PRACTICING IN OREGON AND WASHINGTON
A Guide to the Unwary

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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 and in the scope of the prohibition
“NO CONTACT” RULE: Application to Entities

► Oregon:

► Washington:
Comment 10 & Wright v. Group Health, 103 Wn.2d 192 (1984)
“NO CONTACT” RULE: Scope of the Prohibition

► Oregon: “Subject”

► Washington: “Matter”
INADVERTENT PRODUCTION

Oregon:

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

Washington:
- Ethics: RPC 4.4(b)
- Procedure: CR 26(b)(6)
- Evidence: ER 502
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 Ethics Advisory 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

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► WSBA Legal Ethics Deskbook
► WSBA Law of Lawyering
► WSBA Ethics Opinions
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?