

and property, and may retain counsel other than the purchasing lawyer or law firm;

(4) that the client's legal work will be transferred to the purchasing lawyer or law firm, who will then take over the representation and act on the client's behalf, if the client does not object to the transfer within forty-five (45) days after the date the notice was mailed; and

(5) whether the selling lawyer will withdraw from the representation not less than forty-five (45) days after the date the notice was mailed, whether or not the client consents to the transfer of its legal work.

(c) The notice may describe the purchasing lawyer or law firm's qualifications, including the selling lawyer's opinion of the purchasing lawyer or law firm's suitability and competence to assume representation of the client, but only if the selling lawyer has made a reasonable effort to arrive at an informed opinion.

(d) If certified mail is not effective to give the client notice, the selling lawyer shall take such steps as may be reasonable under the circumstances to give the client actual notice of the proposed sale and the other information required in subsection (b).

(e) A client's consent to the transfer of its legal work to the purchasing lawyer or law firm will be presumed if no objection is received within forty-five (45) days after the date the notice was mailed.

(f) If substitution of counsel is required by the rules of a tribunal in which a matter is pending, the selling lawyer shall assure that substitution of counsel is made.

(g) The fees charged clients shall not be increased by reason of the sale except upon agreement of the client.

(h) The sale of a law practice may be conditioned on the selling lawyer's ceasing to engage in the private practice of law or some particular area of practice for a reasonable period within the geographic area in which the practice has been conducted.

Adopted 01/01/05

*Defined Terms (see Rule 1.0):*

"Known"

"Law firm"

"Matter"

"Reasonable"

"Tribunal"

"Written"

*Comparison to Oregon Code*

This rule continues DR 2-111 which, when adopted in 1995, was derived in large part from Model Rule 1.17.

*Comparison to ABA Model Rule*

The Model Rule requires sale of the entire practice or practice area, and also requires that the selling lawyer cease to engage in the private practice of law, or the area of practice sold, within a certain geographic area. The Model Rule gives the client 90 days to object before it will be presumed the client has consented to the transfer of the client's files. The Model Rule requires notice to all clients, not only current clients, but does not require that it be sent by certified mail. The Model Rule does not address the selling lawyer's right to give an opinion of the purchasing lawyer's qualifications. The Model Rule does not allow for client consent to an increase in the fees to be charged as a result of the sale.

#### **RULE 1.18 DUTIES TO PROSPECTIVE CLIENT**

(a) A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter; and

(ii) written notice is promptly given to the prospective client

Adopted 01/01/05

Amended 12/11/09:

*Paragraph (d) amended to conform to ABA Model Rule 1.18 except for prohibition against disqualified lawyer being apportioned a part of the fee.*

Amended 01/01/14:

Paragraphs (a) and (b) amended slightly to conform to changes in the Model Rule.

Defined Terms (see Rule 1.0):

“Confirmed in writing”

“Informed consent”

“Firm”

“Knowingly”

“Matter”

“Screened”

“Substantial”

“Written”

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code. It is consistent with the rule of lawyer-client privilege that defines a client to include a person “who consults a lawyer with a view to obtaining professional legal services.” OEC 503(1)(a). The rule also codifies a significant body of case law and other authority that has interpreted the duty of confidentiality to apply to prospective clients.

Comparison to ABA Model Rule

This is identical to the ABA Model Rule, except it doesn't prohibit the screened lawyer from sharing in the fee.

## COUNSELOR

### RULE 2.1 ADVISOR

**In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.**

Adopted 01/01/05

Comparison to Oregon Code

This rule has no counterpart in the Oregon Code, although it codifies the concept of exercising independent judgment that is fundamental to the role of the lawyer and which is mentioned specifically in DRs 2-103, 5-101, 5-104, 5-108 and 7-101.

Comparison to ABA Model Rule

This is the ABA Model Rule.

### RULE 2.2 [RESERVED]

### RULE 2.3 EVALUATION FOR USE BY THIRD PERSONS

**(a) A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.**

**(b) When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not**

**provide the evaluation unless the client gives informed consent.**

**(c) Except as disclosure is authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.**

Adopted 01/01/05

Defined Terms (see Rule 1.0):

“Believes”

“Informed consent”

“Knows”

“Matter”

“Reasonably believes”

“Reasonably should know”

Comparison to Oregon Code

This rule is similar to DR 7-101(D), which was adopted in 1997 based on former ABA Model Rule 2.3. Paragraph (b) is new in 2002 to require client consent only when the evaluation poses a risk of material and adverse affect on the client. Under paragraph (a), when there is no such risk, the lawyer needs only to determine that the evaluation is compatible with other aspects of the relationship.

Comparison to ABA Model Rule

This is the ABA Model Rule.

## RULE 2.4 LAWYER SERVING AS MEDIATOR

**(a) A lawyer serving as a mediator:**

**(1) shall not act as a lawyer for any party against another party in the matter in mediation or in any related proceeding; and**

**(2) must clearly inform the parties of and obtain the parties' consent to the lawyer's role as mediator.**

**(b) A lawyer serving as a mediator:**

**(1) may prepare documents that memorialize and implement the agreement reached in mediation;**

**(2) shall recommend that each party seek independent legal advice before executing the documents; and**

**(3) with the consent of all parties, may record or may file the documents in court.**

**(c) The requirements of Rule 2.4(a)(2) and (b)(2) shall not apply to mediation programs established by operation of law or court order.**

Adopted 01/01/05

Amended 01/01/14:

Original paragraph (c) relating to firm representation deleted to eliminate conflict with RPC 1.12..

Defined Terms (see Rule 1.0):

“Matter”