

Oregon State Bar 2004 House of Delegates Meeting

Oregon Convention Center
777 N.E. Martin Luther King, Jr. Blvd.
Portland, OR 97232
Saturday, October 16, 2004, 10:00 a.m.



Dear Oregon State Bar Member:

Enclosed is your agenda for the 2004 Oregon State Bar House of Delegates Meeting, which will begin at 10:00 a.m. on Saturday, October 16, at the Oregon Convention Center, 777 Martin Luther King, Jr. Blvd., Portland, Oregon.

Although only delegates may vote on the resolutions, all members are welcome and are encouraged to participate in the discussion and debate of agenda items. If you are unable to attend, please contact one or more of your delegates to express your views on the items to be considered. Delegates are listed on the bar's webpage at www.osbar.org.

Matters that will be considered by the House of Delegates include:

- A major reformulation of the Oregon Code of Professional Responsibility based substantially on the ABA Model Rules of Professional Conduct. These rules were adopted by the 2003 HOD, submitted to the Oregon Supreme Court, which made some modifications, and are back to the HOD for final consideration.
- Consider referring, for a vote of the full membership, a proposal to increase membership fees by \$70 per year beginning January, 2006, to place all CLE Publications online, make them interactive with the Casemaker™ online research program, and provide all CLE books in this manner to all active members.

The full text and explanatory statements for all resolutions are in the enclosed agenda.

I also encourage you to attend other great events at the Oregon State Bar Annual Meeting, including:

- The OSB 50-year Member Awards Luncheon at 12:00 noon Thursday, October 14, 2004;
- The "Celebrate Oregon Lawyers" reception at 5:00 p.m. Thursday, October 14, 2004;
- The Annual Awards Dinner and Dance, which will begin at 6:00 p.m. Thursday, October 14, 2004. Our special honorees are:
 - Award of Merit: Katherine O'Neil, The Honorable Larry Cole
 - President's Membership Service Award: Paul Saucy, John Geil, Carl Kiss
 - President's Affirmative Action Award: Melvin Oden-Orr
 - President's Public Service Award: Debra Kay Zuhlke Vogt, Tim Volpert, Agnes Sowle, Laura Cooper
- The Law School and Wells Fargo Bank receptions on Friday, October 15, 2004, at 5:00 p.m. and 6:00 p.m. respectively;
- The OSB Tent Show and Dinner, back after many years, at 7:00 p.m. Friday, October 15, 2004; and
- Two separate tracks of Continuing Legal Education programs and the Best of the Best Video Replays running throughout the meeting.

Tickets can be obtained by filling out the registration form in the convention materials, mailed previously, and returning it, with your payment, to the Oregon State Bar. You may also purchase tickets online at the Oregon State Bar website using your VISA or MasterCard, or by calling the Oregon State Bar Order Desk at 800-452-8260 extension 413 (in Oregon only) or 503-620-0222 extension 413. Seating is limited, so reserve your place soon!

If you have questions about the House of Delegates meeting, please contact Teresa Wenzel, Executive Assistant, at 800-452-8260, extension 386 (in Oregon only), at 503-620-0222, extension 386, or by e-mail at twenzel@osbar.org. Or in Ms. Wenzel's absence, you may contact Brenda Williams, Administrative Assistant, at 800-452-8260, extension 309 (in Oregon only), at 503-620-0222, extension 309, or by e-mail at bwilliams@osbar.org.

I look forward to seeing you in Portland!

William G. Carter, President
Oregon State Bar

OREGON STATE BAR
2004 House of Delegates Meeting
Oregon Convention Center
777 N.E. Martin Luther King, Jr. Blvd.
Portland, OR 97232
Saturday, October 16, 2004, 10:00 a.m.
Presiding Officer: William G. Carter, OSB President

Agenda

1. Call to Order

William G. Carter, President

2. Overview of Parliamentary Procedure

George A. Riemer, General Counsel

3. Report of the President

William G. Carter, President

4. Adoption of Final Meeting Agenda

William G. Carter, President

5. Report of the Board of Governors Budget and Finance Committee

Frank H. Hilton, Chair, Board of Governors Budget and Finance Committee

Notice of 2005 Membership Fees

6. The Board of Governors has established the 2005 membership fees at the same level as 2004. Page 3

Presenter: Frank H. Hilton, Chair, Board of Governors Budget and Finance Committee

Items with Financial Impact

7. Refer Proposal to Place CLE Publications Online to Vote of Full Membership (Board of Governors Resolution No. 1) Page 3

Presenter: Nena Cook, President-elect

8. Discount for Certain Attendees at Annual Meetings (House of Delegates Member Resolution No. 2) Page 5

Presenter: Steven M. Cyr, Region 4 Delegate

Items with Legislative Implications

9. Oregon State Bar Support for Adequate Funding of Public Defense (House of Delegates Member Resolution No. 1) Page 5

Presenter: James Hennings, Region 5 Delegate

Other Resolutions

10. In Memoriam (Board of Governors Resolution No. 2) Page 6

Presenter: Ronald L. Bryant, Board of Governors

11. Proposed Rules of Professional Conduct (Board of Governors Resolution No. 3) Page 7

Presenters: Nancy Cooper, Chair, Special Ethics Committee and Gerry Gaydos, Board of Governors

Notice of 2005 Membership Fees

6. The Board of Governors has established the 2005 membership fees at the same level as 2004. This notice is provided pursuant to ORS 9.191.

It is hereby resolved by the Board of Governors of the Oregon State Bar that the 2005 annual membership fees and Client Security Fund assessment be unchanged from 2004, and shall be as follows:

1. Active Members.

A. For members admitted in any jurisdiction before January 1, 2003: \$397.00 for the basic membership fee; \$30.00 for the Affirmative Action Program fee; and \$5.00 for the Client Security Fund assessment; for a total of \$432.00.

B. For members admitted in any jurisdiction before January 1, 2003 who fail to pay their active fees and assessments of \$432.00 by the due date: \$482.00.

C. For members admitted in any jurisdiction on or after January 1, 2003: \$340.00 for the basic membership fee; \$15.00 for the Affirmative Action Program fee; and \$5.00 for the Client Security Fund assessment; for a total of \$360.00.

D. For members admitted in any jurisdiction on or after January 1, 2003 who fail to pay their active fees and assessments of \$360.00 by the due date: \$402.00.

E. For those members admitted in Oregon in 2005, the fees shall be apportioned. The Client Security Fund assessment of \$5.00 shall be paid in full by each new admittee.

F. For those members who pass away in 2005, the fees shall be apportioned upon request of appropriate representatives. The Client Security Fund assessment of \$5.00 and the increase of fees due to payment made after the due date shall not be included in the apportioned refund.

G. Exemptions to active member fees:

(1) Members who were admitted to practice law in Oregon prior to January 1, 1955 are exempt from the payment of all active membership fees and assessments.

(2) Members who are on active military duty in compliance with the terms of ORS 408.450 are exempt from the payment of all active membership fees and assessments. Members who are in the VISTA or Peace Corps programs in compliance with Bar Bylaw 6.6 are exempt from the payment of all active membership fees and assessments. The payment of active membership fees may also be waived if members satisfy the requirements of Bar Bylaw 6.5 on hardship exemptions.

2. Active Pro Bono and Active Emeritus Members

A. For members who qualify under Bar Bylaw 6.101 for Active Pro Bono or Active Emeritus membership: \$110.00 for the basic membership fee and \$5 for the Client Security Fund assessment, for a total of \$115.00.

B. For Active Pro Bono or Active Emeritus members who fail to pay their fees and assessments of \$115.00 by the due date: \$140.00.

3. Inactive Members.

A. The 2005 membership fee for inactive members shall be \$110.00.

B. For those inactive members who fail to pay their fees of \$110.00 by the due date: \$135.00.

C. Exemptions to inactive member fees:

(1) Members who were admitted in Oregon prior to January 1, 1955.

(2) Members in active military duty in compliance with the terms of ORS 408.450 are exempt from the payment of inactive membership fees. Members who are in the VISTA or Peace Corps programs in compliance with Bar Bylaw 6.6 are exempt from the payment of inactive membership fees. The payment of inactive membership fees may also be waived if members satisfy the requirements of Bar Bylaw 6.5 on hardship exemptions.

4. Payment Date: All fees and assessments shall be paid simultaneously, in one remittance, not later than the due date, or within 60 days of date of admission to the Oregon State Bar, whichever occurs last.

5. Definitions: Apportioned fees pertain only to those members admitted in Oregon or who passed away during calendar year 2005. If the member is admitted or passes away in January, the apportioned fee or refund, as the case may be, shall be 12/12; February shall be 11/12; ...; December shall be 1/12. The calculation shall be rounded up to the nearest dollar for each fee allocation.

The due date for 2005 membership fees is Monday, January 31, 2005. Approved by the Board of Governors on Friday, September 3, 2004.

Presenter: Frank H. Hilton

Items with Financial Impact

7. Refer Proposal to Place CLE Publications Online to Vote of Full Membership (BOG Resolution No. 1).

Whereas, the Oregon State Bar has a long tradition of providing legal publications and programs to its members in order that they are enabled to provide competent legal services to their clients by the most efficient means possible; and

Whereas, Oregon State Bar publications have consistently been among the most popular bar benefits provided to its membership; and

Whereas, most lawyers and law offices in Oregon are now fluent in the use of computers, the internet, and online legal research programs, and many members have expressed interest in this proposal, and the CLE publications would remain available in book form for members choosing to retain the traditional format; and

Whereas, providing full availability and access to the entire Oregon State Bar CLE publications library online at reasonable cost, \$70 per member per year, would benefit both the public and members of the bar; and

Whereas, large firms can currently purchase a few sets of printed publications for large numbers of lawyers, and a rebate for a portion of dues of approximately 20% would therefore be equitable for the number of active members over 15 in any firm; and

Whereas, the entire membership should determine whether or not to implement the proposal due to the proposed increase in dues; now therefore, be it

Resolved That the following proposal be referred to the membership for a vote:

“Should the OSB CLE library be accessible online to all active members, funded by a \$70 membership fee increase beginning January 1, 2006 (prorated for 2006 admittees), and with a \$15/member rebate for firms or organizations having more than 15 active members?”

Presenter: Nena Cook

Background

History of CLE Books

Building on a history of service that began in the 1950s when OSB published its first legal handbook, CLE books have provided Oregon attorneys with the basic reference tools they need to practice law in a variety of areas. The CLE library contains about 50 titles. These range from 100-page booklets to five volume treatises, and cover topics from “A” (Administering Oregon Estates) to “W” (Workers’ Compensation). Although they cover different subjects, many of the publications interrelate to each other. Currently, to purchase all of the OSB CLE publications would cost approximately \$6,137.

OSB CLE books are distinguished from those of national publishers because they are specific to Oregon, and written by Oregon practitioners. The focus is on Oregon statutes, cases, administrative rules, forms and legal traditions. The books also provide practice tips, caveats, queries and notes. Many titles include practice forms on computer disk, and the entire library is currently available on CD-ROM.

OSB CLE books are valued because they save time that would otherwise be required to research and assimilate information from statutes, cases and rules on a piecemeal basis. Also, they contribute to an ever-growing and easily accessible fund of knowledge that furthers the efficient and effective practice of law. In membership surveys,

CLE books have consistently rated as the most popular of membership benefits.

Online books

The Board of Governors has been working for the past year to develop a proposal to place all of the CLE books and forms online in order to make them available to all active Oregon bar members. Bar leadership through the bar’s sections, committees, and local bar associations has been asked for their input. The board has also conducted a random sample survey of the bar membership to gain their views. The board is now ready to asking the House of Delegates for its support of this proposal by authorizing a membership referendum on the membership fee increase that would support placing CLE books online. This proposal does not affect CLE seminars.

Features

- Fully searchable – the search engine that is used for Casemaker™ will be used for the CLE books as well. Search capability will be within a book or a series of books.
- Available 24/7 from any computer desktop with an internet connection.
- Linked to Casemaker™. Each reference to a statute or case in the CLE books will be linked to Casemaker™ where that reference exists on Casemaker™.
- CLE books will continue to be available in print form as well for a price per volume of \$30.00 plus shipping and handling.
- The current renewal schedule for books will remain the same but all efforts will be made to update the books more frequently as volunteer and staff time are available.
- The CD ROM product will be replaced by the online version.

Costs

The cost of \$70 is calculated by using the 2005 CLE books department’s budget, subtracting most marketing costs, and including a \$15 rebate for the number of lawyers over 15 in any law firm or similar entity. Costs include staff (editing, word processing, indexing, cite checking, etc.); indirect costs (share of bar facilities; computer and IT support); direct costs (paper and postage); and cost of linking with Casemaker™.

The rebate figure is included because while the proposed fee may seem very advantageous to solo practitioners and small firms, large firms who purchase two or three copies of each book as they are issued will face a significant increase by paying an additional fee for each member of their firm. The rebate will not cover the entire additional costs, but it will help defray them. The same rebate will also be offered to organizations with over 15 bar members.

2005 Budget CLE Books Department

Cost Description	Amount	Totals
Salaries and benefits (5.5 FTE)	\$415,000	
Total Salaries/Benefits		\$415,000
General and Administration		
Special Projects	\$ 3,000	
Research	\$ 5,000	
Comp books for writer	\$ 8,000	
Writer recognition	\$ 3,600	
Indexing	\$18,000	
Web expense and linkage to Casemaker	\$70,000	
Rebates to large firms	\$25,000	
Total General and Administration		\$132,600
Indirect cost allocation (This represents the department's share of all other costs – facilities, computers, design, distribution, etc).	\$294,000	
Total ICA		\$294,000
Grand Total		\$841,600
Number of active OSB members	12,100	
Per member cost		\$70

8. Discount for Certain Attendees at Annual Meetings (House of Delegates Member Resolution No.2)

Whereas, certain meetings are held in conjunction with the annual meeting of the Bar in each year. Those meetings require certain sections, committees, House of Delegates, and other Bar members to be present at a meeting held at the location, and in conjunction with the Oregon State Bar convention.

Whereas, in connection with having to attend a financial impact is extracted on each member of a committee, section, the House of Delegates, speakers, and others persons who are required to be present at the Oregon State Bar annual convention; now therefore, be it

Resolved That beginning in the year 2005, all persons who have work to be done at the location of the Oregon State Bar convention, including House of Delegates members, speakers, committee members, and section members who are required to have meetings in conjunction with the Oregon State Bar convention and its location, shall be entitled to a discount of one-half (1/2) of

the normal fee for attending the Oregon State Bar convention.

Presenter: Steven M. Cyr

**Board of Governors' Estimate of
Financial Impact**

The annual meeting fee for the 2004 convention is \$240. The resolution as proposed allows all members of the House of Delegates, committees and section members meeting in conjunction with the meeting to be given a 50% discount. Currently, the board policy is to have registration fees cover the expenses of the annual meeting. This policy would be significantly impacted if a large number of discounts were made. The more discounts that are given, the higher the fee would need to be to for the regular registrations in order to meet this break-even policy. At a 50% reduction in fees, members of the above stated groups would receive a reduction of \$120. If 100 members asked for the discount, it would reduce annual meeting revenue by \$12,000. If 200 members (the approximate number in the House of Delegates), it would reduce it by \$24,000. It is possible that given the broad definition in the resolution, a significant majority of attendees would qualify for a 50% discount.

Items with Legislative Implications

9. Oregon State Bar Support For Adequate Funding Of Public Defense (HOD Resolution No.1)

Whereas, the State of Oregon is responsible for the funding of Public Defense Services;

Whereas, the Oregon Legislature creates crimes by enacting the criminal code; juvenile actions by enacting the juvenile and family codes and civil commitment actions by enacting the civil commitment code.

Whereas, state and local government pays for the enforcement of these codes;

Whereas, the quality of defense is established by statute and the Oregon and United States Constitutions;

Whereas, the level of funding for Public Defense Services is substantially below market costs for legal services, causing serious questions about the viability of the quality of legal services to indigent clients;

Whereas, the Oregon State Bar has an obligation to insure the adequacy and effectiveness of all areas of legal practice in the State of Oregon; now therefore, be it

Resolved That the legislature, having the duty to provide a defense for crimes that it creates that are charged against indigent defendants, must adequately fund that constitutional duty;

The legislature, having the duty to provide for representation of children, family members and the

mentally ill for actions that it creates effecting indigent parties, must adequately fund that constitutional duty;

The Oregon State Bar shall take all appropriate actions to insure that the State of Oregon through its legislature, fulfills its duties under the Oregon and United States Constitutions to provide for adequately funded Public Defense Services;

2. That the Oregon State Bar will study and enact methods of limiting bar imposed costs for lawyers providing Public Defense Services.

Presenter: James Hennings

Presenter's Background Statement

The funding for defense of indigents accused of crimes, alleged to be mentally ill and a danger to themselves or others, parents charged with child neglect facing parental rights removal in the family court, and children accused of delinquency or in need of court wardship has been chronically underfunded in Oregon. Payment for services, which was minimal when first set by the State, has remained static, failing to provide for reasonable payment for professional services, comparability with other government paid attorneys, inflation increases or cost of living increases.

In 2003 the State Legislature removed authorized funding for Public Defense Services creating a Constitutional Crisis which resulted in the closure of the courts to a majority of criminal matters for 17 weeks. This action resulted in several law suits in State and Federal Court, joined by both Prosecutors and Public Defenders, against the State Legislature and the Judiciary.

Because of the low compensation for Public Defense and the lack of comparability of pay with other government funded lawyers present defense practitioners are leaving the field or retiring, and as law school debt loads increase, new practitioners are unable to take on burden of this practice.

At this time the Public Defense Services system is underfunded by \$7 Million for the present biennium. As a result it is estimated that all money for Public Defense will be expended by May, 2005. This will result in the unprecedented closure of all Criminal Courts in Oregon for two months.

The bar has a heavy burden to establish and protect justice in the Court system, especially in the area of protection of rights against the State, but also to guarantee all inhabitants of Oregon access to a functioning court system.

This resolution commits the bar to vehemently urge the Legislature to fairly allocate sufficient resources to maintain a Fair and Just Criminal Justice System. Such a system must guarantee the rights of persons before the Court and economic equity for the practitioners before the court.

The resolution also requires the bar to examine methods that it can create to lessen the economic burden on attorneys who practice in the area of Public Defense.

Other Resolutions

10. In Memoriam (BOG Resolution No. 2)

Resolved, that the Oregon State Bar House of Delegates and members assembled stand for a moment of silence in honor of the members of the Oregon State Bar whose deaths have been reported since the 2003 House of Delegates Meeting (through September 3, 2004).

The Honorable Edwin E. Allen

Michael C. Arola

Robert C. Art

Gottlieb J. Baer

James N. Baker

William F. Bernard

Wade P. Bettis

James A. Boon

Richard A. Braman

Patricia Y. Braun

Richard Bryson

Alex M. Byler

Lawrence L. Clark

Seymour L. Coblens

John R. Dellenback

Donald R. Duncan

Leeroy O. Ehlers

Timothy G. Garlock

William J. Gibbons

Eric S. Gould

Jack R. Hannam

Sam B. Harbison

Frederick A. Hartstrom

John W. Hathaway

Eric A. Heisel

A. Warren Herrigel

Edward E. Hill

Gary L. Hill

Paul S. Hybertsen

Clifford Kennerly

C. W. King

Kenneth Kraemer

David E. Lofgren, Jr.

Tracy Q. Lyons

The Honorable James M. Main

Donald C. McClain

Hugh R. McDonald

John P. McNulty, II

Stanley J. Mitchell

Carol Tootle Nesler

Edward V. O'Reilly

Robert A. Payne

Cash R. Perrine

William H. Peterson

Eugene L. Pfeiffer

Cecil H. Quesseth
Paul J. Rask
Joseph D. Robertson
Roger Rook
Richard W. Sabin
Louis F. Schultz, Jr.
David A. Silver
F. P. Stager
Robert Y. Thornton
Frederick H. Torp
Steve A. Tyler
Martin W. VanZeipel
Richard Lee Vincent
Graham Walker
Ronald A. Walro

Presenter: Ronald L. Bryant

11. Proposed Oregon Rules of Professional Conduct (BOG Resolution No. 3). (See pages 10 to 30 for text of Proposed Oregon Rules of Professional Conduct.)

Whereas, the Board of Governors formulated the following new Rules of Professional Conduct pursuant to ORS 9.490(1) on August 14, 2004; and

Whereas, the Oregon State Bar House of Delegates must approve any changes in the rules of professional conduct before they may be presented to the Oregon Supreme Court for adoption pursuant to ORS 9.490(1); now, therefore, be it

Resolved That the Oregon Code of Professional Responsibility be replaced with the new Oregon Rules of Professional Conduct as set forth hereinafter, on a date determined by the Oregon Supreme Court, pursuant to ORS 9.490(1).

2. That unless the Court decides otherwise within that time, Rule 5.5 will sunset three years after the effective date of the ORPC, at which time the provisions of DR 3-101(A) and (B) will become Rule 5.5(a) and (b).

Presenters: Nancy Cooper and Gerry Gaydos

Background

In September 2003, the House of Delegate approved the *Proposed* Oregon Rules of Professional Conduct (ORPC) as a replacement for the Oregon Code of Professional Responsibility. As required by ORS 9.490, the *Proposed* ORPC was submitted to the Supreme Court for its review and adoption. The Court conducted a lengthy and thorough review of the *Proposed* ORPC and expressed numerous concerns, particularly about some of the changes made by the house.

Representatives of the Board of Governors and the Special Legal Ethics Committee that had drafted the *Proposed* ORPC met with the court between December

2003 and February 2004 to identify and address the court's concerns. On March 22, 2004, the court indicated in a letter that it was willing to adopt the *Proposed* ORPC if certain changes were made. The BOG approved the Supreme Court's suggested changes in April 2004. In accordance with ORS 9.490, the revised proposal, as formulated by the Board of Governors, must be approved by the House of Delegates before the rules are adopted by the court. In addition to the changes suggested by the Supreme Court, the revised proposal includes the Oregon Law Foundation's recommendation for revising *Proposed* ORPC 1.15 to bring Oregon's IOLTA rules into compliance with constitutional standards. The Board of Governors approved the OLF's recommended revisions at its meeting on August 13-14, 2004. The Supreme Court has informally indicated its approval of the Rule 1.15 changes. The board also adopted a few minor changes intended to clarify some rules.

The following is an explanation of the changes to the *Proposed* Oregon Rules of Professional Conduct from the version approved by the House of Delegates in September 2003. (Note: the changes from the rules approved by the HOD in 2003 that are *not* based on input from the Supreme Court are preceded with a *.):

Preamble and Scope: The Preamble and Scope provisions have been deleted in their entirety. The Supreme Court does not favor including material in the rules that is not binding and enforceable.

***Rule 1.0 Terminology:** The definition of "financial institution" has been deleted and the lettering of the remainder of the rule has been adjusted. This change is to conform to the changes in Rule 1.15, in which paragraph (h) of Rule 1.15-2 specifies the requirements for financial institutions in which trust accounts can be maintained. The definition in this rule is not only superfluous, but inconsistent.

Rule 1.2 Scope of Representation: The HOD deleted the term "informed" from paragraph (b) of this rule. The Supreme Court prefers the ABA Model Rule approach, which requires that the client's consent to a limited scope representation in paragraph (b) be "informed" consent. The term "illegal" is substituted for "criminal" in paragraph (c) to be consistent with existing DR 7-102 and to reflect the broader scope of the obligation.

Rule 1.3 Diligence: The new language retains the existing language of DR 6-101. This will avoid confusion about the standard (a pattern of neglect) established in case law and to ensure that lawyers are not subject to discipline for conduct that constitutes malpractice (negligence).

Rule 1.4 Communication: The language of the pre-2002 version of the ABA Model Rule is substituted for the formulation developed by the ABA Ethics 2000 Commission. There was concern that the level of detail in the E2K version might be confusing and susceptible to abuse.

Rule 1.5 Fees: Paragraph (d) retains the language of DR 2-107(A), reformatted to conform to the structure of the remainder of this rule. The court specifically rejected the version of this rule adopted by the HOD in 2003.

Rule 1.6 Confidentiality of Information: The HOD had deleted the requirement for “informed” consent in paragraph (a). The Supreme Court prefers retention of that standard, which exists in DR 4-101(B), and which makes the rule consistent with the ABA Model Rules as adopted in other jurisdictions.

Rule 1.7 Conflict of Interest: Current Clients: The term “current” has been substituted for the ABA Model Rules term “concurrent” in paragraphs (a) and (b).

***Rule 1.8(c) Conflict of Interest: Current Clients; Specific Rules:** “Domestic partner” has been added to the list of individuals who constitute “related persons” for purposes of testamentary and other gifts from clients to the lawyer or a person related to the lawyer.

Rule 1.8(f) Conflict of Interest: Current Clients; Specific Rules: In paragraph (f)(1), the words “or the attorney fees are determined by a tribunal” was added by the HOD in 2003. The Supreme Court found this language confusing and not helpful. The remaining language is consistent with existing DR 5-103 and avoids possible confusion that can result from the inclusion of unnecessary language.

Rule 1.8(i) Conflict of Interest: Current Clients; Specific Rules: In paragraph (i)(1), the word “authorized” is substituted for “granted.” This was a drafting oversight that predated the 2003 HOD meeting; the intent of the Rules Committee was to adhere to the ABA Model Rule language but for some reason the word got changed. Substituting “authorized” conforms the rule to the ABA Model Rule.

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees: New language has been added to paragraph (d)(vi) to ensure that the exception to the prohibition against negotiating for private employment applies to staff lawyers who do not serve in the traditional “law clerk” role.

Rule 1.12 Former Judge, Arbitrator, Mediator or Other Third Party Neutral: New language has been added to paragraph (b) to ensure that the exception to the prohibition against negotiating for private employment applies to staff lawyers who do not serve in the traditional “law clerk” role.

Rule 1.13 Organization as Client: The words “may only” are substituted for “shall” in paragraph (g) to make it clear that the organization is not required to consent to dual representation but that if it does, only certain individuals within the organization can give the consent.

***Rule 1.15-1 Safeguarding Property:** This rule is essentially identical to the ABA Model Rule except for the reference to Rule 1.15-2 in paragraph (a). It contains

the provisions of DR 9-101(A) through (C), slightly reformatted.

***Rule 1.15-2 IOLTA Accounts and Trust Account Overdraft Notification:** The substantive changes to Rule 1.15 are found in this new rule, which has no ABA Model Rule counterpart. The changes are intended to conform Oregon’s IOLTA rules to the constitutional standard announced in *Brown v. Washington Legal Foundation*, 538 US 216 (2003); the essence of the court’s holding is that net interest (interest in excess of the cost of earning the interest) is client property subject to the Just Compensation Clause (private property may not be taken by government without just compensation paid for the taking). If the funds cannot earn net interest, there is no taking that requires compensation.

Oregon’s IOLTA program will survive constitutional scrutiny if only those client funds that cannot earn net interest are deposited into the IOLTA account, from which interest on pooled funds can be paid over to the Oregon Law Foundation. (Currently, the rules permit lawyers to deposit funds into the IOLTA account if it is *inconvenient*, rather than impossible, to account for individual net interest.) The revised rule sets out factors to be considered in determining whether a client’s funds can or cannot earn net interest. If the client funds cannot earn net interest, they are deposited into the IOLTA account. Otherwise, the funds must be deposited into an individual or pooled trust account in which the interest is accrued for the benefit of the client(s).

Lawyers are required to review their IOLTA accounts at “reasonable intervals” to determine if any funds have, in fact, earned net interest that must be refunded by the OLF to the individual client. Procedures for requesting such a refund are set out in the rule; the rule also includes specific requirements for the kinds of financial institutions in which trust accounts can be maintained.

***Rule 1.16 Declining or Terminating Representation:** The language in paragraph (d) has been revised. The T ABA Model Rule permits a lawyer to retain “papers relating to the client” to the extent permitted by law upon termination of a representation. ORS 8.430(a) grants attorneys a possessory lien on “papers, personal property and money of the client.” Using the language of the Oregon statute will make it clear that the lawyer’s lien rights are not limited only to client “papers.”

Rule 3.1 Meritorious Claims and Contentions: This rule has been revised to more closely conform to DR 2-109 and DR 7-102(A)(2).

Rule 3.2 Expediting Litigation: This Model Rule, which has no counterpart in the Oregon Code, is deleted.

Rule 3.3 Candor Toward the Tribunal: The word “knowingly” is deleted from paragraphs (a)(4) and (5) to avoid duplication with the prefatory phrase.

Rule 3.4 Fairness to Opposing Party and Counsel: In paragraphs (a) and (d), the word “knowingly” has been

added to clarify that the rule is not violated by inadvertent or mistaken conduct. Paragraph (f) is revised to retain the language of DR 7-109(B).

Rule 3.6 Trial Publicity: Paragraph (c)(1) has been deleted. It has no counterpart in the Oregon Code.

Rule 3.8 Special Responsibilities of a Prosecutor: Paragraphs (b) and (c) have been deleted. The remaining provisions of the rule are essentially the same as DR 7-103.

Rule 4.1 Truthfulness in Statements to Others: The word “illegal” has been substituted for “criminal” in paragraph (b) to conform to the standard of DR 7-102(A)(7).

Rule 4.4 Respect for the Rights of Third Persons: The title has been changed to highlight paragraph (b). The term “harass” has been added to paragraph (b), making the rule more similar to DR 7-102(A)(1).

Rule 5.1 Responsibilities of Partners, Managers, and Supervisory Lawyers: Paragraphs (a) and (b) are deleted; the court expressed some concern that they imposed too great a burden on law firms. The remaining provisions mirror DR 1-102(B).

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants: Paragraph (a) is deleted. The court expressed some concern that it imposed too great a burden on lawyers.

Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice: Paragraphs (e) and (f) are deleted. Paragraphs (a) through (d) are essentially identical to the Model Rule, with some adjustment to account for Oregon’s house counsel admission rule. The Court will adopt this rule only with the BOG and HOD’s agreement that it will sunset in three years unless the Court decides otherwise within that period of time. If the rule sunsets, the text of DR 3-101(A) and (B) will be reinstated as Rule 5.5(a) and (b).

Rule 8.3 Judicial and Legal Officials: The language of the Model Rule has been revised for clarification and conformity with DR 8-102.

Rule 8.4 Misconduct: New language has been added to paragraph (a)(3) in place of language added by the HOD in September 2003. The new language is intended to provide the same limitation on the application of the rule that the HOD desired while using a concept (fitness to practice law) that exists elsewhere in the rules rather than new and undefined concepts (“private business affairs”). Nearly identical language has been adopted in Virginia and is under consideration in some other jurisdictions.

***Rule 8.6 Written Advisory Opinions...:** In the first sentence of (a), the reference to “this code” is changed to “these Rules.” In the second sentence, the word “advisory” in reference to written informal opinions is added. for clarity. In the third sentence, the phrase “written advisory” is substituted for “ethics” opinions for

consistency. Both of these latter changes also conform the language throughout the rule. The end of the third sentence is revised so that General Counsel’s office is not required to distribute copies of all advisory opinions, but that they “shall be available” to the enumerated entities. This conforms the rule to actual practice.

Transition Language

In September 2003, the HOD also approved the following “transition language” for the Supreme Court to include in its order adopting the rules, which is also part of this resolution:

“This order shall take effect on [date to be determined], at which time the Rules of Professional Conduct shall supersede and replace the Code of Professional Responsibility for conduct occurring on and after that date. The new Rules, as adopted hereby, do not apply to conduct occurring before that date, and such conduct shall continue to be governed by the Code of Professional Responsibility, which shall continue in full force and effect for discipline as if this order and the new rules had not been adopted.”

PROPOSED
OREGON RULES OF PROFESSIONAL CONDUCT
*(As approved by HOD September 20, 2003, with revisions recommended by Supreme Court
and the Oregon Law Foundation, and approved by BOG August 14, 2004)*
(Deleted text is ~~stricken~~; new text is underlined.)

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PREAMBLE AND SCOPE
PREAMBLE: A LAWYER'S RESPONSIBILITIES

[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

[2] As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealings with others. As an evaluator, a lawyer acts by examining a client's legal affairs and reporting about them to the client or to others.

[3] In addition to these representational functions, a lawyer may serve as a third party neutral, a nonrepresentational role helping the parties to resolve a dispute or other matter. Some of these Rules apply directly to lawyers who are or have served as third party neutrals. See, e.g., Rules 1.12 and 2.4. In addition, there are Rules that apply to lawyers who are not active in the practice of law or to practicing lawyers even when they are acting in a nonprofessional capacity. For example, a lawyer who commits fraud in the conduct of a business is subject to discipline for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. See Rule 8.4.

[4] In all professional functions a lawyer should be competent, prompt and diligent. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client except so far as disclosure is required or permitted by the Rules of Professional Conduct or other law.

[5] A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's business and personal affairs. A lawyer should use the law's procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

[6] As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education. In addition, a lawyer should further the public's understanding of and confidence in the rule of law and the justice system because legal institutions in a constitutional democracy depend on popular participation and support to maintain their authority. A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure

equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel. A lawyer should aid the legal profession in pursuing these objectives and should help the bar regulate itself in the public interest.

[7] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service.

[8] A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and at the same time assume that justice is being done. So also, a lawyer can be sure that preserving client confidences ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

[9] In the nature of law practice, however, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

[10] The legal profession is largely self-governing. Although other professions also have been granted powers of self-government, the legal profession is unique in this respect because of the close relationship between the profession and the processes of government and law enforcement. This connection is manifested in the fact that ultimate authority over the legal profession is vested largely in the courts.

[11] To the extent that lawyers meet the obligations of their professional calling, the occasion for government regulation is obviated. Self-regulation also helps maintain the legal profession's independence from government domination. An independent legal profession is an important force in preserving government under law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent on government for the right to practice.

[12] The legal profession's relative autonomy carries with it special responsibilities of self-government. The profession has a responsibility to assure that its regulations are conceived in the public interest and not in furtherance of parochial or self-interested concerns of the bar. Every lawyer is responsible for observance of the Rules of Professional Conduct. A lawyer should also aid in securing their observance by other lawyers.

Neglect of these responsibilities compromises the independence of the profession and the public interest which it serves.

[13] Lawyers play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship to our legal system. The Rules of Professional Conduct, when properly applied, serve to define that relationship.

SCOPE

[14] The Rules of Professional Conduct are rules of reason. They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of the Rules are imperatives, cast in the terms "shall" or "shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term "may," are permissive and define areas under the Rules in which the lawyer has discretion to exercise professional judgment. No disciplinary action should be taken when the lawyer chooses not to act or acts within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. The Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.

[15] The Rules presuppose a larger legal context shaping the lawyer's role. That context includes court rules and statutes relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general.

[16] Compliance with the Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. The Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. The Rules simply provide a framework for the ethical practice of law.

[17] Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules determine whether a client-lawyer relationship exists. Most of the duties flowing from the client-lawyer relationship attach only after the client has requested the lawyer to render legal services and the lawyer has agreed to do so. But there are some duties, such as that of confidentiality under Rule 1.6, that attach when the lawyer agrees to consider whether a client-lawyer relationship shall be established. See Rule 1.18. Whether a client-lawyer relationship exists for any specific purpose can depend on the circumstances and may be a question of fact.

[18] Under various legal provisions, including constitutional, statutory and common law, the responsibilities of government lawyers may include authority concerning legal matters that ordinarily reposes in the client in private client-lawyer relationships. For example, a lawyer for a government agency may have authority on behalf of the government to decide upon settlement or whether to appeal from an adverse judgment. Such authority in various respects is generally vested in the attorney general and the state's attorney in state government, and their

federal counterparts, and the same may be true of other government law officers. Also, lawyers under the supervision of these officers may be authorized to represent several government agencies in intragovernmental legal controversies in circumstances where a private lawyer could not represent multiple private clients. These Rules do not abrogate any such authority.

[19] Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. The Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, the Rules presuppose that whether or not discipline should be imposed for a violation, and the severity of a sanction, depend on all the circumstances, such as the willfulness and seriousness of the violation, extenuating factors and whether there have been previous violations.

[20] Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached. In addition, violation of a Rule does not necessarily warrant any other nondisciplinary remedy, such as disqualification of a lawyer in pending litigation. The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self-assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Nevertheless, since the Rules do establish standards of conduct by lawyers, a lawyer's violation of a Rule may be evidence of breach of the applicable standard of conduct.

[21] The Preamble and this note on Scope provide general orientation, but the text of each Rule is authoritative.

RULE 1.0 TERMINOLOGY

(a) "Belief" or "believes" denotes that the person involved actually supposes the fact in question to be true. A person's belief may be inferred from circumstances.

(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.

(c) "Electronic communication" includes but is not limited to 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.

~~(d) "Financial institution" denotes those institutions defined in ORS 706.005.~~

(e d) "Firm" or "law firm" denotes a lawyer or lawyers, including "Of Counsel" lawyers, in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a private or public legal aid or public defender organization, a legal services organization or the legal department of a corporation or other public or private organization. Any other lawyer, including an office sharer or a lawyer working for or with a firm on a limited basis, is not a member of a firm absent indicia sufficient to establish a de facto law firm among the lawyers involved.

(f e) "Fraud" or "fraudulent" denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

(g 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.

(h 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.

(i h) "Knowingly," "known," or "knows" denotes actual knowledge of the fact in question, except that 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. A person's knowledge may be inferred from circumstances.

(j i) "Matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and any other matter covered by the conflict of interest rules of a government agency.

(k j) "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

(l k) "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

(m l) "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

(n m) "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

(o n) "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

(p o) "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

(q p) "Tribunal" denotes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

(r q) "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A "signed" writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

CLIENT-LAWYER RELATIONSHIP

RULE 1.1 COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.2 SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER

(a) Subject to paragraphs (b) and (c), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives **informed** consent.

(c) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is ~~criminal~~ **illegal** or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

RULE 1.3 DILIGENCE

A lawyer shall ~~act with reasonable diligence and promptness in representing a client~~ **not neglect a legal matter entrusted to the lawyer.**

RULE 1.4 COMMUNICATION

(a) A lawyer shall **keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information:**—

~~(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(h), is required by these Rules;~~

~~(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;~~

~~(3) keep the client reasonably informed about the status of the matter;~~

~~(4) promptly comply with reasonable requests from the client for information; and~~

~~(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.~~

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.5 FEES

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

(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; and

(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.

(d) A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the client ~~agrees to the arrangement~~ **gives informed consent to the fact that there will be a division of fees,** and

(2) the total fee **of the lawyers for all legal services they rendered the client** is not clearly excessive.

(e) Paragraph (d) 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 Rule 1.17.

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 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.

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 ~~con~~current conflict of interest. A ~~con~~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 ~~con~~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.

RULE 1.8 CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

- (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client;
- (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
- (3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, confirmed in writing, except as permitted or required under these Rules.

(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift, unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, **domestic partner**, child, grandchild, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close familial relationship.

(d) 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.

(e) 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.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent ~~or the attorney fees are determined by a tribunal~~;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- (3) information related to the representation of a client is protected as required by Rule 1.6.

(g) 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 gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

(h) A lawyer shall not:

- (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client is independently represented in making the agreement;
- (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel in connection therewith;
- (3) enter into any agreement with a client regarding arbitration of malpractice claims without informed consent, in a writing signed by the client; or
- (4) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or

former client to file or to pursue any complaint before the Oregon State Bar.

(i) 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 ~~granted~~ **authorized** by law to secure the lawyer's fee or expenses; and
- (2) contract with a client for a reasonable contingent fee in a civil case.

(j) A lawyer shall not have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them before the client-lawyer relationship commenced; or 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. For purposes of this rule:

- (1) "sexual relations" means sexual intercourse or 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; and
- (2) "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.

RULE 1.9 DUTIES TO FORMER CLIENTS

(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless each affected client gives informed consent, confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

- (1) whose interests are materially adverse to that person; and
- (2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter, unless each affected client gives informed consent, confirmed in writing.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

- (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

RULE 1.10 IMPUTATION OF CONFLICTS OF INTEREST; SCREENING

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) When a lawyer becomes associated with a firm, no lawyer associated in the firm shall knowingly represent a person in a matter in which that lawyer is disqualified under Rule 1.9, unless the personally disqualified lawyer is screened from any form of participation or representation in the matter. For purposes of this rule, screening requires that:

- (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; and
- (3) no violation of this Rule 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.

(d) A disqualification prescribed by this rule may be waived by the affected clients under the conditions stated in Rule 1.7.

(e) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

RULE 1.11 SPECIAL CONFLICTS OF INTEREST FOR FORMER AND CURRENT GOVERNMENT OFFICERS AND EMPLOYEES

(a) Except as Rule 1.12 or law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

- (1) is subject to Rule 1.9 (c); and
- (2) shall not otherwise represent a 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 gives its informed consent, confirmed in writing, to the representation.

(b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

- (1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and
- (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

(c) Except as law may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term "confidential government information" means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law from disclosing to the public or has a legal privilege not to disclose and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c).

(d) Except as law may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

- (1) is subject to Rules 1.7 and 1.9; and
- (2) shall not:

(i) use the lawyer's public position to obtain, or attempt to obtain, special advantage in legislative matters for the lawyer or for a client.

(ii) 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.

(iii) 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.

(iv) either while in office or after leaving office use information the lawyer knows is confidential government information obtained while a public official to represent a private client.

(v) participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless the lawyer's former client and the appropriate government agency give informed consent, confirmed in writing; or

(vi) negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk **or staff lawyer to or otherwise assisting in the official duties of** a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

(e) Notwithstanding any Rule of Professional Conduct, 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.

(f) 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 Rule 1.10(c) (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.

RULE 1.12 FORMER JUDGE, ARBITRATOR, MEDIATOR OR OTHER THIRD-PARTY NEUTRAL

(a) Except as stated in Rule 2.4(b) and in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

(b) A lawyer shall not negotiate for employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator or other third-party neutral. A lawyer serving as a law clerk **or staff lawyer to or otherwise assisting in the official duties of a judge or other adjudicative officer** may negotiate for employment with a party or lawyer involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge or other adjudicative officer.

(c) If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) the disqualified lawyer is timely screened from any participation in the matter substantially in accordance with the procedures set forth in Rule 1.10(c); and

(2) written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this rule.

(d) An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

RULE 1.13 ORGANIZATION AS CLIENT

(a) A lawyer employed or retained by an organization represents the organization acting through its duly authorized constituents.

(b) If a lawyer for an organization knows facts from which a reasonable lawyer, under the circumstances, would conclude that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, then the lawyer shall proceed as is reasonably necessary in the best interest of the organization. Unless the lawyer reasonably believes that it is not necessary in the best interest of the organization to do so, the lawyer shall refer the matter to higher authority in the organization, including, if warranted by the circumstances, referral to the highest authority that can act on behalf of the organization as determined by applicable law.

(c) Except as provided in paragraph (d),

(1) if despite the lawyer's efforts in accordance with paragraph (b) the highest authority that can act on behalf of the organization insists upon or fails to address in a timely and appropriate manner an action or a refusal to act, that is clearly a violation of law, and

(2) the lawyer reasonably believes that the violation is reasonably certain to result in substantial injury to the organization, then the lawyer may reveal information relating to the representation whether or not Rule 1.6 permits such disclosure, but only if and to the extent the lawyer reasonably believes necessary to prevent substantial injury to the organization.

(d) Paragraph (c) shall not apply with respect to information relating to a lawyer's representation of an organization to investigate an alleged violation of law, or to defend the organization or an officer, employee or other constituent associated with the organization against a claim arising out of an alleged violation of law.

(e) A lawyer who reasonably believes that he or she has been discharged because of the lawyer's actions taken pursuant to paragraphs (b) or (c), or who withdraws under circumstances that require or permit the lawyer to take action under either of those paragraphs, shall proceed as the lawyer reasonably believes necessary to assure that the organization's highest authority is informed of the lawyer's discharge or withdrawal.

(f) In dealing with an organization's directors, officers, employees, members, shareholders or other constituents, a lawyer shall explain the identity of the client when the lawyer knows or reasonably should know that the organization's interests are adverse to those of the constituents with whom the lawyer is dealing.

(g) A lawyer representing an organization may also represent any of its directors, officers, employees, members, shareholders or other constituents, subject to the provisions of Rule 1.7. If the organization's consent to the dual representation is required by Rule 1.7, the consent **shall may only** be given by an appropriate official of the organization other than the individual who is to be represented, or by the shareholders.

RULE 1.14 CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.15-1 SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Each lawyer trust account shall be an

interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. **Lawyer trust accounts shall conform to Rule 1.15-2.** Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a lawyer trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a lawyer trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

RULE 1.15-2 IOLTA ACCOUNTS AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

~~(f) 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 in compliance with the following requirements:~~

- ~~(1) the lawyer trust account shall be maintained in compliance with paragraphs (a) through (e) of this rule;~~
- ~~(2) no earnings from the lawyer trust account shall be made available to the lawyer or law firm;~~
- ~~(3) all earnings from the lawyer trust account, net of any transaction costs, shall be remitted to the Oregon Law Foundation; and~~
- ~~(4) 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.~~

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest ("net interest") shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. A lawyer or law firm establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of its establishment.

~~(g b) All client funds shall be deposited in the lawyer's or law firm's IOLTA trust account specified in paragraph (f) unless a particular client's funds can earn net interest. All interest earned by funds held in the IOLTA account shall be paid to the Oregon Law Foundation as provided in this rule. they are deposited in:~~

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client's benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

- ~~(1) a separate interest bearing lawyer trust account for a specific and individual matter for a each particular client. There shall be a separate lawyer trust account opened for each such particular or client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in paragraphs (a) through (d) of this rule for the principal funds of the client; or~~
- ~~(2) 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 bank service charges, 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) through (d) of this rule for the principal funds of the client.~~

~~(h d) In determining whether to use a lawyer trust account specified in paragraph (f) or a lawyer trust account specified in paragraph (g), a client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:~~

- ~~(1) the amount of interest which the funds would earn during the period they are expected to be deposited the amount of the funds to be deposited;~~
- ~~(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;~~
- ~~(3) the rates of interest at financial institutions where the funds are to be deposited;~~
- ~~(4) the cost of establishing and administering a separate interest bearing the lawyer trust account for the client's benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm's services, and the cost of preparing any tax-related documents to report or account for income accruing to the client's benefit; and~~
- ~~(3 5) the capability of the financial institutions, the lawyer or the law firm to calculate and pay interest income to individual clients; and~~
- ~~(6) any other circumstances that affect the ability of the client's funds to earn a net return for the client.~~

(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine whether circumstances

have changed that require further action with respect to the funds of a particular client.

(f) If a lawyer or law firm determines that a particular client's funds in an IOLTA account either did or can earn net interest, the lawyer shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for any interest earned by the client's funds that may have been remitted to the Oregon Law Foundation.

(1) The request shall be made in writing to the Oregon Law Foundation within a reasonable period of time after the interest was remitted to the Foundation and shall be accompanied by written verification from the financial institution of the interest amount.

(2) The Oregon Law Foundation will not refund more than the amount of interest it received from the client's funds in question. The refund shall be remitted to the financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.

(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer's firm.

~~(i h) Lawyers engaged in the private practice of law shall permit their~~ **A lawyer or law firm may maintain a** lawyer trust accounts ~~to be maintained only in~~ **at a** financial institutions ~~which that:~~

(1) is authorized by state or federal banking laws to transact banking business in the state where the account is maintained;

(2) is insured by the Federal Deposit Insurance Corporation or an analogous federal government agency;

(3) has entered into an agreement with the Oregon Law Foundation:

(i) to remit to the Oregon Law Foundation, at least quarterly, interest earned on the average daily balance in the lawyer's or law firm's IOLTA account, less reasonable service charges, if any; and

(ii) to deliver to the Oregon Law Foundation a report with each remittance showing the name of the lawyer or law firm for whom the remittance is sent, the number of the IOLTA account as assigned by the financial institution, the average daily account balance for each month for which the remittance is made, the rate of interest applied, the period for which the remittance is made, and the amount and description of any service charges deducted during the remittance period; and

(4) has entered into an overdraft notification 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.

~~(j i)~~ **(j i)** Overdraft notification agreements with financial institutions shall require that the following information be provided in writing to Disciplinary Counsel within ten banking days of the date the item was returned unpaid:

(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.

~~(k j)~~ **(k j)** Agreements between financial institutions and the Oregon State Bar 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.

~~(l k)~~ **(l k)** 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.

~~(m l)~~ **(m l)** 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 paragraph **(j i)**. The lawyer shall include a full explanation of the cause of the overdraft.

RULE 1.16 DECLINING OR TERMINATING REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law;

(2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(3) the lawyer is discharged.

(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

(1) withdrawal can be accomplished without material adverse effect on the interests of the client;

(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given

reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain ~~papers relating to~~ **papers, personal property and money** of the client to the extent permitted by other law.

RULE 1.17 SALE OF 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.

RULE 1.18 DUTIES TO PROSPECTIVE CLIENT

(a) A person who discusses with a lawyer the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has had discussions with a prospective client shall not use or reveal information learned in the consultation, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) Representation is permissible if both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(1) the disqualified lawyer is timely screened from any participation in the matter; and

(2) written notice is promptly given to the prospective client.

COUNSELOR

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

RULE 2.2 [RESERVED]

RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

- (a) A lawyer may provide an evaluation of a matter affecting a client for the 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.
- (b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent.
- (c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

RULE 2.4 LAWYER SERVING AS MEDIATOR

- (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 Rule 1.10, 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 give informed consent, confirmed in writing.
- (d) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.

ADVOCATE

RULE 3.1 MERITORIOUS CLAIMS AND CONTENTIONS

A lawyer shall not knowingly bring or defend a proceeding, ~~or~~ assert ~~or controvert an issue~~ a position therein, **delay a trial or take other action on behalf of a client**, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law, except that a lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result

in incarceration may, nevertheless so defend the proceeding as to require that every element of the case be established.

RULE 3.2 ~~EXPEDITING LITIGATION~~ [RESERVED]

~~A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.~~

RULE 3.3 CANDOR TOWARD THE TRIBUNAL

- (a) A lawyer shall not knowingly:
 - (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
 - (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
 - (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;
 - (4) conceal or ~~knowingly~~ fail to disclose to a tribunal that which the lawyer is required by law to reveal; or
 - (5) ~~knowingly~~ engage in other illegal conduct or conduct contrary to these Rules.
- (b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- (c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, unless compliance requires disclosure of information otherwise protected by Rule 1.6.
- (d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL

A lawyer shall not:

- (a) **knowingly and** unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b) falsify evidence; counsel or assist a witness to testify falsely; offer an inducement to a witness that is prohibited by law; or

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; except that 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's loss of time in attending or testifying; or
- (3) a reasonable fee for the professional services of an expert witness.

(c) knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists;

(d) in pretrial procedure, **knowingly** make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused;

(f) ~~request a person other than a client to refrain from voluntarily giving relevant information to another party unless:~~

~~(1) the person is a relative or an employee or other agent of a client; and~~

~~(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information~~ **advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for purposes of making the person unavailable as a witness therein;** or

(g) threaten to present criminal charges to obtain an advantage in a civil matter unless 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.

RULE 3.5 IMPARTIALITY AND DECORUM OF THE TRIBUNAL

A lawyer shall not:

- (a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;
- (b) communicate ex parte with such a person during the proceeding unless authorized to do so by law or court order;
- (c) communicate with a juror or prospective juror after discharge of the jury if:
 - (1) the communication is prohibited by law or court order;
 - (2) the juror has made known to the lawyer a desire not to communicate; or

(3) the communication involves misrepresentation, coercion, duress or harassment;

(d) engage in conduct intended to disrupt a tribunal; or

(e) fail to 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.

RULE 3.6 TRIAL PUBLICITY

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Notwithstanding paragraph (a), a lawyer may state:

- (1) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;
- (2) information contained in a public record;
- (3) that an investigation of a matter is in progress;
- (4) the scheduling or result of any step in litigation;
- (5) a request for assistance in obtaining evidence and information necessary thereto;
- (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
- (7) in a criminal case, in addition to subparagraphs (1) through (6):
 - (i) the identity, residence, occupation and family status of the accused;
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
 - (iii) the fact, time and place of arrest; and
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.

(c) Notwithstanding paragraph (a), a lawyer may:

- (1) ~~make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.~~
- (2) ~~reply to charges of misconduct publicly made against the lawyer;~~ or
- (3) ~~2~~ participate in the proceedings of legislative, administrative or other investigative bodies.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

(e) 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 this rule.

RULE 3.7 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 unless:

- (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; or
- (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.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause; and

~~(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;~~

~~(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, unless the accused is appearing pro se with approval of the tribunal or has knowingly waived any rights to counsel and silence;~~

~~(d)~~ (b) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

RULE 3.9 ADVOCATE IN NONADJUDICATIVE PROCEEDINGS

A lawyer representing a client before a legislative body or administrative agency in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

TRANSACTIONS WITH PERSONS OTHER THAN CLIENTS

RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third person; or
- (b) fail to disclose a material fact when disclosure is necessary to avoid assisting an ~~illegal criminal~~ or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

RULE 4.2 COMMUNICATION WITH PERSON REPRESENTED BY COUNSEL

In representing a client or the lawyer's own interests, a lawyer shall not communicate or cause another to communicate on the subject of the representation with a person the lawyer knows to be represented by a lawyer on that subject unless:

- (a) the lawyer has the prior consent of a lawyer representing such other person;
- (b) the lawyer is authorized by law or by court order 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.

RULE 4.3 DEALING WITH UNREPRESENTED PERSONS

In dealing on behalf of a client or the lawyer's own interests with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client or the lawyer's own interests.

RULE 4.4 RESPECT FOR THE RIGHTS OF THIRD PERSONS; INADVERTENTLY SENT DOCUMENTS

(a) In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, harass or burden a third person, or knowingly use methods of obtaining evidence that violate the legal rights of such a person.

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

LAW FIRMS AND ASSOCIATIONS

RULE 5.1 RESPONSIBILITIES OF PARTNERS, MANAGERS, AND SUPERVISORY LAWYERS

~~(a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.~~

~~(b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.~~

~~(c)~~

A lawyer shall be responsible for another lawyer's violation of these Rules of Professional Conduct if:

(1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or 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.

RULE 5.2 RESPONSIBILITIES OF A SUBORDINATE LAWYER

(a) A lawyer is bound by the Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

~~(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;~~

~~(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and~~

~~(c) except as provided by Rule 8.4(b), a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:~~

~~(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or~~

~~(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.~~

RULE 5.4 PROFESSIONAL INDEPENDENCE OF A LAWYER

(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 purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price.

(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.

(4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

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

(c) 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.

(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 or occupies the position of similar responsibility in any form of association other than a corporation, except as authorized by law; or

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

(e) 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.

RULE 5.5 UNAUTHORIZED PRACTICE OF LAW; MULTIJURISDICTIONAL PRACTICE

(a) A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

(1) except as authorized by these Rules or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law; or

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

(c) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services on a temporary basis in this jurisdiction that:

(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;

(2) are in or reasonably related to a pending or potential proceeding before a tribunal in this or another jurisdiction, if the lawyer, or a person the lawyer is assisting, is authorized by law or order to appear in such proceeding or reasonably expects to be so authorized;

(3) are in or reasonably related to a pending or potential arbitration, mediation, or other alternate dispute resolution proceeding in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;

(4) are not within paragraphs (c)(2) or (c)(3) and arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice; or

(5) are provided to the lawyer's employer or its organizational affiliates and are not services for which the forum requires pro hac vice admission.

(d) A lawyer admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, may provide legal services in this jurisdiction that are services that the lawyer is authorized to provide by federal law or other law of this jurisdiction.

~~(e) A lawyer who is admitted only in a non-United States jurisdiction shall not, except as authorized by this Rule or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law, or hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction. Such a lawyer does not engage in the unauthorized practice of law in this jurisdiction when on a temporary basis the lawyer performs services in this jurisdiction that:~~

~~(1) are undertaken in association with a lawyer who is admitted to practice in this jurisdiction and who actively participates in the matter;~~

~~(2) are in or reasonably related to a pending or potential proceeding before a tribunal held or to be held in a jurisdiction outside the United States if the lawyer, or a person the lawyer is assisting, is authorized by law or by order of the tribunal to appear in such proceeding or reasonably expects to be so authorized;~~

~~(3) are in or reasonably related to a pending or potential arbitration, mediation or other alternative dispute resolution proceeding held or to be held in this or another jurisdiction, if the services arise out of or are reasonably related to the lawyer's practice in a jurisdiction in which the lawyer is admitted to practice and are not services for which the forum requires pro hac vice admission;~~

~~(4) are not within paragraphs (2) or (3) and~~

~~(i) are performed for a client who resides or has an office in a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or~~

~~(ii) arise out of or are reasonably related to a matter that has a substantial connection to a jurisdiction in which the lawyer is authorized to practice to the extent of that authorization; or~~

~~(5) are governed primarily by international law or the law of a non-United States jurisdiction.~~

~~(f) For purposes of the grant of authority in subsection (e), the lawyer must be a member in good standing of a recognized legal profession in a foreign jurisdiction, the members of which are admitted to practice as lawyers or counselors at law or the equivalent and subject to effective regulation and discipline by a duly constituted professional body or a public authority. The lawyer must also not be disbarred or suspended from practice in any jurisdiction.~~

RULE 5.6 RESTRICTIONS ON RIGHT TO PRACTICE

A lawyer shall not participate in offering or making:

(a) a partnership, shareholders, operating, employment, or other similar type of agreement that restricts the right of a lawyer to practice after termination of the relationship, except an agreement concerning benefits upon retirement; or

(b) an agreement in which a direct or indirect restriction on the lawyer's right to practice is part of the settlement of a client controversy.

RULE 5.7 [RESERVED]

PUBLIC SERVICE

RULE 6.1 [RESERVED]

RULE 6.2 [RESERVED]

RULE 6.3 MEMBERSHIP IN LEGAL SERVICES ORGANIZATION

A lawyer may serve as a director, officer or member of a legal services organization, apart from the law firm in which the lawyer practices, notwithstanding that the organization serves persons having interests adverse to a client of the lawyer. The lawyer shall not knowingly participate in a decision or action of the organization:

(a) if participating in the decision or action would be incompatible with the lawyer's obligations to a client under Rule 1.7; or

(b) where the decision or action could have a material adverse effect on the representation of a client of the organization whose interests are adverse to a client of the lawyer's.

RULE 6.4 LAW REFORM ACTIVITIES AFFECTING CLIENT INTERESTS

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration, notwithstanding that the reform may affect the interest of a client of the lawyer. When the lawyer knows that the interest of a client may be materially benefited by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

RULE 6.5 NONPROFIT AND COURT-ANNEXED LIMITED LEGAL SERVICES PROGRAMS

(a) A lawyer who, under the auspices of a program sponsored by a nonprofit organization or court, provides short-term limited legal services to a client without expectation by either the lawyer or the client that the lawyer will provide continuing representation in the matter:

(1) is subject to Rule 1.7 and 1.9(a) only if the lawyer knows that the representation of the client involves a conflict of interest; and

(2) is subject to Rule 1.10 only if the lawyer knows that another lawyer associated with the lawyer in a law firm is disqualified by Rule 1.7 or 1.9(a) with respect to the matter.

(b) Except as provided in paragraph (a)(2), Rule 1.10 is inapplicable to a representation governed by this Rule.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

(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;

(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;

(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;

(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;

(5) states or implies an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law;

(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;

(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;

(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;

(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;

(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;

(11) is false or misleading in any manner not otherwise described above; or

(12) violates any other Rule of Professional Conduct or any statute or regulation applicable to solicitation, publicity or advertising by lawyers.

(b) 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.

(c) 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.

(d) 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 Rule 7.2.

(e) A lawyer may not engage in joint or group advertising involving more than one lawyer or law firm unless the advertising complies with Rules 7.1, 7.2, and 7.3 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.

RULE 7.2 ADVERTISING

(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 paragraph (c) or Rule 1.17.

(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 Rule 5.4, Rule 5.5, ORS 9.160, or ORS 9.500 through 9.520;

(2) the recipient of legal services, and not the plan, service or organization, is recognized as the client;

(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 Rule 7.3 if engaged in by the lawyer.

RULE 7.3 DIRECT CONTACT WITH PROSPECTIVE CLIENTS

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment from a prospective client when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment from a prospective client by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the lawyer knows or reasonably should know that the physical, emotional or mental state of the prospective client is such that the person could not exercise reasonable judgment in employing a lawyer;

(2) the prospective client has made known to the lawyer a desire not to be solicited by the lawyer; or

(3) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertisement" in noticeable and clearly readable fashion on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraph (a).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

RULE 7.4 [RESERVED]

RULE 7.5 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 Rule 7.1 and other applicable 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 Rule 7.1; and

(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 paragraph (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 paragraph (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.

RULE 7.6 [RESERVED]

MAINTAINING THE INTEGRITY OF THE PROFESSION

RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

(a) An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not:

(1) knowingly make a false statement of material fact; or

(2) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

(b) 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.

(c) 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.

RULE 8.2 JUDICIAL AND LEGAL OFFICIALS

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard to its truth or falsity concerning the qualifications or integrity of a judge, ~~or~~ adjudicatory officer ~~or public legal officer~~, or of a candidate for election or appointment to a judicial or ~~other adjudicatory legal~~ office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

RULE 8.3 REPORTING PROFESSIONAL MISCONDUCT

(a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

(b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

(c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or 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;

(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.

RULE 8.4 MISCONDUCT

- (a) It is professional misconduct for a lawyer to:
- (1) violate ~~or attempt to violate~~ the Rules of Professional Conduct, 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 as a lawyer in other respects;
 - (3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation ~~in relation to the lawyer's practice or private business affairs~~ **that reflects adversely on the lawyer's fitness to practice law;**
 - (4) engage in conduct that is prejudicial to the administration of justice; or
 - (5) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.
- (b) Notwithstanding paragraphs (a)(1), (3) and (4) and Rule 3.3(a)(1), 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 Rules of Professional Conduct. "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.

RULE 8.5 DISCIPLINARY AUTHORITY; CHOICE OF LAW

- (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.
- (b) Choice of Law. In any exercise of the disciplinary authority of this jurisdiction, the Rules of Professional Conduct to be applied shall be as follows:
- (1) for conduct in connection with a matter pending before a tribunal, the rules of the jurisdiction in which the tribunal sits, unless the rules of the tribunal provide otherwise; and
 - (2) for any other conduct, the rules of the jurisdiction in which the lawyer's conduct occurred, or, if the predominant effect of the conduct is in a different jurisdiction, the rules of that jurisdiction shall be applied to the conduct. A lawyer shall not be subject to discipline if the lawyer's conduct conforms to the rules of a jurisdiction in which the

lawyer reasonably believes the predominant effect of the lawyer's conduct will occur.

RULE 8.6 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~~ **these Rules**. The Oregon State Bar Legal Ethics Committee and General Counsel's Office may also issue informal written **advisory** opinions on questions under these Rules. The General Counsel's Office of the Oregon State Bar shall maintain records of both OSB formal and informal ~~ethics-written advisory~~ **ethics-written advisory** opinions and ~~shall make~~ copies of each **shall be** 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 educating lawyers about these Rules.
- (b) In considering alleged violations of these Rules, the Disciplinary Board and Oregon Supreme Court may consider any lawyer's good faith effort to comply with an opinion issued under paragraph (a) of this rule as:
- (1) a showing of the lawyer's good faith effort to comply with these Rules; and
 - (2) a basis for mitigation of any sanction that may be imposed if the lawyer is found to be in violation of these Rules.
- (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.