

(2) a contingent fee for representing a defendant in a criminal case; or

(3) a fee denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:

(i) the funds will not be deposited into the lawyer trust account, and

(ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

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

(1) the client 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.

Adopted 01/01/05

Amended 12/01/10: Paragraph(c)(3) added.

Defined Terms (see Rule 1.0):

"Firm"

"Informed Consent"

"Matter"

"Reasonable"

Comparison to Oregon Code

Paragraphs (a), (b) and (c)(1) and (2) are taken directly from DR 2-106, except that paragraph (a) is amended to include the Model Rule prohibition against charging a "clearly excessive amount for expenses." Paragraph (c)(3) had no counterpart in the Code. Paragraph (d) retains the substantive obligations of DR 2-107(A) but is rewritten to accommodate the new concepts of "informed consent" and "clearly excessive." Paragraph (e) is essentially identical to DR 2-107(B).

Comparison to ABA Model Rule

ABA Model Rule 1.5(b) requires that the scope of the representation and the basis or rate of the fees or expenses for which the client will be responsible be communicated to the client before or within a reasonable time after the representation commences, "preferably in writing." Model Rule 1.5(c) sets forth specific requirements for a contingent fee agreement, including an explanation of how the fee will be

determined and the expenses for which the client will be responsible. It also requires a written statement showing distribution of all funds recovered. Paragraph (c)(3) has no counterpart in the Model Rule. Model Rule 1.5(e) permits a division of fees between lawyers only if it is proportional to the services performed by each lawyer or if the lawyers assume joint responsibility for the representation.

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) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.

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

(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Adopted 01/01/05

Amended 12/01/06: Paragraph (b)(6) amended to substitute "information relating to the representation of a client" for "confidences and secrets."

Amended 01/20/09: Paragraph (b)(7) added.

Amended 01/01/14: Paragraph (6) modified to allow certain disclosures to avoid conflicts arising from a change of employment or ownership of a firm. Paragraph (c) added.

Defined Terms (see Rule 1.0):

"Believes"

"Firm"

"Information relating to the representation of a client"

"Informed Consent"

"Reasonable"

"Reasonably"

"Substantial"

Comparison to Oregon Code

This rule replaces DR 4-101(A) through (C). The most significant difference is the substitution of "information relating to the representation of a client" for "confidences and secrets." Paragraph (a) includes the exceptions for client consent found in DR 4-101(C)(1) and allows disclosures "impliedly authorized" to carry out the representation, which is similar to the exception in DR 4-101(C)(2).

The exceptions to the duty of confidentiality set forth in paragraph (b) incorporate those found in DR 4-101(C)(2) through (C)(5). There are also two new exceptions not found in the Oregon Code: disclosures to prevent "reasonably certain death or substantial bodily harm" whether or not the action is a crime, and disclosures to

obtain legal advice about compliance with the Rules of Professional Conduct.

Paragraph (b)(6) in the Oregon Code pertained only to the sale of a law practice.

Paragraph (b)(7) had no counterpart in the Oregon Code.

Comparison to ABA Model Rule

ABA Model Rule 1.6(b) allows disclosure "to prevent reasonably certain death or substantial bodily harm" regardless of whether a crime is involved. It also allows disclosure to prevent the client from committing a crime or fraud that will result in significant financial injury or to rectify such conduct in which the lawyer's services have been used. There is no counterpart in the Model Rule for information to monitoring responsibilities.

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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

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

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

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

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

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

(2) the representation is not prohibited by law;

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

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

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Believes"

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

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Law firm"

"Matter"

Comparison to Oregon Code

This rule has no equivalent in the Oregon Code. It was adopted by the ABA in 2002 to address concerns that strict application of conflict of interest rules might be deterring lawyers from volunteering in programs that provide short-term limited legal services to clients under the auspices of a non-profit or court-annexed program.

Comparison to ABA Model Rule

This is the ABA Model Rule.

INFORMATION ABOUT LEGAL SERVICES

RULE 7.1 COMMUNICATION CONCERNING A LAWYER'S SERVICES

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

Adopted 01/01/05

Amended 12/01/06: Paragraph (a)(5) reworded to conform to former DR 2-101(A)(5).

Amended 01/01/14: Model Rule 7.1 language substituted for former RPC 7.1.

Comparison to Oregon Code

The rule retains the essential prohibition against false or misleading communications, but not the specifically enumerated types of communications deemed misleading.

Comparison to ABA Model Rule

This is the ABA Model Rule.

RULE 7.2 ADVERTISING

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a lawyer referral service; and

(3) pay for a law practice in accordance with Rule 1.17.

(c) Any communication made pursuant to this rule shall include the name and contact information of at least one lawyer or law firm responsible for its content.

Adopted 01/01/05

Amended 01/01/14: Revised to track more closely Model Rule 7.2 and eliminate redundant language.

Amended 01/01/17: Revised to remove "not-for-profit" from (2) and to require listing "contact information" in lieu of "office address."

Defined Terms (see Rule 1.0):

"Law firm"

Comparison to Oregon Code

This rule retains DR 2-103's permission for advertising in various media, provided the communications are not false or misleading and do not involve improper in-person contact. It retains the prohibition against paying another to recommend or secure employment, with the exception of a legal service plan or not-for-profit lawyer referral service. The rule also continues the requirement that communications contain the name and office address of the lawyer or firm.

Comparison to ABA Model Rule

This rule is drawn from and is very similar to the ABA Model Rule, except that the MR allows payment only to a lawyer referral service approved by an appropriate regulatory agency. The MR also permits reciprocal referral agreements between lawyers and between lawyers and nonlawyer professionals, which is directly contradictory to Oregon RPC 5.4(e).

RULE 7.3 SOLICITATION OF CLIENTS

A lawyer shall not solicit professional employment by any means when:

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

(b) the person who is the subject of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

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

Adopted 01/01/05

Amended 01/01/14: The title is changed and the phrase "target of the solicitation" or the word "anyone" is substituted for "prospective client" to avoid confusion with the use of the latter term in RPC 1.8. The phrase "Advertising Material" is substituted for "Advertising" in paragraph (c).

Amended 01/01/17: Deleting requirement that lawyer place "Advertising Material" on advertising.

Amended 01/11/18: Deleting requirements specific to "in-person, telephone or real-time electronic contact" and deleting exception for prepaid and group legal service plans

Defined Terms (see Rule 1.0):

"Electronic communication"
"Known"
"Knows"
"Matter"
"Reasonable"
"Reasonably should know"
"Written"

Comparison to Oregon Code

This rule incorporates elements of DR 2-101(D) and (H) and DR 2-104.

Comparison to ABA Model Rule

This rule closely mirrors the Model Rule, although the MR has no counterpart to paragraph (b)(1).

RULE 7.4 [RESERVED]

RULE 7.5 FIRM NAMES AND LETTERHEADS

(a) A lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is a fact.

(e) 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 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 of the lawyer's firm devotes a substantial amount of professional time in the representation of the client.

Adopted 01/01/05

Amended 01/01/14: The rule was modified to mirror the ABA Model Rule.

Defined Terms (see Rule 1.0):

"Firm"
"Law firm"
"Partner"
"Substantial"

Comparison to Oregon Code

This rule retains much of the essential content of DR 2-102.

Comparison to ABA Model Rule

This is the Model Rule.

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.