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OSB Considers New Ethics Rules

**By Mark J. Fucile
Fucile & Reising LLP**

At its annual meeting on September 20, the Oregon State Bar House of Delegates will consider adopting a new set of ethics rules patterned on the ABA's Model Rules of Professional Conduct. If approved by the House of Delegates and then by the Supreme Court, the current Oregon Disciplinary Rules would be replaced by new Oregon Rules of Professional Conduct. Although the DRs date to 1970, the change would be less sweeping in practical effect than you might think. At the same time, Oregon lawyers would gain the benefit in an era of increasing cross-border practice of having a set of rules closer in form and format to the rest of the country.

Let's start with some background. When the Oregon DRs were adopted in 1970 they were based on the ABA's then-current Model Code of Professional Responsibility. Although some of our rules have been revised over the years, the ABA significantly reshaped its model format in 1983 with the adoption of the Model Rules of Professional Conduct and then updated those further in 2002. Since the ABA moved to its "Model Rules" format, 44 states have followed and more are considering doing so.

In light of this trend, the OSB Board of Governors appointed a special committee in 2001 to study whether changes were warranted to the Oregon rules. The committee issued a comprehensive report in January of this year

recommending that Oregon move to the “Model Rules” format. Following a period of public comment, the Board of Governors in June voted unanimously to forward the proposal to the House of Delegates.

Although the new rules would *look* different, the *practical effect* would be much the same. In other words, a conflict under the old rules would still be a conflict under the new rules, the requirements for consent are very similar and a lawyer’s duty of confidentiality is essentially the same.

So, why change? The OSB study committee initially took the approach that “if it ain’t broke, don’t fix it.” However, after reviewing the ABA’s Model Rules, it concluded that they would offer Oregon lawyers two major advantages over the current ones.

First, although the new rules retain the content of the old set, they recast them in form and format in a way that meshes better with the rest of the country. Several thousand OSB members are already members of other bars and our reciprocity partners Washington and Idaho both use the Model Rules. For lawyers whose practices take them across state lines, moving to a more uniform system will make life simpler. Even for those lawyers whose work is solely in Oregon, the value of drawing on guidance from other jurisdictions using a similar set of rules shouldn’t be understated.

Second, the new rules contain provisions we currently lack in Oregon that would bring additional clarity to several key areas—including duties to

prospective clients, spelling out who the client is when representing an entity and regularizing specific categories of temporary multijurisdictional practice.

The text of the rules and the accompanying report are available on the Bar's web site at www.osbar.org. On balance, the new rules would be a good fit for the practice environment that has evolved for Oregon lawyers since the DRs were adopted 33 years ago.

Note: By way of "full disclosure," your columnist was a member of the OSB study committee that recommended the new rules.

ABOUT THE AUTHOR

Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics, product liability defense and condemnation litigation. In his legal ethics practice, Mark handles professional responsibility, regulatory and attorney-client privilege matters and law firm related litigation for lawyers, law firms and legal departments throughout the Northwest. He is a past member of the Oregon State Bar's Legal Ethics Committee, is a past chair of the Washington State Bar Rules of Professional Conduct Committee, is a member of the Idaho State Bar Professionalism & Ethics Section and is a co-editor of the OSB's Ethical Oregon Lawyer and the WSBA's Legal Ethics Deskbook. Mark also writes the monthly Ethics Focus column for the Multnomah (Portland) Bar's Multnomah Lawyer, the quarterly Ethics & the Law column for the WSBA Bar News and is a regular contributor on risk management to the OSB Bar Bulletin, the Idaho State Bar

Advocate and the Alaska Bar Rag. Mark's telephone and email are
503.224.4895 and Mark@frllp.com.