Oregon State Bar

NEW LAWYER MENTORING PROGRAM MANUAL

RESOURCES FOR MENTORS & NEW LAWYERS

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INTRODUCTION

The first years of a lawyer's practice are a critical time in the development of professional habits, practices and character. This period can also be a challenging, and sometimes stressful, period as lawyers adjust to the pressures of practice management, client relations and the adversarial process. To facilitate this transition into the practice of law, the Oregon Supreme Court, in conjunction with the bar, created the New Lawyer Mentoring Program. The goal of the NLMP is to introduce new lawyers to the high standards of integrity, professional conduct, professional competence and service to the public that are an Oregon tradition.

Shortly after admission, each new lawyer (unless deferred or exempt), will be paired with an experienced lawyer who has practiced for at least five years and who has been selected by the Court for their commitment to ethics, professionalism and professional skills. Together, the new lawyer and the mentor will develop a curriculum of activities to introduce the new lawyer to the legal community and to the practical application of ethics, civility and professionalism. The new lawyer will also receive practical guidance about client relations and law office management, as well as explore practical skills in a substantive area of the law. The mentor will be a coach and a guide as the new lawyer adjusts to the challenges of law practice. Finally, working with the new lawyer will allow the mentor to see the profession through new, enthusiastic eyes and help the mentor understand generational differences.

The NLMP is premised on one-to-one interaction as a supplement to traditional classroom-style continuing education programs that new lawyers attend. Although it consists of a series of mandatory activities and experiences, the NLMP is flexible enough to complement and coordinate with existing law firm training programs as well as the special training needs of government, corporate and public interest practices.

The success of the NLMP depends on the commitment of both the mentors and the new lawyers; the Court and the bar appreciate the devotion of time, energy and skill that will be required on both sides.

This manual contains information about enrolling in the NLMP, developing the individual mentoring program, and certifying completion. It also has some tips for successful mentoring relationships, a copy of the Rules of Licensure regarding the New Lawyer Mentoring Rule, and selected Oregon Rules of Professional Conduct.

Questions not addressed in the manual can be directed to the NLMP Coordinator, Cathy Petrecca at 503.431.6355, or NLMP Assistant, Karla Houtary at 503.431.6367 or by sending an email to mentoring@osbar.org.

OPERATING PROCEDURES AND POLICIES

1. *Enrollment, Exemptions and Deferrals*

a. Within 28 days of admission, new lawyers must either enroll in the NLMP, certify they are exempt, or request a deferral. All of this shall be done through the NLMP survey.

b. New lawyers are exempt from the NLMP if they have engaged in the active, substantial and continuous practice of law in another United States jurisdiction for two or more years prior to admission in Oregon.

c. Requests for exemption based on law practice outside of the United States will be subject to review by the NLMP staff.

d. New lawyers who are not practicing law in Oregon, including judicial clerks, may request to defer participation in the NLMP until they begin practicing in Oregon, at which time they must immediately enroll in the NLMP.

e. New lawyers who practice outside the state of Oregon will be deferred from participation in the NLMP if the bar determines that mentoring cannot be arranged conveniently. If a new lawyer who deferred for this reason commences practicing law in Oregon within the first two years of admission, the new lawyer must enroll in the NLMP immediately.

2. *Mentor Match*

a. The bar will match new lawyers with mentors based principally on geography, and whenever possible, practice-area interests. To the extent possible and practicable, consideration will be given to preferences for any factors identified by a new lawyer or a mentor.

b. New lawyers employed in law firms, government offices, corporate law departments or other group practices may request either an “in-house” or an “outside” mentor. An “in-house” mentor is in the same firm or office as the new lawyer. An “outside” mentor is a lawyer not in the same firm or office as the new lawyer. New lawyers may request a specific mentor; if the mentor requested has not been appointed by the Supreme Court, a conditional match will be made pending the mentor’s appointment.

c. The bar will match new lawyers and mentors as soon as possible following completion of the new lawyer’s enrollment survey, after which email notice of the match and respective contact information will be provided to the new lawyer and the mentor.

   The new lawyer is responsible for arranging the initial meeting with the mentor, and the meeting must take place within 28 business days of the announcement of the match.

d. Occasionally there will be delays in finding an effective match for a new lawyer. The NLMP will automatically set the new lawyer’s program completion due date based on their match date. Participants will have at least one full year to work with their NLMP

mentor. The NLMP operates on two completion deadlines per year: May 31 and December 31.

e. If a match does not appear to be effective, or for any reason may not be able to best meet the needs of the new lawyer, the participants are encouraged to inform the NLMP promptly so as not to delay the new lawyer's progress through the program. The NLMP will seek solutions to any developing issues, and will appoint a replacement match where desired.

3. Designing the Mentoring Plan

a. The Mentoring Plan includes core concepts and experiences that will introduce new lawyers to the practical aspects of lawyering. The Mentoring Plan has six component parts:

1. Introduction to the Legal Community
2. Professionalism, Rules of Professional Conduct and Cultural Competence
3. Introduction to Law Office Management
4. Working With Clients
5. Career Development through public service, bar programs and work/life balance
6. Practice Area Basic Skills

Parts 1-5 are comprised of specific topics that the new lawyer must discuss with the mentor and specific activities that the new lawyer must complete and review with the mentor. In Part 6, the Practice Area component, the new lawyer selects, completes and then discusses with the mentor, a minimum of 10 basic skill activities in one or more substantive practice areas that best match the new lawyer's interests.

b. During the initial meeting, the new lawyer and the mentor should review the required elements of the mentoring plan and identify the practice areas the new lawyer will focus on during the mentorship.

c. The mentoring plan may include as many practice area activities as the new lawyer and mentor agree are practical, but must include at least 10 activities from one or more practice areas. ***The activities listed in the substantive areas are not exclusive**; the new lawyer and mentor may supplement the listed activities or substitute others that they identify as basic competency skills. Similarly, if the new lawyer is interested in a substantive area for which no activities are suggested, the new lawyer and the mentor may develop a customized elective plan of activities designed to build basic skills in that area. A new lawyer may choose more than one practice area.

d. The mentor alone is not expected to personally address all of the Mentoring Plan elements, but rather to be a conduit to the larger bar community for the new lawyer. If the mentor does not have experience in an area of interest to the new lawyer, the mentor should help the new lawyer find another experienced lawyer who practices in the subject area to assist in mentoring the new lawyer.

e. In the event that a mentor arranges for significant curriculum elements to be addressed by another member of the OSB community, the mentors may split the allowed mentoring continuing education credits, although to get credits the consulted lawyer may need to apply to and be approved for the NLMP program. How credits are split must be agreed upon by the mentors, and with the approval of the NLMP.

f. A new lawyer employed by a law firm, corporate legal department or governmental unit may complete an alternate mentoring plan based on the employer's established and approved training program, provided the program covers the areas required by the NLMP.

g. A new lawyer who has completed some of the mentoring plan activities as a law clerk or otherwise prior to admission may also develop a customized plan with the mentor that builds on existing skills in the component areas.

4. Completing the Mentoring Plan

a. The mentoring plan is designed to be completed in approximately one year. It is expected that new lawyers and their mentors will meet at least once each month for twelve months, and that each meeting will last approximately 90 minutes to allow sufficient time to review and discuss the various experiences and activities that make up the mentoring plan and to monitor the new lawyer's progress.

b. New lawyers who are mentored within their law firm, corporate legal department or governmental unit may complete some of their required activities in small group settings rather than by individual discussion with their in-house mentors. Similarly, if programs are offered through sections, local or specialty bars, curriculum areas may be addressed in group settings through outside organizations.

c. When all mentoring plan activities have been completed, the new lawyer shall sign a Certificate of Completion. The new lawyer is responsible for filing the Certificate with the bar, accompanied by a fee of $100 (if applicable), by adding the activity to their MCLE transcript via the OSB member dashboard. The MCLE credits will be applied to the new lawyer's **first three-year** reporting period (not the first reporting period on admission). See OSB Rules of Licensure Title 7. The mentor will be awarded eight (8) MCLE credits. These credits will be added to the mentor's CLE transcript by NLMP staff upon receipt of the new lawyer's Completion Certificate.

d. The Certificate of Completion must be filed with the bar, by the new lawyer, on or before the completion due date.

e. A new lawyer who is unable to complete the plan within the allowed time may be granted additional time for good cause shown. Examples of good cause include health issues, a geographic move, a change in employment or other circumstances that prevent the new lawyer from working on the mentoring plan. The new lawyer must submit a request for additional time in writing or by email, on or before the completion deadline.

5. Noncompliance, Suspension and Reinstatement

a. A new lawyer who fails to complete the mentoring plan on time (and who has not been granted an extension) will be given written notice and shall have 60 days from the date of the notice to cure the noncompliance.

b. If the noncompliance is not cured (by completing the mentoring plan) within the time allowed, the Executive Director shall recommend to the Supreme Court that the new lawyer be suspended from membership in the bar.

c. During a period of suspension, the new lawyer may not engage in the practice of law.

d. A suspended new lawyer may apply for reinstatement as soon as the mentoring plan is completed. In addition to the reinstatement application, the new lawyer must submit the Certificate of Completion, the NLMP fee of $100 and a reinstatement fee.

e. Upon receipt of a satisfactory application for reinstatement, the Executive Director will forward a recommendation to the Supreme Court that the new lawyer be reinstated to active membership. Reinstatement is effective upon approval by the Supreme Court.

f. A reinstatement after suspension for not completing the NLMP has no effect upon any other aspect of the new lawyer's status, including any suspension for nonpayment of membership fees, MCLE noncompliance or a disciplinary proceeding.

FREQUENTLY ASKED QUESTIONS

1. *Is the NLMP Mandatory?*

Yes. All newly admitted lawyer members of the Oregon State Bar must participate in the program unless they have already practiced in another jurisdiction for at least two years.

2. *What if I am unemployed or otherwise not practicing law after admission?*

New lawyers who do not have plans to begin practicing law immediately after admission, including new lawyers who are working as judicial clerks, may request a deferral until such time as they begin practicing law.

3. *When do I start the NLMP?*

Unless exempt or deferred, new lawyers must enroll in the NLMP by completing the online enrollment survey within 28 days after admission to the bar. New lawyers who are granted a deferral must complete the online enrollment survey immediately upon returning to or beginning to practice law in Oregon. Actual commencement of the curriculum will begin when the new lawyer receives official notice of a mentor match.

4. *Who are the mentors?*

Mentors are Oregon lawyers in good standing who have at least five years of experience in the practice of law. They must have a clean recent disciplinary history, and a reputation for competence and for conducting themselves ethically and professionally.

5. *How are mentors selected?*

Potential mentors may be nominated by other mentors, volunteer or be specifically recruited by a new lawyer. The nominees are reviewed by NLMP staff to confirm eligibility and the slate is then sent to the Supreme Court for appointment.

6. *Do mentors get any special training?*

All appointed mentors are required to screen a brief video available on the bar's website. In addition to familiarizing mentors with the required elements of the mentoring plan, the training video includes ideas and tips for establishing successful mentoring relationships. Mentors are also asked to review this manual in its entirety. Additional optional training opportunities will be presented periodically.

7. *How do I find a mentor?*

There are three ways that mentors will be identified for new lawyers. If a new admittee is hired by a firm or organization, their employer may assign a more senior attorney to serve as their NLMP mentor. The second option is for a new lawyer to seek out a respected member of the bar and ask if they are willing to serve as a mentor. In these first two options, mentors will be appointed on a provisional basis pending Supreme Court

approval. The third option is for the bar to match new lawyers with mentors who have been appointed by the Supreme Court. The principal criteria for the match will be location, although other factors, such as practice area interest or other preferences will be given consideration to the extent possible.

8. Does my mentor have to be a lawyer in my firm?

No. Generally, lawyers employed in law firms, corporate legal departments and government offices will be matched with a mentor in the same firm or office. However, new lawyers may request and will then be matched with an "outside" mentor. This decision rests with the new lawyer. Some may choose the expediency of working within the law firm. Others may find value in having outside mentoring, as a supplement to the value of their in-house relationships.

9. May I choose my own mentor?

Yes. Finding a mentor with whom you can establish rapport will only enhance the value of the program. New lawyers are encouraged to seek out established Oregon lawyers that might make a suitable mentor. Mentors must meet the specified criteria and be appointed by the court, though provisional matches may be made pending court appointment.

10. What if a mentor I've asked is already mentoring, but is willing to work with me also?

Mentors are welcome to work with more than one new lawyer, and there may be some benefit to this group practice. They will need to confirm by email or phone with NLMP staff that they are willing to serve as a mentor to multiple new lawyers.

11. What if a mentor would like to share the mentoring role with another qualified lawyer?

Two mentors are able to serve together as "co-mentors" to one new lawyer, or even to a small group of new lawyers. All mentors must meet the criteria, and the arrangement must be confirmed by phone or email with NLMP staff. Mentors must agree among themselves as to an appropriate method of splitting the eight MCLE credits.

12. What is the Mentoring Plan?

The Mentoring Plan sets out the activities the new lawyer will work on with the mentor during the mentoring year. It is comprised of five areas of required activities and one practice area selected by the new lawyer. The elective activities may be in one or more substantive areas and must include at least 10 basic skills activities.

Suggestions for the elective practice area activities can be found on the NLMP Practical Skills Activities page. If a new lawyer wishes to focus on a substantive area not covered in the manual, the new lawyer and the mentor may identify basic skill activities related to that substantive area.

13. Can I get credit for Mentoring Plan activities that I have already completed prior to admission?

No. However, experience as a law clerk or otherwise, prior to admission, can be used to enhance the Mentoring Plan activities. The new lawyer and the mentor may design a customized mentoring plan that has the same focus but builds on existing knowledge and skills through more advanced activities.

14. What do I do if I have a problem with my mentor?

If a mentor is not making time for regular meetings or is not providing helpful guidance and coaching through the mentoring plan activities, a new mentor can be assigned. New lawyers are encouraged to give the relationship some time to develop and to remember that the NLMP mentor may not be able to satisfy all of the needs for support that the new lawyer may have. However, new lawyers are encouraged to contact the bar as soon as it becomes clear that a problem exists. NLMP staff will work to address any issues promptly, and to keep the new lawyer on track to complete the curriculum with a minimum of delay or difficulty.

Please do not hesitate to contact the NLMP coordinator for help resolving any match problems or to discuss reassignment within the program.

15. How much time will the NLMP require?

The NLMP mentoring plan is designed to be completed in approximately twelve months if the new lawyer and mentor meet regularly. As a guide, the new lawyer and mentor should expect to meet monthly for approximately 90 minutes. New lawyers will typically have anywhere from 12 to 17 months to complete their plans. The program is also able to grant extensions.

16. Do I have to complete the new admittee MCLE requirements in addition to the Mentoring Plan?

Yes. The NLMP **does not replace** the Minimum Continuing Legal Education (MCLE) requirements for new admittees. (See OSB Rules of Licensure 8.2(2).) However, upon successful completion of the NLMP, new lawyers are awarded six general MCLE credits that will be carried forward into their first three-year reporting period.

17. Do new lawyers receive MCLE credit for participating in the NLMP?

Yes, see question #16 above.

18. Do mentors receive MCLE credit?

Yes. The Board of Governors has determined that mentors may claim eight (8) MCLE credits for mentoring a new lawyer, including six general and two ethics credits. If another lawyer assists with the mentoring, the credits may be apportioned between them according to their respective responsibility for the mentoring.

19. What if I can't complete my Mentoring Plan within the time allowed?

If a new lawyer does not believe that the assigned deadline can be met due to health or personal issues, job changes or other circumstances beyond their control, an extension may be granted for good cause shown.

A request for an extension must be submitted via email to the bar **prior to** the completion deadline. A new lawyer who does not qualify for an extension and who does not complete the plan in time will be given written notice and 60 days to cure the noncompliance (by completing the plan). Failure to complete the plan will result in the Executive Director recommending that the noncompliant new lawyer be suspended from membership in the bar and, consequently, from the practice of law. New lawyers are encouraged to contact the NLMP early if they anticipate a problem completing the program by the deadline.

20. How do I establish completion of the Mentoring Plan?

When all of the activities of the Mentoring Plan have been completed, the new lawyer signs the Certificate of Completion and is responsible for reporting completion on their MCLE transcript and paying the $100 fee, if applicable.

21. What if I can't afford the fee?

New lawyers who earn $75,000 or less per year and whose employer does not pay the fee are exempt from payment of the completion fee.

At the sole discretion of the Executive Director, the NLMP fee may be waived in cases of financial hardship or special circumstances. Requests for a fee waiver must be submitted in writing to the NLMP Coordinator and should include the reason for the request accompanied by a summary of the applicant's income and expenses. The NLMP administrator will consult with the Executive Director on all such requests.

22. How do I get reinstated from a suspension?

A new lawyer suspended for failing to timely complete the mentoring plan and/or pay the fee can apply to the Executive Director for reinstatement by submitting the appropriate reinstatement form accompanied by the Certificate of Completion, paying the NLMP fee of $100 and paying the reinstatement fee of $100. If the submission is satisfactory to the Executive Director, a recommendation for the applicant's reinstatement will be sent to the Supreme Court.

TIPS FOR SUCCESS

IF YOU ARE A MENTOR…

- **Take the early initiative**. Although the initial contact is a responsibility of the new lawyer, many new lawyers are hesitant to be overly burdensome to their mentors. Mentors are encouraged to reach out, set up good times to call and communicate their openness and availability early in the relationship.
- **Set both expectations and boundaries** early on. At the initial meeting, set a regular date/time for your monthly meetings. Inform your new lawyer about the best time to call with questions or issues, when they are more likely to get your undivided attention.
- **Listen** to your new lawyer's concerns and, especially in the beginning, draw out those concerns that the new lawyer may be reluctant to raise.
- **Recognize** that new lawyers may differ in what they hope and need to get out of a mentoring relationship. Adjust your own approach to assure you are providing your new lawyer with what they are seeking, rather than any fixed perceptions of what your role may entail.
- **Create** a safe environment for the new lawyer's growth by being accessible and non-judgmental, keeping confidences and inviting open and frank conversations.
- **Acknowledge** the issues facing new lawyers who are ethnic minorities, or who may face particular challenges because of their religion, sexual orientation, economic status, national origin or age.
- **Use your friends and colleagues.** No one experienced lawyer can be all things to a new lawyer. Reach out to your fellow lawyers to expose your new lawyer to a diversity of experiences, approaches, styles and perspectives. One analogy may be to consider yourself in a "primary care practitioner" role, while connecting your new lawyer to the breadth and depth of the bar as broadly as possible.
- **Remember** that the only dumb question is the one that isn't asked. Encourage your new lawyer to ask, ask, ask. Be respectful and responsive with your answers.
- Your responsibility is not to direct or supervise your new lawyer's work, but to be a **coach and guide** for the development of professional values and skills.
- **Share** your experience and talent freely. Be the role model you would want.
- **Be candid** about some of the humbling experiences you have had as a lawyer. Your new lawyer will be more likely to openly discuss their difficulties knowing you too have struggled.
- **Take the time** to develop a meaningful mentoring relationship. At its best, this relationship is an opportunity for mutual learning and growth.
- **Bear in mind the program's goals**. In the rare event that a new lawyer is displaying poor professional habits, consider the best possible mentoring approach to address these issues for the long-term health of both this new lawyer and the bar. Seek guidance from other experienced mentors. The goal is to develop all new lawyers in the highest ideals of professionalism. Simply withdrawing from the program could be a missed opportunity and could defeat the larger purpose of public good behind your service.

IF YOU ARE A NEW LAWYER…

- **Start by setting a regular schedule**. The initial meeting should include establishment of a set schedule for monthly meetings. Flexibility will be required at times, but having the regular meeting time will help the mentoring relationship develop more quickly, and the curriculum progress more reliably.
- **Be respectful** of your mentor's time. Be prompt and give plenty of notice if you need to reschedule a meeting. Make good use of your meeting time; come prepared with a list of things you want to discuss.
- Your mentor's "war stories" can be **valuable learning tools**, especially if you can relate them to a situation of your own.
- **Ask questions!** Don't let your ego get in the way of accepting feedback and constructive criticism from your mentor.
- **Do not cover up a challenge.** New lawyers will make mistakes; it is inevitable. First acknowledging a problem and then correcting it will avoid any snowball effect or worse – impact on clients or colleagues. Your mentor could be an invaluable ally in helping through these challenges. Use your mentor as a resource, particularly in more challenging circumstances.
- **Build multiple mentor relationships**; your NLMP mentor will not be able to advise you in every aspect of your professional or personal life. Develop effective networks with peers, other lawyers in and outside your workplace, judges, family and friends.
- Your reputation in the community will be based on your interactions with your mentor, your clients, your work colleagues, opposing counsel, court staff and judges. **Nurture it and guard it jealously**.
- **Address any problems in the mentoring relationship promptly.** The court and the bar want this to be as useful and valuable an experience as possible. If for any reason, the program or the mentoring relationship is not meeting your needs, contact the NLMP staff to begin working toward a resolution. This program is intended as a service, not a burden. Changes will be made promptly to address your needs.

ETHICAL CONSIDERATIONS IN MENTORING

FORMAL ETHICS OPINION NO. 2011-184

Lawyer to Lawyer Consulting: Confidentiality, Conflicts of Interest

Facts:

Lawyer A participates in a mentoring program for new lawyers. Lawyer B is Lawyer A's mentor and is not in Lawyer A's law firm. Lawyer A wishes to discuss a matter concerning one of his clients with Lawyer B.

Lawyer C is a solo practitioner. She is a member of an email listserv maintained by a professional organization that provides members the opportunity to exchange ideas and respond to questions about problems and issues that arise in their practice. Lawyer C encounters an unusual situation in a case she is handling and wishes to receive advice on how to proceed from knowledgeable colleagues who participate in her listserv.

Questions:

1. May Lawyer A disclose information relating to the representation of his client with Lawyer B?

2. May Lawyer B consult regarding Lawyer A's client matter without first checking for conflicts of interest between Lawyer A's client and any client of Lawyer B's firm?

3. May Lawyer C relate the details of the unusual situation she has encountered to other lawyers who participate in her professional organization's listserv?

Conclusions:

1. Yes, qualified.

2. See discussion.

3. Yes, qualified.

Discussion:

Oregon RPC 1.6 provides, in pertinent part:

> (1) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

Oregon RPC 1.7 provides, in pertinent part:

> Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:
>
> (1) the representation of one client will be directly adverse to another client;

> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or…..

It is not uncommon for a lawyer working on a client matter to seek the guidance or assistance of a knowledgeable colleague. Except where the client has specifically instructed otherwise, lawyers may consult with colleagues within their own firms or who are formally associated on a client's matter without violating the duties to safeguard confidential information and avoid conflicts of interest.

A lawyer may also, on occasion, seek the advice of colleagues who are not members of the lawyer's firm or associated on a client matter. Whether those discussions arise in the context of a formal mentoring relationship or through informal discussions, such as on a professional listserv or in casual conversation, both the lawyer seeking advice and the lawyer giving the advice must exercise care to avoid violating their duties to their respective clients.

The American Bar Association's Standing Committee on Ethics and Professional Responsibility Formal Opinion 98-411, *"Ethical Issues in Lawyer-to-Lawyer Consultation,"* provides practical guidance on this subject.[1] Even though this ABA opinion was adopted before listservs and other electronic discussion tools[2] were commonly used by lawyers and makes no reference to them or to lawyer mentoring programs, the principles it discusses and the guidance it provides are applicable in these contexts.[3]

I. *Considerations for the Consulting Lawyer*

Oregon RPC 1.6 safeguards "all information relating to the representation of a client," and prohibits disclosure of such information without the client's informed consent or as provided in one of the specific exceptions to the rule. There is no exemption for lawyers participating in mentorship programs or for other lawyers seeking assistance on behalf of clients. RPC 1.6(a) permits disclosure of confidential information, without the informed consent of a client, where the disclosure is "impliedly authorized to carry out the representation…" The rule does not suggest what kind of disclosures might be impliedly authorized, the ABA opinion interprets Rule 1.6 "to allow disclosures of client information to lawyers outside the firm when the consulting lawyer reasonably believes the disclosure will further the representation by

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[1] Formal Opinion 98-411 (1998), available at: www.abanet.org/media/youraba/200911/98-411.pdf

[2] For purposes of this opinion, when reference is made to "listservs" the same considerations apply to discussions on blogs, online community "bulletin boards" or similar electronic discussion venues.

[3] The ABA opinion purports to apply equally to consultations about the substance or procedure of a client's matter and to consultations about the consulting lawyer's own ethical responsibilities in the matter. However, since the ABA opinion was issued, both the ABA and Oregon have adopted rules that expressly permit disclosure of otherwise confidential information to the extent reasonably necessary "to secure legal advice about the lawyers compliance with these Rules." ABA Model Rule 1.6(b)(4) and Oregon RPC 1.6(b)(3). Comment [9] to the ABA Model Rule suggests that such disclosures may be impliedly authorized for the lawyer to carry out the representation but, even if not, are permitted "because of the importance of a lawyer's compliance with the Rules of Professional Conduct." This opinion is limited to consultations between lawyers unrelated to the lawyer's own professional conduct.

obtaining the consulted lawyer's experience or expertise for the benefit of the consulting lawyer's client."

Consultations that are general in nature and that do not involve disclosure of information relating to the representation of a specific client do not implicate Rule 1.6. For instance, there would be no violation of the rule in a listserv inquiry seeking the name or citation for a recent case on a subject relevant to a client matter or to discussions about an issue of law or procedure that might be present in a client matter. Similarly, inquiries or discussions posed as hypotheticals generally do not implicate RPC 1.6. Accordingly, Lawyer A might safely pose a question to Lawyer B, or Lawyer C might post an inquiry on a listserv, as a hypothetical case.

Framing a question as a hypothetical is not a perfect solution, however. Lawyers faces a significant risk of violating Rule 1.6 when posing hypothetical questions if the facts provided permit persons outside the lawyer's firm to determine the client's identity. Where the facts are so unique or where other circumstances might reveal the identity of the consulting lawyer's client even without the client being named, the lawyer must first obtain the client's informed consent for the disclosures.

To obtain "informed consent," a lawyer must provide a client with "adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct."[4] As noted in the ABA opinion, that may include an explanation that the disclosure may constitute a waiver of attorney-client privilege or might otherwise prejudice the client's interests.

A lawyer should avoid consulting with another lawyer who is likely to be or to become counsel for an adverse party in the matter. In the absence of an agreement to the contrary, the consulted lawyer does not assume any obligation to the consulting lawyer's client by simply participating in the consultation.[5] The consulting lawyer thus risks divulging sensitive information to a client's current or future adversary, who is not prohibited from subsequently using the information for the benefit of his or her own client. This should be a particular concern to Lawyer C if she posts her inquiry to listservs whose members may represent parties on all sides of legal issues. Moreover, no listserv, regardless the restrictions and limitations upon those who participate in it, can assure that messages will be read only by persons aligned with the interests of the lawyer posting an inquiry. Lawyer C, in seeking to consult about an unusual fact pattern, must be careful about using a listserv to obtain assistance from other attorneys, at least not without the informed consent of her client about the potential risks of the consultation.

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[4] Oregon RPC 1.0(g).

[5] The ABA opinions suggests that an agreement to maintain confidentiality might be inferred in some situations, such as where the consulting lawyer puts conditions on the consultation or where the information discussed is of a nature that a reasonable lawyer would assume its confidentiality. In the absence of any authority, however, practitioners should not assume a confidentiality agreement will be inferred.

One way for a consulting lawyer to avoid some of the foregoing risks is to obtain an agreement that the consulted lawyer will both maintain the confidentiality of information disclosed and not engage in representation adverse to the consulting lawyer's client.

II. *Considerations for the Consulted Lawyer*

As discussed above, a consulted lawyer assumes no obligations to the consulting lawyer's client by the mere fact of the consultation. Lawyer B will not have violated any duty to Lawyers A's client under Rule 1.6 if Lawyer B later discloses or uses information received from Lawyer A, including in circumstances where Lawyer B undertakes representation adverse to Lawyer A's client.

Even a consultation premised on hypothetical facts can have practical implications for the consulted lawyer if the guidance provided to the consulting lawyer is used to harm a client of the consulted lawyer. The ABA opinion illustrates this point with the example of a lawyer skilled in real estate matters, like our Lawyer B, who is consulted by a less experienced lawyer, such as our Lawyer A, about how a tenant might void a lease. As a result of Lawyer B's guidance, Lawyer A's client repudiates a lease. Lawyer B subsequently learns that the landlord whose lease was repudiated is a client of Lawyer B's firm.

In that situation, if there was no confidentiality agreement between the lawyers, Lawyer B has a duty to inform the landlord client about the consultation and its possible consequences. While doing so does not breach any duties to Lawyer A's client or to Lawyer B's client, the practical result may be allegations of negligence or ethical misconduct by the landlord client and the destruction of the relationship. Had Lawyers A and B entered a confidentiality agreement regarding the consultation, then Lawyer B and his firm could be disqualified under Rule 1.10. if Lawyer B's obligations under that agreement would materially limit his ability to represent the landlord in the matter.[6]

Lawyer B can avoid the problems posed by the above example by insisting, prior to any consultation with Lawyer A about a client matter, that Lawyer A provide the identity of the client so that Lawyer B can check for possible conflicts with clients of Lawyer B's firm. In addition to checking for possible conflicts, Lawyer B might seek an agreement from Lawyer A, on behalf of Lawyer A's client, that the consultation will not create any obligations by Lawyer B to Lawyer A's client.

Consultations among lawyers, whether during the course of a mentorship program, on listservs and other "social media," during continuing education programs, or in more informal settings, are an important part of a lawyer's professional development and a critical component in representing clients. Indeed, such consultations may be one way in which lawyers fulfill their ethical duty, under Oregon RPC 1.1, to provide competent representation. But lawyers who are not members of the same firm or affiliated on a particular case must be mindful of other ethical obligations to clients. For the consulting lawyer, like Lawyers A and C in this opinion, care

[6] Oregon RPC 1.7(a)(2) prohibits a lawyer from representing a client if there is "a significant risk that the representation…will be materially limited by the lawyer's responsibilities to…a third person…," except where the affected client gives informed consent, confirmed in writing.

should be taken not to violate the duty to maintain the confidentiality of information relating to the representation of a client. For the consulted lawyer, like Lawyer B, the duty of loyalty to existing clients must be considered. Even though a consultation will not create an attorney-client relationship between the client of the consulting lawyer and the consulted lawyer, there may be circumstances, as illustrated above, where the consulted lawyer will need to check for possible conflicts of interest, or take other prophylactic measures, to ensure that an obligation to current clients is not impaired.

Approved by OSB Board of Governors, March 2011

OREGON STATE BAR
STATEMENT OF PROFESSIONALISM

Adopted by the Oregon State Bar House of Delegates and
Approved by the Supreme Court of Oregon effective September 16, 2019

As lawyers, we belong to a profession that serves our clients and the public good. As officers of the court, we aspire to a professional standard of conduct that goes beyond merely complying with the ethical rules. Professionalism is consistent conduct that includes compliance with all ethical rules promulgated by the Oregon Supreme Court, courageous representation of clients, striving for the public good and complying with the following principles in dealing with our clients, opposing parties, opposing counsel, the courts, and all others:

- I will promote the integrity of the profession and the legal system.
- I will work to ensure access to justice for all segments of society.
- I will avoid all forms of discrimination.
- I will protect and improve the image of the legal profession in the eyes of the public.
- I will support a diverse bench and bar.
- I will promote respect for the courts.
- I will support the education of the public about the legal system.
- I will work to achieve my client's goals, while at the same time maintain my professional ability to give independent legal advice to my client.
- I will always advise my clients of the costs and potential benefits or risks of any considered legal position or course of action.
- I will communicate fully and openly with my client, and use written fee agreements with my clients.
- I will not employ tactics that are intended to delay, harass, or drain the financial resources of any party.
- I will always be prepared for any proceeding in which I am representing my client.
- I will be courteous and respectful to my clients, to adverse litigants and adverse counsel, and to the court.
- I will only pursue positions and litigation that have merit.
- I will explore all legitimate methods and opportunities to resolve disputes at every stage in my representation of my client.
- I will support pro bono activities.

SELECTED
OREGON RULES OF PROFESSIONAL CONDUCT

Rule 1.0 Terminology
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(b) "Confirmed in writing," when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (g) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

***

(f) “Information relating to the representation of a client” denotes both information protected by the attorney-client privilege under applicable law, and 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.

(g) "Informed consent" denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct. When informed consent is required by these Rules to be confirmed in writing or to be given in a writing signed by the client, the lawyer shall give and the writing shall reflect a recommendation that the client seek independent legal advice to determine if consent should be given.

Rule 1.6 Confidentiality of Information
***

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;

(2) to prevent reasonably certain death or substantial bodily harm;

(3) to secure legal advice about the lawyer's compliance with these Rules;

(4) to establish a claim or defense on behalf of the 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 in any proceeding concerning the lawyer's representation of the client;

(5) to comply with other law, court order, or as permitted by these Rules; or

(6) to provide the following information in discussions preliminary to the sale of a law practice under Rule 1.17 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 information relating to the representation of such clients whether or not the sale of the practice closes or the client ultimately consents to representation by the purchasing lawyer.

(7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.

Rule 1.7 Conflict of Interest: Current Clients
***

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client;

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or

(3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a current conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and

(4) each affected client gives informed consent, confirmed in writing.

OSB Rules of Licensure Title 7 – New Lawyer Mentoring Program

Amended by Order dated April 3, 2025, effective May 1, 2025.

7.1 New Lawyer Mentoring Program (NLMP)

(1) Within 28 days of admission, each new attorney admittee who is an active member that practices law in Oregon or has a principal office for the practice of law in Oregon shall either:

(a) Enroll in the NLMP by filing an NLMP Enrollment Form with the Bar; or

(b) Certify to the Bar that the new attorney admittee is eligible for an exemption from the NLMP as provided in RL 7.2(2)(b).

(2) Within the first three-year reporting period following admission as an active member, each new attorney admittee shall complete the requirements of the NLMP curriculum established by the Board, complete a mentoring plan, file an NLMP Completion Certificate, and pay the accreditation fee.

7.2 Exemptions and Deferrals

(1) Exemptions.

(a) A new attorney admittee is exempt from the NLMP requirements if:

(i) The admittee has practiced law in another jurisdiction for two years or more upon admission to the Bar; or

(ii) The admittee defers the NLMP under subsection (2)(a) of this Rule for two or more years and exclusively practices law outside the State of Oregon for two or more years.

(b) The MCLE Program Manager may grant any other exemption from the NLMP requirements, with the consent of the NLMP Program Manager, for good cause shown.

(c) A new attorney admittee who earns $75,000 or less annually and whose employer will not pay the NLMP fee is exempt from payment of the NLMP fee.

(2) Deferrals.

(a) A new attorney admittee whose principal office is outside the State of Oregon and does not practice law in Oregon is temporarily deferred from the NLMP requirements.

(b) A new attorney admittee is eligible for a temporary deferral from the NLMP requirements if the new attorney admittee is not engaged in the practice of law or is serving as a judicial clerk.

(c) A new attorney admittee who ceases to qualify for a deferral must notify the NLMP Program Manager and enroll in the NLMP within 28 days of the change in circumstance that led to the deferral.

(d) The NLMP Program Manager may approve a deferral for good cause shown.

7.3 Mentors

(1) The Supreme Court appoints NLMP mentors, upon recommendation by the Bar.

(2) A person qualifies for appointment as a mentor if:

(a) The person is an active or active pro bono attorney member attorney in good standing, with at least five years of experience in the practice of law and a reputation for competence and ethical and professional conduct;

(b) The person is an attorney who is not a member of the Bar, but otherwise meets the requirements of subsection (2)(a) and also is a member in good standing in another United States jurisdiction and is qualified to represent clients before the Social Security Administration, the Internal Revenue Service, the United States Patent and Trademark Office, or the United States Citizenship and Immigration Services office; or

(c) The person is an attorney who is not a member of the Bar, but otherwise meets the requirements of subsection (2)(a) and also is in good standing in another United States jurisdiction, and is recommended by the NLMP Program Manager.

7.4 Matching

(1) The NLMP Program Manager will match new attorney admittees with NLMP mentors based principally on geography and, whenever possible, practice area interests. Upon request by the new attorney admittee and NLMP mentor, the NLMP Program Manage may consider common membership in specialty or affinity bar organizations when establishing a match. The NLMP Program Manager will notify the new attorney admittee and NLMP mentor as soon as an NLMP match is confirmed.

(2) The NLMP Program Manager may reassign a match upon request of the new attorney admittee or NLMP mentor, if the coordinator determines a match is not effective to meet the goals of the program.

(3) The new attorney admittee is responsible for arranging the initial meeting with the NLMP mentor, and the meeting must take place within 28 business days of the new attorney admittee's receipt of notice of the match. At the meeting, the new attorney admittee and NLMP mentor will review the elements of their mentoring plan, including the following topics:

(a) introduction to the legal community;

(b) professionalism, the Oregon Rules of Professional Conduct, and cultural competence;

(c) introduction to law office management;

(d) working with clients;

(e) career development through public service, Bar programs, and quality of life issues; and

(f) practice area basic skills.

7.5 NLMP Completion Certificate

(1) Each new attorney admittee is responsible for ensuring that all requirements of the NLMP are completed.

(2) Upon completion of the NLMP, a new attorney admittee shall file with the Bar an NLMP Completion Certificate, executed by the new attorney admittee, for accreditation by the MCLE Program Manager.

(3) Upon successful completion of the NLMP, a new attorney admittee earns 6 general/practical skills credits, which may be applied to the MCLE requirements of their first three-year MCLE reporting period.

7.6 Removal of NLMP Mentors

(1) An NLMP mentor against whom one or more charges of misconduct have been approved for filing by the SPRB or who has been suspended for failure to respond to requests for information or records, or to respond to a subpoena, shall be removed from participation in the NLMP until such charges have been resolved by final decision or order.

(2) If the license of an NLMP mentor is suspended as a result of a final decision or order in a disciplinary proceeding, the member may not resume service as an NLMP mentor until the NLMP mentor's license is reinstated to active status.

(3) For the purposes of this rule, charges of misconduct include authorization by the SPRB to file a formal complaint, Disciplinary Counsel's notification to the court of a criminal conviction, and Disciplinary Counsel's notification to the court of an attorney's discipline in another jurisdiction.

(4) Within 14 days of receipt by the Bar of notice of charges against an NLMP mentor, the NLMP Program Manager shall provide written notice to the NLMP mentor and new attorney admittee that the NLMP mentor is removed from serving as a mentor.

(5) Within 30 days, or as soon as reasonably practical, of removal of an NLMP mentor, the NLMP Program Manager shall select a new mentor for the new attorney admittee and shall issue a notice to the new attorney admitted and new NLMP mentor as soon as a new NLMP match is confirmed.

7.7 Administration of New Lawyer Mentoring Program

(1) The Bar may establish a fee to be paid by the new attorney admittees participating in the NLMP.

(2) The Bar shall develop the NLMP curriculum and requirements, in consultation with the Supreme Court, and shall be responsible for its administration.

(3) The NLMP Program Manager will publish an NLMP Manual consistent with NLMP curriculum developed by the Bar, to provide additional information about developing and implementing an effective mentoring plan.

(4) The MCLE Committee may review and provide input on the NLMP Manual to the NLMP Program Manager.

NLMP TIMELINE

The NLMP operates under two completion deadlines per year: May 31 and December 31. New lawyers who are admitted other than at the scheduled swearing-in ceremonies will have adjusted deadlines based on their actual admission date.

EVENT:	TIMELINE:
Swearing-in ceremony or admission date	Mid-May, mid-October, or upon OSB admission date
Enrollment deadline	Within 28 days of admission to the OSB
Match notification sent to Mentor and New Lawyer	As soon as reasonably possible based on suitable available mentors
Initial meeting between Mentor and New Lawyer	Within 28 days of match notification
Last day to submit Certificate of Program Completion & fee	May 31/December 31 after new lawyer's first full year of admission, or based on extension date granted by NLMP coordinator
Notices of non-compliance sent	*Contact the NLMP for current year's dates
Non-compliance "remedy" period expires	*Contact the NLMP for current year's dates
OSB sends suspension recommendations to Oregon Supreme Court	*Contact the NLMP for current year's dates

INITIAL MEETING GUIDE

What	Mentor	New Lawyer
Come prepared	Learn what you can about your new lawyer prior to the initial meeting.	Learn what you can about your mentor prior to the initial meeting.
New Lawyer's Goals	Listen. Ask Questions.	Come prepared with several key goals, for both your career and for your mentoring year.
Mentor's Career Story	Tell a brief story about your career, including a discussion about your mentors and their lessons. If you had no mentors, discuss how it affected your career.	Listen. Ask questions.
Emphasis on new lawyer goals/needs	Be prepared to adjust your expectations of the mentoring role to the specific needs of your new lawyer.	Give thought in advance to what you want out of the program, and how to communicate that to your mentor.
Set expectations AND boundaries	Agree on general time expectations, preferred communication practices, etc. Understand, however, that part of your role is to be available for unexpected challenges faced by your new lawyer in their first year.	Agree on preferred communication practices and time expectations and be respectful of mentor's time limitations.
Compliance Deadline	Review the expected time for completion of the NLMP, including extensions if necessary, and the consequences of noncompliance.	Acknowledge your understanding of the deadlines and your responsibility for successful completion.
Prepare the Mentoring Plan[‡‡]	Review the plan components. Discuss the new lawyer's practice area interest and any adjustments required to meet the new lawyer's individual needs.	Review the plan in advance and be prepared to discuss your practice area choice and any other adjustments for your individual needs.
Establish a regular meeting schedule	Inform the new lawyer of your time commitments and general schedule; agree on a method and frequency for communication between scheduled meetings.	Commit to organizing your time so as to make efficient use of mentoring meetings. Be considerate of the mentor's schedule.
Agree to be candid about any problems	Explain that you will inform the new lawyer if a problem arises in the mentoring relationship, or if a desired result is not being achieved.	Explain that you will inform the mentor if a problem arises in the mentoring relationship, or if a desired result is not being achieved.

[‡‡] If your firm has an established plan, determine if it has been qualified under the NLMP; if not, you can seek approval by submitting a request explaining how the firm's plan is substantially similar to and will provide substantially equivalent experiences to the new lawyer as the standard plan.

MENTORING PLAN CHECKLIST EXAMPLE

New Lawyer *Joseph Martin* **Mentor** *Amanda Bell*

PART A: REQUIRED & OPTIONAL ACTIVITIES/EXPERIENCES

1. Introduction to the Legal Community, Public Service and Bar Service

Required Activities	**Date completed**
▪ As soon as practicable after receipt of the mentoring match, the new lawyer and mentor meet to get acquainted and design the mentoring plan. **The new lawyer is responsible for arranging the initial meeting.**	1/22/2x
• Introduce the new lawyer to other lawyers in the community through attendance at meetings of the local bar association or another law-related group. Discuss opportunities for participating in the work of local, state or national bar organizations and the value of professional networking and relationships gained thereby.	2/27/2x
• Describe and explain the customs and expectations of etiquette and behavior in the legal community such as cooperating with reasonable requests of opposing counsel that do not prejudice the rights of the lawyer's client, punctuality in fulfilling all professional commitments, avoiding offensive tactics, treating opposing parties and counsel with courtesy, and discuss the value of adhering to those customs and practices.	3/26/2x

***Optional* Activities**	**Date completed**
• Introduce the new lawyer to other lawyers and staff members at the mentor's office or workplace, or ascertain that such introductions have already occurred.	1/22/2x
• Discuss a lawyer's professional obligations regarding and the personal rewards arising from community and public service, and supporting and providing legal service to low income clients. Acquaint the new lawyer with Campaign for Equal Justice, the Oregon Law Foundation and/or other law-related charitable organizations. Acquaint the new lawyer with programs in which lawyers in private practice can provide pro bono legal services.	2/27/2x
• Review and discuss the opportunities for volunteer participation in OSB and local bar programs (including the ONLD and local bar young lawyer groups) and how being involved in such activities promotes professional and personal development.	5/4/2x
• Escort the new lawyer on a tour of the local courthouse(s) and, to the extent practicable, introduce the new lawyer to members of the judiciary, court personnel and clerks of court.	5/4/2x

SAMPLE

****REMINDER:** New lawyers are encouraged to retain a copy of the mentoring plan checklist in the event of an MCLE audit.**