connection with any proceeding, claim, controversy, transaction, investigation, charge, accusation, arrest or other particular matter in which the lawyer previously represented the former client; or

(2) Representation of the former client provided the lawyer with confidences or secrets as defined in DR 4-101(A), the use of which would, or would likely, inflict injury or damage upon the former client in the course of the subsequent matter.

(D) Former Client Conflicts - Permissive Representation. A lawyer may represent a client in instances otherwise prohibited by DR 5-105(C) when both the current client and the former client consent to the representation after full disclosure.

(E) Current Client Conflicts - Prohibition. Except as provided in DR 5-105(F), a lawyer shall not represent multiple current clients in any matters when such representation would result in an actual or likely conflict.

(F) Current Client Conflicts - Permissive Representation. A lawyer may represent multiple current clients in instances otherwise prohibited by DR 5-105(E) when such representation would not result in an actual conflict and when each client consents to the multiple representation after full disclosure.

(G) Vicarious Disqualification of Affiliates. Except as permitted in subsections (D) and (F), when a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule other than DR 2-110(B)(3), DR 5-101(A)(2), DR 5-102(A), 5-106(A) or DR 5-110, no other member of the lawyer’s firm may accept or continue such employment, except as provided in DR 8-101(D).

(H) Disqualification Upon Termination of Employment. When a lawyer terminates the lawyer’s association in a firm, neither the lawyer nor any firm member with which the terminating lawyer subsequently becomes affiliated shall accept or continue employment prohibited by DR 5-105(C) through (G).

(I) Screening Procedure Upon Termination of Employment. The prohibition stated in DR 5-105(H) shall not apply provided the personally disqualified lawyer is screened from any form of participation or representation in the matter. In order to ensure such screening:

(1) The personally disqualified lawyer shall serve on the lawyer's former law firm an affidavit attesting that during the period of the lawyer's disqualification the personally disqualified lawyer will not participate in any manner in the matter or the representation and will not discuss the matter or the representation with any other firm member; and the personally disqualified lawyer shall serve, if requested by the former law firm, a further affidavit describing the lawyer's actual compliance with these undertakings promptly upon final disposition of the matter or representation.

(2) At least one firm member shall serve on the former law firm an affidavit attesting that all firm members are aware of the requirement that the personally disqualified lawyer be screened from participating in or discussing the matter or the representation and describing the procedures being followed to screen the personally disqualified lawyer; and at least one firm member shall serve, if requested by the former law firm, a further affidavit describing the actual compliance by the firm members with the procedures for screening the personally disqualified lawyer promptly upon final disposition of the matter or representation.

(3) No violation of DR 5-105(H) or of the requirements of DR 5-105(I) shall be deemed to have occurred if the personally disqualified lawyer does not know that the lawyer's firm members have accepted employment with respect to a matter which would require the making and service of such affidavits and if all firm members having knowledge of the accepted employment do not know of the disqualification.

(J) Effect of a Lawyer's Departure. When a lawyer has terminated an association with a firm, the firm is not prohibited by reason of the formerly associated lawyer's work from thereafter representing a person in a matter adverse to a client that was represented by the formerly associated lawyer unless one or more of the lawyers remaining at the firm would be disqualified pursuant to DR 5-105(C) or unless the closed file or other confidential information remains at the firm and consent is not obtained pursuant to DR 5-105(D).

#### **DR 5-106 Mediation**

(A) A lawyer serving as a mediator:

(1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding, and

(2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.

(B) A lawyer serving as a mediator:

(1) may prepare documents that memorialize and implement the agreement reached in mediation,

(2) shall recommend that each party seek independent legal advice before executing the documents, and

(3) with the consent of all parties, may record or may file the documents in court.

(C) Notwithstanding DR 5-105(G), when a lawyer is serving or has served as a mediator in a matter, a member of the lawyer's firm may accept or continue the representation of a party in the matter in mediation or in a related matter if all parties to the mediation consent after full disclosure.

(D) The requirements of (A)(2) and (B)(2) shall not apply to mediation programs established by operation of law or court order.

#### **DR 5-107 Settling Similar Claims of Clients**

(A) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregate agreement as to guilty or nolo contendere pleas, unless each client consents after full disclosure, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

#### **DR 5-108 Avoiding Influence by Others than the Client**

(A) Except with the consent of the lawyer's client after full disclosure, a lawyer shall not:

(1) Accept compensation for the lawyer's legal services from one other than the lawyer's client; or

(2) Accept from one other than the lawyer's client anything of value related to the lawyer's representation of or the lawyer's employment by the lawyer's client.

(B) A lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

(C)

(1) A lawyer shall not be deemed in violation of DR 5-101(A) or DR 5-108(A) or (B) as a result of the lawyer's membership on the board of directors or advisory committee of an Oregon legal aid program, if the lawyer or a member of the lawyer's firm represents a client in an advocacy proceeding in which the legal aid program represents an opposing party; if:

(a) The lawyer and members of the lawyer's firm scrupulously refrain from either expressly or impliedly influencing or attempting to influence the professional judgment of the legal aid program attorneys with respect to such proceeding;

(b) The lawyer refrains from voting on or engaging in any board or committee discussions involving matters which might involve a potential conflict of interest; and

(c) The lawyer discloses the lawyer's relationship with the legal aid program to the lawyer's client as soon as practicable after the lawyer becomes aware of the potential conflict of interest and obtains the lawyer's client's consent to continue such representation, and a member of the lawyer's firm discloses such relationship to the member's client as soon as possible after the member becomes aware of such potential conflict and obtains the member's client's consent to continue such representation.

(2) A lawyer employed by a legal aid program shall not be deemed in violation of DR 5-101(A) or DR 5-108(A) or (B) as a result of the lawyer's representation of a client in an advocacy proceeding in which an opposing party is represented by a member of the board of directors or advisory committee of the legal aid program, if:

(a) The lawyer does not permit the lawyer's professional judgment to be influenced by the relationship of the board or committee member to the legal aid program; and

(b) The lawyer discloses to the lawyer's client the relationship of the lawyer board or committee member and the legal aid program as soon as practicable after the lawyer becomes aware of such relationship and obtains the lawyer's client's consent to continue the representation.

(3) No lawyer, as a member of the board of directors or advisory committee of any Oregon legal aid program, shall influence or attempt to influence actions of the legal aid program in any manner which may benefit a client of such lawyer or his or her firm differently in kind or degree from members of the general public, regardless of whether any advocacy proceeding involving any client of the legal aid program and client of the lawyer board or committee member or his or her firm is pending or contemplated.

(D) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(1) A nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;

(2) A nonlawyer is a corporate director or officer thereof, except as authorized by law; or

(3) A nonlawyer has the right to direct or control the professional judgment of a lawyer.

#### **DR 5-109 Conflicts of Interest: Public Employment**

(A) A lawyer shall not represent a client in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after full disclosure.

(B) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after full disclosure.

**DR 5-110 Sexual Relations with Clients**

- (A) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the lawyer/client relationship commenced.
- (B) A lawyer shall not have sexual relations with a representative of a current client of the lawyer if the sexual relations would, or would likely, damage or prejudice the client in the representation.
- (C) For purposes of DR 5-110 “sexual relations” means:
- (1) Sexual intercourse; or
  - (2) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party.
- (D) For purposes of DR 5-110 “lawyer” means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

Disciplinary Rule 6  
Competence and Diligence

**DR 6-101 Competence and Diligence**

- (A) A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
- (B) A lawyer shall not neglect a legal matter entrusted to the lawyer.

**DR 6-102 Limiting Liability to Client**

- (A) A lawyer shall not make an agreement prospectively limiting the lawyer’s liability to a client for malpractice unless permitted by law and the client is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection therewith.
- (B) A lawyer shall not enter into any agreement with a client regarding arbitration of malpractice claims without full disclosure.

Disciplinary Rule 7  
Zealously Representing Clients within the Bounds of the Law

**DR 7-101 Representing a Client Zealously**

- (A) A lawyer shall not intentionally:
- (1) Fail to seek the lawful objectives of the lawyer’s client through reasonably available means permitted by law and these disciplinary rules except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of the lawyer’s client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the legal process.
  - (2) Fail to carry out a contract of employment entered into with a client for professional services but the lawyer may withdraw as permitted under DR 2-110, DR 5-102 and DR 5-105.
  - (3) Prejudice or damage the lawyer’s client during the course of the professional relationship except as required under DR 7-102(B).
- (B) In the lawyer’s representation of a client, a lawyer may:
- (1) Where permissible, exercise the lawyer’s professional judgment to waive or fail to assert a right or position of the lawyer’s client.

(2) Refuse to aid or participate in conduct that the lawyer believes to be unlawful even though there is some support for an argument that the conduct is legal.

(C) A lawyer may seek the appointment of a guardian or take other protective action which is least restrictive with respect to a client only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest, whether because of minority, mental disability or for some other reason.

(D) In the lawyer's representation of a client, a lawyer may undertake an evaluation of a matter affecting a client for use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client and the client consents after full disclosure. Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by DR 4-101.

#### **DR 7-102 Representing a Client Within the Bounds of the Law**

(A) In the lawyer's representation of a client or in representing the lawyer's own interests, a lawyer shall not:

(1) File a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the lawyer's client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another.

(2) Knowingly advance a claim or defense that is unwarranted under existing law except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.

(3) Conceal or knowingly fail to disclose that which the lawyer is required by law to reveal.

(4) Knowingly use perjured testimony or false evidence.

(5) Knowingly make a false statement of law or fact.

(6) Participate in the creation or preservation of evidence when the lawyer knows or it is obvious that the evidence is false.

(7) Counsel or assist the lawyer's client in conduct that the lawyer knows to be illegal or fraudulent.

(8) Knowingly engage in other illegal conduct or conduct contrary to a Disciplinary Rule.

(B) A lawyer who receives information clearly establishing that:

(1) The lawyer's client has, in the course of the representation, perpetrated a fraud upon a person or tribunal shall promptly call upon the lawyer's client to rectify the same, and if the lawyer's client refuses or is unable to do so, the lawyer shall reveal the fraud to the affected person or tribunal except when the information is a confidence as defined in DR 4-101(A).

(2) A person other than the lawyer's client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

#### **DR 7-103 Performing the Duty of Public Prosecutor or Other Government Lawyer**

(A) A public prosecutor or other government lawyer shall not institute or cause to be instituted criminal charges when the lawyer knows or it is obvious that the charges are not supported by probable cause.

(B) A public prosecutor or other government lawyer in criminal litigation shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant has no counsel, of the existence of evidence, known to the prosecutor or other government lawyer, that tends to negate the guilt of the defendant, mitigate the degree of the offense or reduce the punishment.

#### **DR 7-104 Communicating with a Person Represented by Counsel**

(A) During the course of the lawyer's representation of a client, a lawyer shall not:

(1) communicate or cause another to communicate on the subject of the representation, or on directly related subjects with a person the lawyer knows to be represented by a lawyer on that subject, or on directly related subjects, unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law to do so; or
- (c) a written agreement requires a written notice or demand to be sent to such other person, in which case a copy of such notice or demand shall also be sent to such other person's lawyer.

This prohibition includes a lawyer representing the lawyer's own interests.

(B) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

#### **DR 7-105 Threatening Criminal Prosecution**

(A) Except as provided below, a lawyer shall not threaten to present criminal charges to obtain an advantage in a civil matter. A lawyer may threaten to present such charges if, but only if, the lawyer reasonably believes the charge to be true and if the purpose of the lawyer is to compel or induce the person threatened to take reasonable action to make good the wrong which is the subject of the charge.

#### **DR 7-106 Trial Conduct**

(A) A lawyer shall not disregard or advise the lawyer's client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding but the lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(B) In presenting a matter to a tribunal, a lawyer shall disclose:

- (1) Legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the lawyer's client and which is not disclosed by opposing counsel.
- (2) Unless privileged or irrelevant, the identities of the clients the lawyer represents and of the persons who employed the lawyer.

(C) In appearing in the lawyer's professional capacity before a tribunal, a lawyer shall not:

- (1) State or allude to any matter that the lawyer has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.
- (2) Ask any question that the lawyer has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person.
- (3) Assert the lawyer's personal knowledge of the facts in issue except when testifying as a witness.
- (4) Assert the lawyer's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant or as to the guilt or innocence of a criminal defendant but the lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.
- (5) Fail to comply with known local customs of courtesy or practice of the bar or a particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply.
- (6) Engage in undignified or discourteous conduct which is degrading to a tribunal.
- (7) Intentionally or habitually violate any established rule of procedure or of evidence.

#### **DR 7-107 Trial Publicity**

(A) A lawyer engaged in a matter shall not make an extrajudicial statement pertaining to that matter that a reasonable person would expect to be disseminated by means of public communication if the statement poses a serious and imminent threat to the fact-finding process in a governmental adjudicative proceeding and if the lawyer either intends to affect that process or reasonably should know that the statement poses such a threat and acts with indifference to that effect.

(B) The foregoing provision of DR 7-107 does not preclude a lawyer from replying to charges of misconduct publicly made against the lawyer or from participating in the proceedings of legislative, administrative or other investigative bodies.

(C) A lawyer shall exercise reasonable care to prevent the lawyer's employees from making an extrajudicial statement that the lawyer would be prohibited from making under DR 7-107(A).

#### **DR 7-108 Communication with or Investigation of Jurors**

(A) Before the trial of a case a lawyer connected therewith shall not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(B) During the trial of a case:

(1) A lawyer connected therewith shall not communicate with or cause another to communicate with any member of the jury.

(2) A lawyer who is not connected therewith shall not communicate with or cause another to communicate with a juror concerning the case.

(C) DR 7-108(A) and (B) do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(D) After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer shall not ask questions of or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(E) A lawyer shall not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(F) All restrictions imposed by DR 7-108 upon a lawyer also apply to communications with or investigations of members of a family of a venireman or a juror.

(G) A lawyer shall reveal promptly to the court improper conduct by a venireman or a juror, or by another toward a venireman or a juror or a member of their families, of which the lawyer has knowledge.

#### **DR 7-109 Contact with Witnesses**

(A) A lawyer shall not suppress any evidence that the lawyer or the lawyer's client has a legal obligation to reveal or produce.

(B) A lawyer shall not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of making the person unavailable as a witness therein.

(C) A lawyer shall not pay, offer to pay, or acquiesce in payment of compensation to a witness contingent upon the content of the witness's testimony or the outcome of the case but a lawyer may advance, guarantee or acquiesce in the payment of:

(1) Expenses reasonably incurred by a witness in attending or testifying.

(2) Reasonable compensation to a witness for the witness' loss of time in attending or testifying.

(3) A reasonable fee for the professional services of an expert witness.

#### **DR 7-110 Contact with Officials**

(A) A lawyer shall not give or lend anything of value to a judge, official, or employee of a tribunal except as permitted by Judicial Rule 3 of the Code of Judicial Conduct but a lawyer may make a contribution to the campaign fund of a candidate for judicial office in conformity with Judicial Rule 4 of the Code of Judicial Conduct.

(B) In an adversary proceeding, a lawyer shall not communicate, or cause another to communicate, as to the merits of the cause with a judge or an official before whom the proceeding is pending except:

- (1) In the course of official proceedings in the cause.
- (2) In writing if the lawyer promptly delivers a copy of the writing to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.
- (3) Orally upon adequate notice to opposing counsel or to the adverse party if the adverse party is not represented by a lawyer.
- (4) As otherwise authorized by law or by Judicial Rule 2 of the Code of Judicial Conduct.

### Disciplinary Rule 8

#### Improper Conduct as a Public Official or Judicial Candidate; Improper Criticism of the Judiciary

##### **DR 8-101 Action as a Public Official**

(A) A lawyer who holds public office shall not:

- (1) Use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.
- (2) Use the lawyer's public position to influence, or attempt to influence, a tribunal to act in favor of the lawyer or of a client.
- (3) Accept anything of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing the lawyer's action as a public official.
- (4) Either while in office or after leaving office use confidential government information obtained while a public official to represent a private client.
  - (a) As used in this rule, the term "confidential government information" means information which has been obtained under governmental authority and which at the time the information is used the government is prohibited by law from disclosing to the public or has legal privilege not to disclose and which is not otherwise available to the public.

(B) The foregoing provisions of DR 8-101(A) do not preclude a lawyer from acting under a law which specifically authorizes the performance of a governmental function, despite a conflict of interest, if the lawyer complies with all requirements of such law.

(C) Notwithstanding the provisions of DR 8-101(A) or any other disciplinary rule, and consistent with the "debate" clause, Article IV, section 9, of the Oregon Constitution, or the "speech or debate" clause, Article I, section 6, of the United States Constitution, a lawyer-legislator shall not be subject to discipline for words uttered in debate in either house of the Oregon Legislative Assembly or for any speech or debate in either house of the United States Congress.

(D) A member of a lawyer-legislator's firm shall not be subject to discipline for representing a client in any claim against the State of Oregon provided:

- (1) The lawyer-legislator is screened from participation or representation in the matter in accordance with the procedure set forth in DR 5-105(I). The required affidavits shall be served on the Attorney General; and
- (2) The lawyer-legislator shall not directly or indirectly receive a fee for such representation.

##### **DR 8-102 Statements Concerning Judges and Other Adjudicatory Officers**

(A) A lawyer shall not knowingly make false statements of fact concerning the qualifications of a candidate for election or appointment to a judicial office.

(B) A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officer.

##### **DR 8-103 Lawyers as Candidates for Judicial Office**

(A) A lawyer who is a candidate for judicial office to be filled either by public election or by appointment shall comply with the applicable provisions of Judicial Rule 4 of the Code of Judicial Conduct.

Disciplinary Rule 9  
Client Funds and Property

**DR 9-101 Preserving Identity of Funds and Property of a Client**

(A) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, and escrow and other funds held by a lawyer or law firm for another in the course of work as lawyers, shall be deposited and maintained in one or more identifiable trust accounts in the state in which the law office is situated. Trust accounts shall be specifically identified by use of the phrase "Lawyer Trust Account." No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay account charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) With respect to each lawyer trust account, on or before the later of the date on which such account is opened or February 15, 1994, the lawyer or law firm in whose name such account is held shall mail or deliver to the financial institution in which such account is held a written notice stating that the financial institution holds one or more lawyer trust accounts in the name of said lawyer or law firm, and setting forth the name of the lawyer or law firm in whose name each lawyer trust account is held and the account number of each lawyer trust account.

(C) A lawyer shall:

(1) Promptly notify a client of the receipt of the client's funds, securities or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the lawyer's client regarding them. Every lawyer engaged in the private practice of law shall maintain and preserve for a period of at least five years after final disposition of the underlying matter, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of disbursements rendered to clients or equivalent records clearly and expressly reflecting the date, amount, source and explanation for all receipts, withdrawals, deliveries and disbursements of funds or other property of a client.

(4) Promptly pay or deliver to a client as requested by the client the funds, securities or other properties in the possession of the lawyer which the client is entitled to receive. Under circumstances covered by DR 9-101(A)(2), the undisputed portion of the funds held by the lawyer shall be disbursed to the client.

(D)

(1) Each lawyer trust account shall be an interest bearing trust account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care.

(2) A lawyer or law firm who receives client funds which are so nominal in amount, or are expected to be held for such a short period of time, that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest bearing lawyer trust account for such funds. The lawyer trust account shall be maintained in compliance with the following requirements:

(a) The lawyer trust account shall be maintained in compliance with DR 9-101(A), (B) and (C);

(b) No earnings from the lawyer trust account shall be made available to the lawyer or law firm;

(c) All earnings from the lawyer trust account, net of any transaction costs, shall be remitted to the Oregon Law Foundation;

(d) The lawyer trust account shall be operated in accordance with such other operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.

(3) All client funds shall be deposited in the lawyer trust account specified in subdivision (2) unless they are deposited in:

(a) A separate interest bearing lawyer trust account for a specific and individual matter for a particular client. There shall be a separate lawyer trust account opened for each such particular matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in (A) and (C) of this rule for the principal funds of the client; or

(b) A pooled interest bearing lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to each client. Interest so earned must be held in trust as property of each client in the same manner as is provided in (A) and (C) of this rule for the principal funds of the client.

(4) In determining whether to use a lawyer trust account specified in subdivision (2) or a lawyer trust account specified in subdivision (3), a lawyer or law firm shall consider:

(a) The amount of interest which the funds would earn during the period they are expected to be deposited;

(b) The cost of establishing and administering the lawyer trust account, including the cost of the lawyer or law firm's services; and

(c) The capability of the financial institution to calculate and pay interest to individual clients.

#### **DR 9-102 Trust Account Overdraft Notification Program**

(A) Subject to DR 9-101(D), lawyers engaged in the private practice of law shall permit their lawyer trust accounts to be maintained only in financial institutions which enter into an agreement with the Oregon State Bar requiring the financial institution to report to the Oregon State Bar Disciplinary Counsel when any properly payable instrument is presented against such account containing insufficient funds, whether or not the instrument is honored.

(B) Overdraft notification agreements with financial institutions shall provide that all reports made by them shall contain the following:

(1) the identity of the financial institution;

(2) the identity of the lawyer or law firm;

(3) the account number; and

(4) either (i) the amount of the overdraft and the date it was created; or (ii) the amount of the returned instrument and the date it was returned.

The information required by the notification agreement shall be provided in writing to Disciplinary Counsel within ten banking days of the date the item was paid or returned unpaid.

(C) Agreements between financial institutions and the Oregon State Bar shall take effect March 15, 1994, or on the date of the agreement between the financial institution and the Oregon State Bar, whichever is later. Such agreements shall apply to all branches of the financial institution and shall not be canceled except upon a thirty-day notice in writing to Disciplinary Counsel.

(D) Nothing in this rule shall preclude financial institutions which participate in any trust account overdraft notification program from charging lawyers or law firms for the reasonable costs incurred by the financial institutions in participating in such program.

(E) Every lawyer who receives notification from a financial institution that any instrument presented against his or her lawyer trust account was presented against insufficient funds, whether or not the instrument was honored, shall promptly notify Disciplinary Counsel in writing of the same information required by subsection (B). The lawyer shall include a full explanation of the cause of the overdraft.

## Disciplinary Rule 10 Definitions

### **DR 10-101 Definitions**

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(A) “Firm member” or “member of a firm” means a partner, a shareholder, an associate, or a lawyer serving as “Of Counsel”. Any other lawyer, including an office sharer or a lawyer working for or with a firm on a limited basis, is not a “firm member” or “member of a firm” absent indicia sufficient to establish a defacto law firm among the lawyers involved.

(B)

(1) “Full disclosure” means an explanation sufficient to apprise the recipient of the potential adverse impact on the recipient, of the matter to which the recipient is asked to consent.

(2) As used in DR 5-101, DR 5-104, DR 5-105, DR 5-107, DR 5-109, or when a conflict of interest may be present in DR 4-101, “full disclosure” shall also include a recommendation that the recipient seek independent legal advice to determine if consent should be given and shall be contemporaneously confirmed in writing.

(C) “Law firm” or “firm” means a proprietorship, partnership or professional legal corporation engaged in the practice of law. “Law firm” or “firm” also includes a law department of a corporation or government agency, a private or public legal aid or public defender organization and a public interest law firm.

(D) “Partner” includes a shareholder in a professional legal corporation.

(E) “Person” includes a corporation, an association, a trust, a partnership, and any other organization or legal entity.

(F) “Professional legal corporation” means a corporation, or an association treated as a corporation, authorized to practice law.

(G) “State” means any state of the United States, the District of Columbia, Puerto Rico, and any other United States territory or possession.

(H) “Tribunal” mean all courts and all other adjudicatory bodies.

(I) “Financial institution” means those institutions defined in ORS 706.005.

(J) “Electronic communication” includes but is not limited to on-line legal lists and directories; web pages; messages sent to newsgroups, listservs and bulletin boards; messages sent via electronic mail; and real time interactive communications such as conversations in internet chat groups and conference areas and video conferencing.