

In the Matter of the Oregon State Bar)
Disciplinary Board Code of Conduct)
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SUPREME COURT ORDER
No. 20-025

ORDER APPROVING CODE OF
CONDUCT FOR THE OREGON STATE
BAR DISCIPLINARY BOARD

At a public meeting on September 9, 2020, the Oregon Supreme Court unanimously adopted a Code of Conduct for the Oregon State Bar Disciplinary Board. The Disciplinary Board is an important part of the attorney disciplinary system, which requires independent, fair, and competent decision makers to make factual findings and interpret and apply the rules and laws governing the legal profession. The Code of Conduct provides Disciplinary Board members with a structure for governing their conduct.

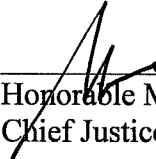
WHEREAS, the attorney disciplinary system requires independent, fair, and competent decision makers to make factual findings and interpret and apply the rules and laws governing the legal profession;

WHEREAS, the Court appoints the members of the Oregon State Bar Disciplinary Board, who serve at the discretion of the Court;

WHEREAS, a code of conduct will guide and provide Disciplinary Board members with a structure for governing their conduct.

THE COURT HEREBY ADOPTS the Disciplinary Board Code of Conduct, attached as Exhibit A to this order. This order becomes effective immediately.

Dated this 18th day of September, 2020.



Honorable Martha L. Walters
Chief Justice

EXHIBIT A

DISCIPLINARY BOARD CODE OF CONDUCT

PREAMBLE

Purpose. The attorney disciplinary system requires independent, fair and competent decision makers to make factual findings and interpret and apply the rules and laws governing the legal profession. As such, Disciplinary Board members, individually and collectively, must respect and honor their office as a public trust and strive to enhance and maintain confidence in the disciplinary system.

Members of the Disciplinary Board are appointed by the Oregon Supreme Court. They serve at the discretion of the court.

This Disciplinary Board Code of Conduct (the "Code") shall not infringe on the essential independence of Disciplinary Board members in making disciplinary decisions, findings, interpretations or recommendations.

The Code is intended to guide and provide Disciplinary Board members a structure for governing their conduct, both professionally and personally. Violation of the Code may result in removal from the Disciplinary Board at the discretion of the Oregon Supreme Court.

Conclusion. The Code is not an exhaustive guide. Disciplinary Board members should also govern their professional and personal activities by general ethical standards. The Code, however, states basic principles and rules to assist Disciplinary Board members in establishing and maintaining high standards of professional and personal conduct.

CODE

Definitions. In this Code:

- (1) "Impartiality" means the absence of bias or prejudice in favor of, or against, particular parties, or classes of parties, as well as maintaining an open mind in considering issues that may come before the Disciplinary Board member.
- (2) "Knowingly" or "knowledge" means actual knowledge of the fact in question, which may be inferred from the circumstances.
- (3) "Law" means court rules, statutes, constitutional provisions and legal conclusions in published court decisions.
- (4) "Nonpublic information" means information that, by law, is not available to the public, including information that is sealed by statute or court order, impounded or communicated in camera, offered in grand jury proceedings or contained in presentencing reports, dependency case reports or psychiatric reports.

Rule 1: Maintaining the Integrity of the Disciplinary System

- (A) A Disciplinary Board member shall uphold the integrity and independence of the disciplinary process.
- (B) A Disciplinary Board member should participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards in such a manner as to preserve the integrity and independence of the disciplinary system. This Code applies to every aspect of Disciplinary Board member behavior except Disciplinary Board orders. Orders issued on the record in the course of Disciplinary Board member duties are subject solely to judicial review under the Bar Rules of Procedure and Oregon Rules of Appellate Procedure.
- (C) A Disciplinary Board member shall avoid impropriety and the appearance of impropriety in all of the Disciplinary Board member's activities.
 - (1) A Disciplinary Board member shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the disciplinary process.
 - (2) A Disciplinary Board member may not allow family, social, political or other relationships to influence the Disciplinary Board member's adjudicative conduct or judgment. A Disciplinary Board member may not lend the prestige of the office to advance the private interests of the Disciplinary Board member or of others or convey or permit others to convey the impression that they are in a special position to influence the Disciplinary Board member.
 - (3) A Disciplinary Board Member shall not engage in conduct that reflects adversely on the member's character, competence, temperament, or fitness to serve as a Disciplinary Board Member.
 - (4) A Disciplinary Board member may not hold membership in any organization that, as a policy or practice and contrary to applicable federal or state law, treats persons less favorably in granting membership privileges, allowing participation, or providing services on the basis of sex, gender identity, race, national origin, ethnicity, religion, sexual orientation, marital status, disability, or age.

Rule 2: Impartial and Diligent Performance of a Member's Duties

- (A) A Disciplinary Board member shall perform the duties of the office impartially and diligently.
- (B) The Disciplinary Board member's duties include all the duties of the office prescribed by law, including adjudicative functions. In the performance of the duties pursuant to this section, the following apply to adjudicative responsibilities:
 - (1) A Disciplinary Board member shall hear and decide matters assigned to the Disciplinary Board member, except those in which disqualification is required

and except when Disciplinary Board member substitution is requested and granted.

- (2) A Disciplinary Board member shall be faithful to the law. A Disciplinary Board member may not be swayed by partisan interests, public clamor or fear of criticism.
 - (3) A Disciplinary Board member shall be patient, dignified and courteous to complainants, respondents, witnesses, lawyers and others with whom the Disciplinary Board member deals in an official capacity. During hearings, a Disciplinary Board member shall act so that the Disciplinary Board member's attitude, manner or tone toward the parties, counsel or witnesses does not prevent the proper presentation of the cause or the ascertainment of the truth.
 - (4) A Disciplinary Board member shall perform the duties of the office without bias or prejudice. A Disciplinary Board member may not, in the performance of duties, by words or conduct, manifest bias or prejudice, including bias or prejudice on the basis of sex, gender identity, race, national origin, ethnicity, religion, sexual orientation, marital status, disability, or age.
- (C) A Disciplinary Board member may not initiate, permit, engage in or consider ex parte communications concerning a pending or impending action or proceeding except that:
- (1) A Disciplinary Board member may initiate, permit, engage in or consider ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits if all of the following conditions are met:
 - (a) The Disciplinary Board member reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication.
 - (b) When the ex parte communication may affect the substance of the action or proceeding, the Disciplinary Board member promptly notifies all of the other parties of the substance of the ex parte communication and allows each party an opportunity to respond.
 - (2) A Disciplinary Board member may consult with other Disciplinary Board members or with personnel whose function is to aid the Disciplinary Board member in carrying out the Disciplinary Board member's adjudicative responsibilities.
 - (3) A Disciplinary Board member may initiate, permit, engage in or consider ex parte communications when expressly authorized by law.
- (D) A Disciplinary Board member shall dispose of all disciplinary matters promptly and efficiently.

- (E) A Disciplinary Board member may not, while a proceeding is pending or impending, make any public comment that may reasonably be expected to affect the outcome or impair the fairness of the proceeding. The subsection does not prohibit a Disciplinary Board member from making public statements in the course of his or her official duties or from explaining for public information the procedures of the disciplinary system.
- (F) A Disciplinary Board member may not disclose or use, for any purpose unrelated to service on the Disciplinary Board, nonpublic information acquired in a Disciplinary Board member's official capacity.

Rule 3: Disqualification

[Disciplinary Board Members are subject to Rule 3.10 of the Oregon Code of Judicial Conduct regarding disqualification and this Rule is a modification of Rule 3.10 of the Oregon Code of Judicial Conduct written to refer to Disciplinary Board members rather than judges.]

- (A) A Disciplinary Board member shall disqualify himself or herself in any proceeding in which a reasonable person would question the Disciplinary Board member's impartiality, including but not limited to the following circumstances:
 - (1) The Disciplinary Board member has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of the facts that are in dispute in the proceeding.
 - (2) The Disciplinary Board member knows that the member, the member's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:
 - (a) A party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
 - (b) Acting as a lawyer in the proceeding;
 - (c) A person who has an interest that could be substantially affected by the proceeding; or
 - (d) Likely to be a material witness in the proceeding.
 - (3) The Disciplinary Board member knows that he or she, individually or as a fiduciary, or the member's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person has an economic interest in the subject matter in controversy or is a party to the proceeding.
 - (4) The Disciplinary Board member has made a statement, other than in a disciplinary proceeding, decision, or opinion that commits or reasonably appears to commit, the Disciplinary Board member to reach a particular result or rule in a particular way in the proceeding.

- (5) The Disciplinary Board member:
- (a) Served as a lawyer in the matter in controversy, or, unless paragraph 5(b) applies, was associated with a lawyer who participated substantially as a lawyer in the matter during such association;
 - (b) Served in governmental employment and, in such capacity, participated personally either as a lawyer or as a supervising lawyer in the matter in controversy, or participated personally as a public official concerning the matter, or has publicly expressed in such a capacity an opinion concerning the merits of the matter; or
 - (c) Was a material witness concerning the matter.
- (B) The disqualification requirement under subsection (A) of this Rule does not apply if the rule of necessity applies.
- (C) A Disciplinary Board member shall keep informed about the member's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the member's spouse or domestic partner and minor children residing in the member's household.
- (D) A Disciplinary Board member subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the member's disqualification. If, following the disclosure and a reasonable opportunity to discuss the matter outside the presence of the member, the parties and their lawyers agree that the member should not be disqualified, the member may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

Rule 4: Other Activities

A Disciplinary Board member shall so conduct the Disciplinary Board Member's other activities as to minimize the risk of conflict with Disciplinary Board member obligations.

- (A) **Activities in General.** A Disciplinary Board member shall conduct all of the Disciplinary Board member's activities so that they do none of the following:
- (1) Cast reasonable doubt on the Disciplinary Board member's capacity to act impartially as a Disciplinary Board member.
 - (2) Demean the Disciplinary Board member office.
 - (3) Interfere with the proper performance of Disciplinary Board member duties.
- (B) **Other Activities.** A Disciplinary Board member may pursue employment, conduct a business or professional practice, perform volunteer work, speak, write, lecture, teach and participate in other activities whether or not concerning the law, the legal system, the

administration of justice and non-legal subjects, all consistent with the requirements of this Code.

ENFORCEMENT

The General Counsel of the Bar or the Adjudicator shall refer allegations that a Disciplinary Board member violated this Code to the Oregon Supreme Court for appropriate action pursuant to Supreme Court Order 19-025.