

OREGON RULES OF PROFESSIONAL CONDUCT 4.1, 4.2, 4.3, 5.3, 8.4

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 or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Fraudulent"

"Knowingly"

Comparison to Oregon Code

This rule has no direct counterpart in Oregon, but it expresses prohibitions found in DR 1-102(A)(3), DR 7-102(A)(5) and DR 1-102(A)(7).

Comparison to ABA Model Rule

This is the ABA Model Rule, except that MR 4.1(b) refers to "criminal" rather than "illegal" conduct.

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.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Written"

Comparison to Oregon Code

This rule retains the language of DR 7-104(A), except that the phrase "or on directly related subjects" has been deleted. The application of the rule to a lawyer acting in the lawyer's own interests has been moved to the beginning of the rule.

Comparison to ABA Model Rule

This rule is very similar to the ABA Model Rule, except that the Model Rule does not apply to a lawyer acting in the lawyer's own interest. The Model Rule also makes no exception for communication required by a written agreement.

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.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knows"

"Matter"

"Reasonable"

"Reasonably should know"

Comparison to Oregon Code

This rule replaces DR 7-104(B). It is expanded to parallel Rule 4.2 by applying to situations in which the lawyer is representing the lawyer's own interests. The rule is broader than DR 7-104(B) in that it specifically prohibits a lawyer from stating or implying that the lawyer is disinterested. It also imposes an affirmative requirement on the lawyer to correct any misunderstanding an unrepresented person may have about the lawyer's role. The rule continues the prohibition against giving legal advice to an unrepresented person.

Comparison to ABA Model Rule

This is essentially identical to the ABA Model Rule, with the addition "or the lawyers own interests" at the beginning and end to make it clear that the rule applies even when the lawyer is not acting on behalf of a client.

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RULE 5.3 RESPONSIBILITIES REGARDING NONLAWYER ASSISTANTS

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

(a) 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

(b) 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.

Adopted 01/01/05

Defined Terms (see Rule 1.0):

"Knowledge"

"Knows"

"Law firm"

"Partner"

"Reasonable"

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code. Paragraph (a) is somewhat similar to the requirement in DR 4-101(D), but broader because not limited to disclosure of confidential client information.

Paragraph (b) applies the requirements of DR 1-102(B) to nonlawyer personnel. An exception by cross-reference to Rule 8.4(b) is included to avoid conflict with the rule that was formerly DR 1-102(D).

Comparison to ABA Model Rule

This is similar to the ABA Model Rule, although the Model Rule also requires law firm partners and other lawyers with comparable managerial authority to make reasonable efforts to ensure that the firm has in place measures giving reasonable assurance that the conduct of nonlawyer assistants is compatible with the professional obligations of lawyers. Also, the Model Rule does not have the “except as provided in 8.4(b)” language in paragraph (b), since the Model Rule has no counterpart to DR 1-102(D).

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RULE 8.4 MISCONDUCT

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

- (1) 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 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) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate these Rules or other law, or**
- (6) 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.

Adopted 01/01/05

Amended 12/01/06:

Paragraph (a)(5) added.

Defined Terms (see Rule 1.0):

"Believes"

"Fraud"

"Knowingly"

"Reasonable"

Comparison to Oregon Code

This rule is essentially the same as DR 1-102(A).

Paragraph (b) retains DR 1-102(D).

Comparison to ABA Model Rule

Paragraphs (a)(1) through (6) are the same as Model Rule 8.4(a) through (f), except that MR 8.4(a) also prohibits attempts to violate the rules.

Paragraph (b) has no counterpart in the Model Rules.

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