ETHICS NORTH & SOUTH OF THE COLUMBIA

Washington Defense Trial Lawyers
SW Washington Membership CLE
April 2, 2010—Portland

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PERSPECTIVE

► A little background....

● Ethics practice

● Products practice
INTRODUCTION

► Whose Law Applies?

► Three Key Differences

► Some Other Differences
WHOSE LAW APPLIES?

► More similarities than differences

► A quick history of the Oregon RPCs (and their lack of comments)

► An equally quick history of the Washington RPCs and comments
WHOSE LAW APPLIES?

Choice of law under RPC 8.5(b)

Litigation conduct generally governed by forum state

For other conduct, look to where “predominate effect” occurs
THREE KEY DIFFERENCES

1. “No contact” rule

2. Inadvertent production

3. Who is the client in insurance defense?
“NO CONTACT” RULE

► Same basic rule: RPC 4.2

► But different application with entities
“NO CONTACT” RULE

► Oregon:

► Washington:
Comment 10 & Wright v. Group Health, 103 Wn.2d 192 (1984)
INADVERTENT PRODUCTION

- **Oregon:**
  - Ethics: RPC 4.4(b)
  - Procedure: Nothing (yet)
INADVERTENT PRODUCTION

► Washington:
  ● Ethics: RPC 4.4(b)
  ● Procedure: CR 26(b)(6)
INADVERTENT PRODUCTION

Disqualification Risk to the Recipient

- Richards v. Jain,
  168 F. Supp.2d 1195 (W.D. Wash. 2001)

WHO IS THE CLIENT?

- **Oregon:**
  - “2 client” state
  - OSB Formal Ethics Op. 2005-121
  - Exception to the “default”
WHO IS THE CLIENT?

Washington:
- “1 client” state
- WSBA Formal Ethics Op. 195
SOME OTHER DIFFERENCES

► “Specialists”
  ● Oregon 7.4—“Reserved”
  ● Washington 7.4—Generally “no”

► Trust Account Location
  ● Oregon RPC 1.15-1(a)—Office Based
  ● Washington RPC 1.15A(i)—License Based
SOME OTHER DIFFERENCES

► Security (after the fact) for Fees
  ● Oregon RPC 1.8(a)—“No deal” (so far)
  ● Washington RPC 1.8(a)—“Deal”

► Conflict Waivers & “Informed Consent”
  ● Oregon RPC 1.0(g)—Recommending independent counsel
  ● Washington RPC 1.0(e)—No (but a good idea)
RPCs NOW MOSTLY SIMILAR

- Conflict Rules, RPCs 1.7-1.9
- Confidentiality Rule, RPC 1.6
- Screening Rule, RPC 1.10
- Entity Client Rule, RPC 1.13
- Withdrawal Rule, RPC 1.16
- Prospective Client Rule, RPC 1.18
ENFORCEMENT CAN BE DIFFERENT

► Oregon:
  ● More bar complaints and bar prosecutions per capita

► Washington:
  ● More disqualification and breach of fiduciary duty cases
RESOURCES

► OSB Ethical Oregon Lawyer
► OSB Ethics Opinions
► OADC

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► WSBA Legal Ethics Deskbook
► WSBA Ethics Opinions
► WDTL
FOR FURTHER READING

► “Inadvertent Production Revisited (Again)”
   — October 2009 WSBA Bar News

► “The Shifting Sands of Inadvertent Production”
   — Winter 2009 OADC Magazine

► “A Tri-State Look at the Tri-Partite Relationship”
   — November 2006 WSBA Bar News
QUESTIONS?