

A dark, moody photograph of a person in silhouette sitting at a desk with a laptop. The person is leaning forward, looking at the screen. The background shows a window with vertical bars. The overall tone is professional and serious.

Attorneys Anonymous

MAY 2023 MEETING

WELCOME TO ETHICS AND STRESS!



ORPC 1.1 - COMPETENCE

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

DEFINITION OF INCOMPETENCE

A lawyer acts incompetently by acting “without the legal knowledge, skill, thoroughness, or preparation necessary for the representation ...”

In re Conduct of Magar, 335 Or 306, 320, 66 P3d 1014 (2003) (former DR 6-101(A)).

Formal Ethics Opinion No. 2007-178:

- ▶ “A caseload is ‘excessive’ and is prohibited if the lawyer is unable to at least meet ... basic obligations ...”
- ▶ If lawyers’ “workload prevents them from fulfilling their ethical obligations to each client, then their workload ‘must be controlled so that each matter may be handled competently.’”

LEGAL STANDARD

“[T]he ‘standard for assessing competence and diligence is an objective one’ and, thus, is not focused on a lawyer's mental state.”

In re Conduct of Bettis, 342 Or 232, 237, 149 P3d 1194, 1197 (2006) (citation omitted) (former DR 6-101(A))

ORS 9.527(5)

A lawyer may be disbarred, suspended, or reprimanded when “guilty of gross or repeated negligence or incompetence.”

ORPC 1.16(a)

“a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: . . . the representation will result in violation of the Rules of Professional Conduct or other law[.]”

ORPC 1.3 - DILIGENCE

A lawyer shall not neglect a legal matter entrusted to the lawyer.

(Identical to former DR 6-101(B))

DEFINITION OF DILIGENCE

“One commentator has described lack of diligence as ‘a special and wide-spread variety of incompetence’ consisting of ‘incompetently failing to act when advancing or protecting a client’s interests calls for action,’ and as ranging from ‘virtual abandonment of the client to procrastination.’”

In re Conduct of Magar, 335 Or 306, 320, 66 P3d 1014 (2003) (citation omitted) (former DR 6-101(B)).

EXAMPLES OF NEGLIGENCE

- ▶ *In re Worth*, 336 Or 256, 263–64, 82 P3d 605 (2003) (failure to respond to court notices threatening the dismissal of cases; failure to communicate with the clients; failure to perform substantive work on the cases; and failure to provide the clients with copies of notices, pleadings, and orders)
- ▶ *In re Bourcier*, 322 Or 561, 566–67, 909 P2d 1234 (1996) (failure to communicate with the client, failure to pursue the client's appeal, failure to advise the client about filing a pro se brief, failure to advise the client that the appeal was dismissed, and failure to respond to the client's inquiries)
- ▶ *In re Parker*, 330 Or 541, 544–45, 9 P3d 107 (2000) (failure in one case to respond to the client's messages and prepare for trial, and agreeing to dismiss the client's case without consulting the client; failure in a second case to pursue the client's case and, after termination by the client, failure to respond to the request for the file by client's new lawyer; failure in a third case to file appropriate documents dismissing an appeal; and failure in a fourth case to respond to the client's request to modify a trust instrument)
- ▶ *In re Jackson*, 347 Or 426, 435–36, 223 P3d 387 (2009) (failure to prepare for a requested settlement conference, to send his dates of availability after receiving the arbitrator's notice, to respond to voicemail reminders regarding the same, and to take steps to pursue arbitration after the court's second referral to arbitration).

ORPC 8.4 - MISCONDUCT

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;

*** * ***

(4) engage in conduct that is prejudicial to the administration of justice

(Essentially the same as DR 1-102(A))

ORPC 8.3(a) – REPORTING MISCONDUCT

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.

DEFINITION OF “SUBSTANTIAL”

Oregon RPC 1.0(o) defines the word substantial as “a material matter of clear and weighty importance.”

EXCEPTION FOR PROTECTED COMMUNICATIONS

“Pursuant to this rule, a lawyer may not report another lawyer’s Oregon RPC violation if the source of knowledge of the violation is protected by Oregon RPC 1.6 or ORS 9.460(3), unless one of the exceptions permitting disclosure is present.”

OSB Formal Ethics Op No 2005-95 (rev 2014)

WHO MUST YOU REPORT?

- ▶ You don't have to report your own misconduct. ORPC 8.3(a)
- ▶ You must report misconduct of other lawyers, even if they are in your law firm.
- ▶ You must also report misconduct of lawyers admitted *pro hac vice* (see UCR 3.170(1)(d)), and lawyers who are suspended or inactive. *In re Smith*, 318 Or 47, 53, 861 P2d 1013 (1993), *cert den*, 513 US 866 (1994).
- ▶ You must report RPC violations by judges who are OSB members.

Ask for help!

RPC 1.6(b)

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(4) to secure legal advice about the lawyer's compliance with these Rules



oaaap
Oregon Attorney
Assistance Program



Professional
Liability Fund



Don't Delay and Be Truthful!

- ▶ **RPC 1.3A** – A lawyer shall not neglect a legal matter entrusted to the lawyer.
- ▶ **RPC 1.4(a)** – A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- ▶ **RPC 7.1** - A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
- ▶ **RPC 8.4(a)(3)** – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law.

Don't Delay and Be Truthful!

- ▶ ***In re Obert, 336 Or 640 (2004)*** – Lawyer's failure to promptly disclose the dismissal of the client's case to the client was a material omission. Lawyer failed to timely file a notice of appeal and, consequently, the client's appeal was dismissed. The lawyer was so ashamed and embarrassed that he had failed his client that he waited five months before informing the client that he had missed the deadline and the appeal had been dismissed. The Oregon Supreme Court found that in addition to neglecting the client's matter, the attorney's failure to promptly disclose "the all-critical fact that the court has spoken and the client's case is over" constituted a separate violation for engaging in conduct involving a misrepresentation.

Inform the Client!

RPC 1.4 (a) A lawyer shall:

- ▶ (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- ▶ (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- ▶ (3) keep the client reasonably informed about the status of the matter;
- ▶ (4) promptly comply with reasonable requests for information; and
- ▶ (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

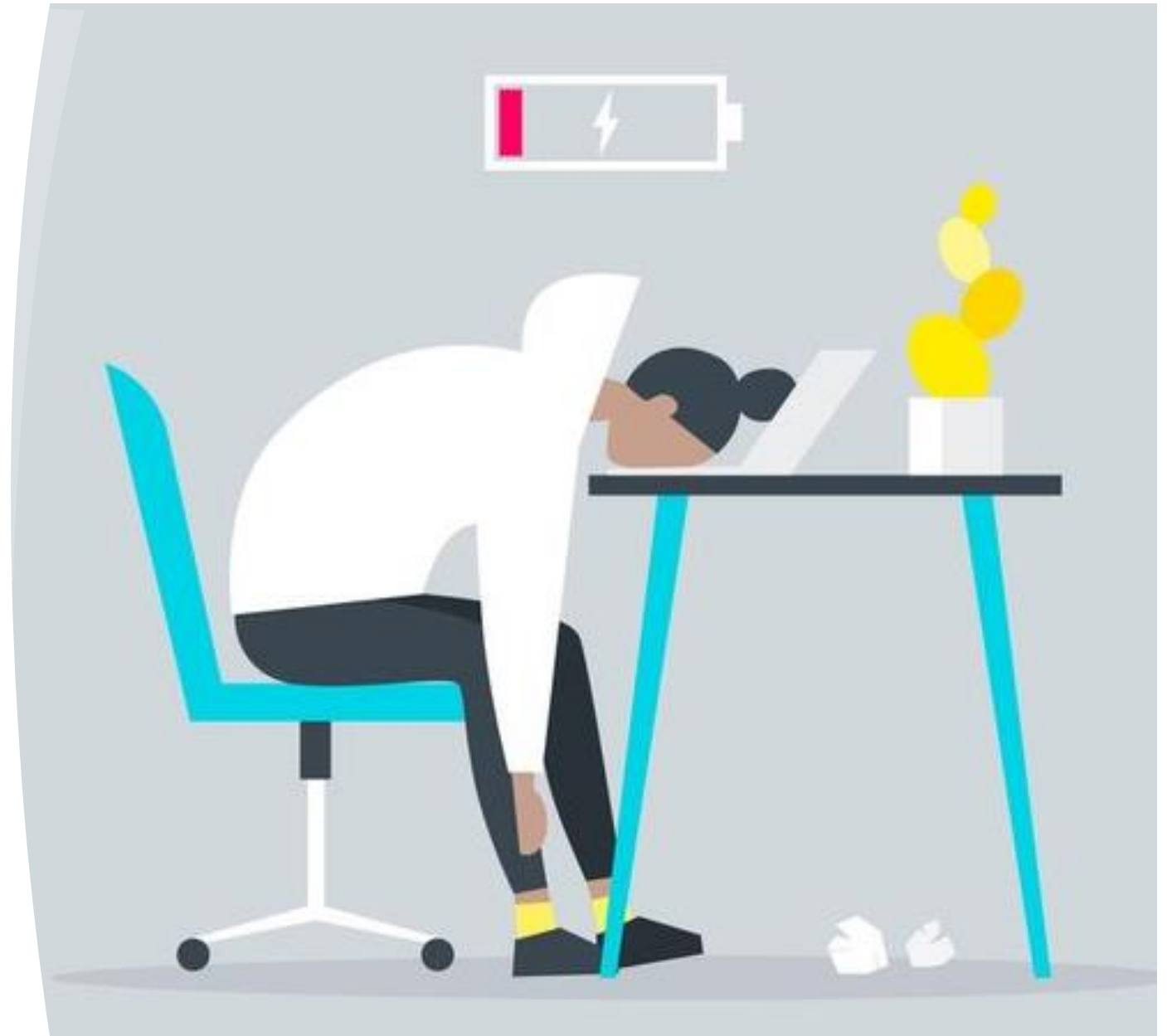
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

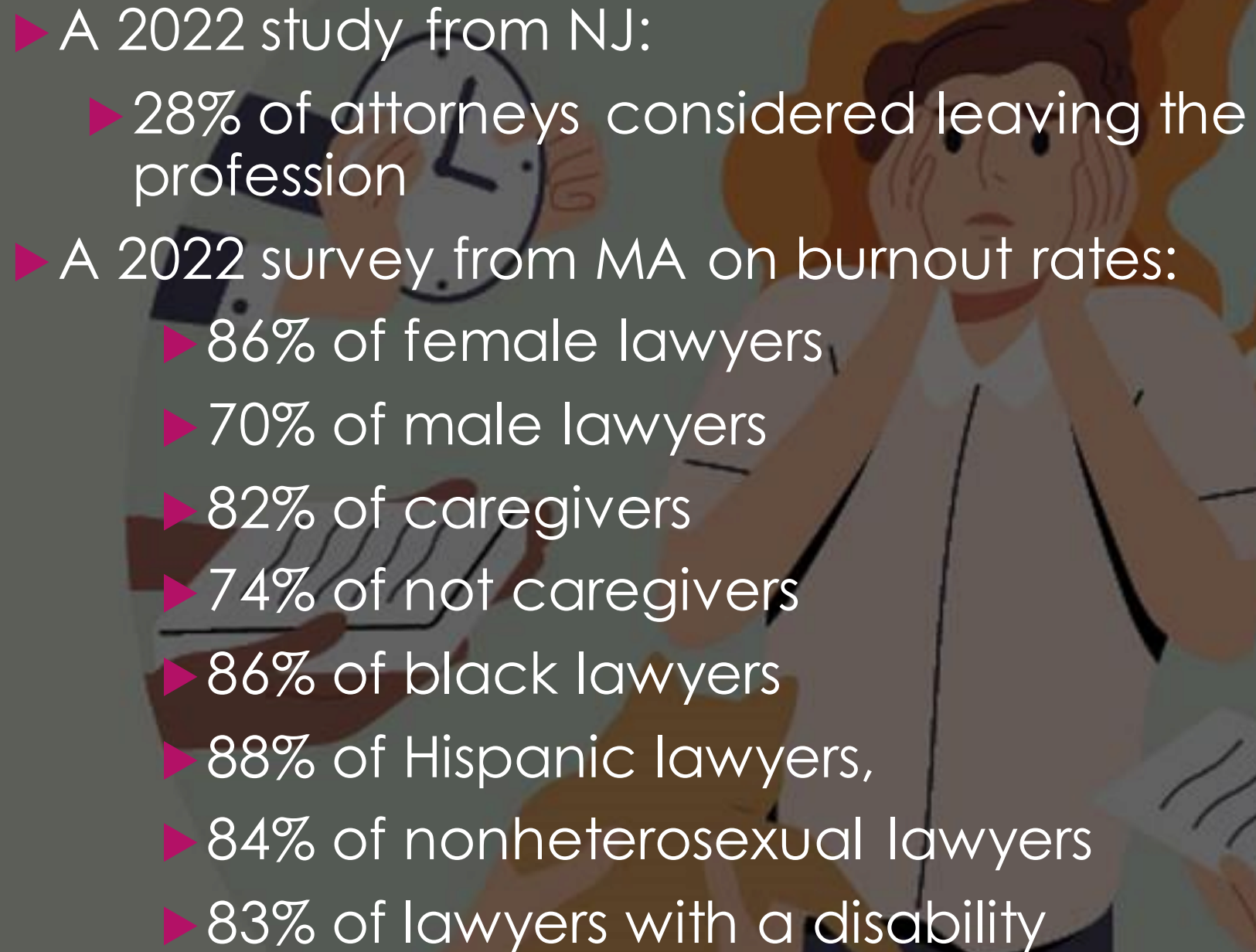
Take Responsibility!

In re Graeff, 485 Or 258, 263-64 (2021): The appropriate sanction for a lawyer's misconduct is determined by referencing the American Bar Association's Standards for Imposing Lawyer Sanctions and Oregon case law, including the aggravating and mitigating factors. Aggravating factors include having a dishonest or selfish motive (ABA Standard 9.22(b); and the refusal to acknowledge wrongful nature of conduct (ABA Standard 9.22(g)).

Burn-out is a syndrome conceptualized as resulting from chronic workplace stress that has not been successfully managed. It is characterized by three dimensions:

- ▶ feelings of energy depletion or exhaustion;
- ▶ increased mental distance from one's job, or feelings of negativism or cynicism related to one's job; and
- ▶ reduced professional efficacy.



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- A central illustration of a woman with brown hair in a bun, wearing a white short-sleeved shirt, with her hands pressed against her temples in a gesture of stress or exhaustion. She is surrounded by various floating icons: a clock, a laptop, a smartphone, a tablet, and a document. The background is a dark, muted green with a subtle pattern of orange and yellow shapes.
- ▶ A 2022 study from NJ:
 - ▶ 28% of attorneys considered leaving the profession
 - ▶ A 2022 survey from MA on burnout rates:
 - ▶ 86% of female lawyers
 - ▶ 70% of male lawyers
 - ▶ 82% of caregivers
 - ▶ 74% of not caregivers
 - ▶ 86% of black lawyers
 - ▶ 88% of Hispanic lawyers,
 - ▶ 84% of nonheterosexual lawyers
 - ▶ 83% of lawyers with a disability









- 1.Improve Brain Health
- 2.Reduction in Health Risks
- 3.Management of Chronic Health Conditions

- ▶ **Short workouts** count! If you have 10 minutes, you can still boost your brain power and mood. Consider stretching and doing a few jumping jacks, squats, or Pilates exercises.
- ▶ If you have half an hour or so: Consider **a walk outside**, this brings the added benefits of fresh air.
- ▶ If you have half a day or more: Consider some of our local gems, including **a hike** at Forest Park or in the Columbia Gorge, or the walks listed in one of my favorite books, *Portland Stair Walks: Explore Portland, Oregon's Public Stairways* (by Laura O. Foster).
- ▶ If you are planning long term, consider **joining an adult recreational league** and play your favorite sport!



Gloria Trainor







What kinds of leave are covered?



Family leave



Medical leave



Safe leave

- ▶ You are automatically covered if:
- ▶ You work for an employer in Oregon, and
- ▶ You earned at least \$1,000 the year before you apply for benefits, and
- ▶ You have a life event that qualifies you

House Bill 2005 – Family and Medical Leave Insurance (FAMLI)

- Passed in 2019
- Employers started contributing in January 2023
- Benefits to start September 2023 (**maybe?**)
- Can be combined with FMLA for additional 2-4 weeks coverage



You can take up to 12 weeks paid leave in a 52-week period (starting from the day your leave begins). You can take a week or a single day off at a time based on what your serious health condition needs.

Your job is protected by law while you're on paid leave if you have worked at least 90 consecutive days for your employer.



You may be able to take up to 2 additional weeks (up to 14 total weeks) if you are pregnant, have given birth, or have health needs because of childbirth.

Your employer cannot fire you or threaten you for taking time off if you are eligible for paid leave, and they must give you the time off according to the law.



Paid Leave Oregon pays you every week while you are on leave. [Learn more.](#)

You have the right to the same job you had when you left if you have worked for your employer for at least 90 consecutive days by law. This means you do not lose your job title or role while you're on paid leave, if the position still exists, even if the position was filled by a temporary replacement employee while you were on leave.

ORS 653.077 Rest Periods for Expression of Milk

- ▶ (2)(a) An employer shall provide reasonable unpaid rest periods to accommodate an employee who needs to express milk for the employee's child.
- ▶ (c) The employer shall provide the employee a reasonable rest period to express milk each time the employee has a need to express milk.
- ▶ (d) The employee shall, if feasible, take the rest periods to express milk at the same time as the rest periods or meal periods that are otherwise provided to the employee.
- ▶ (5)(a) An employer shall make reasonable efforts to provide a location, other than a public restroom or toilet stall, in close proximity to the employee's work area for the employee to express milk in private.

See also OAR 839-020-0051





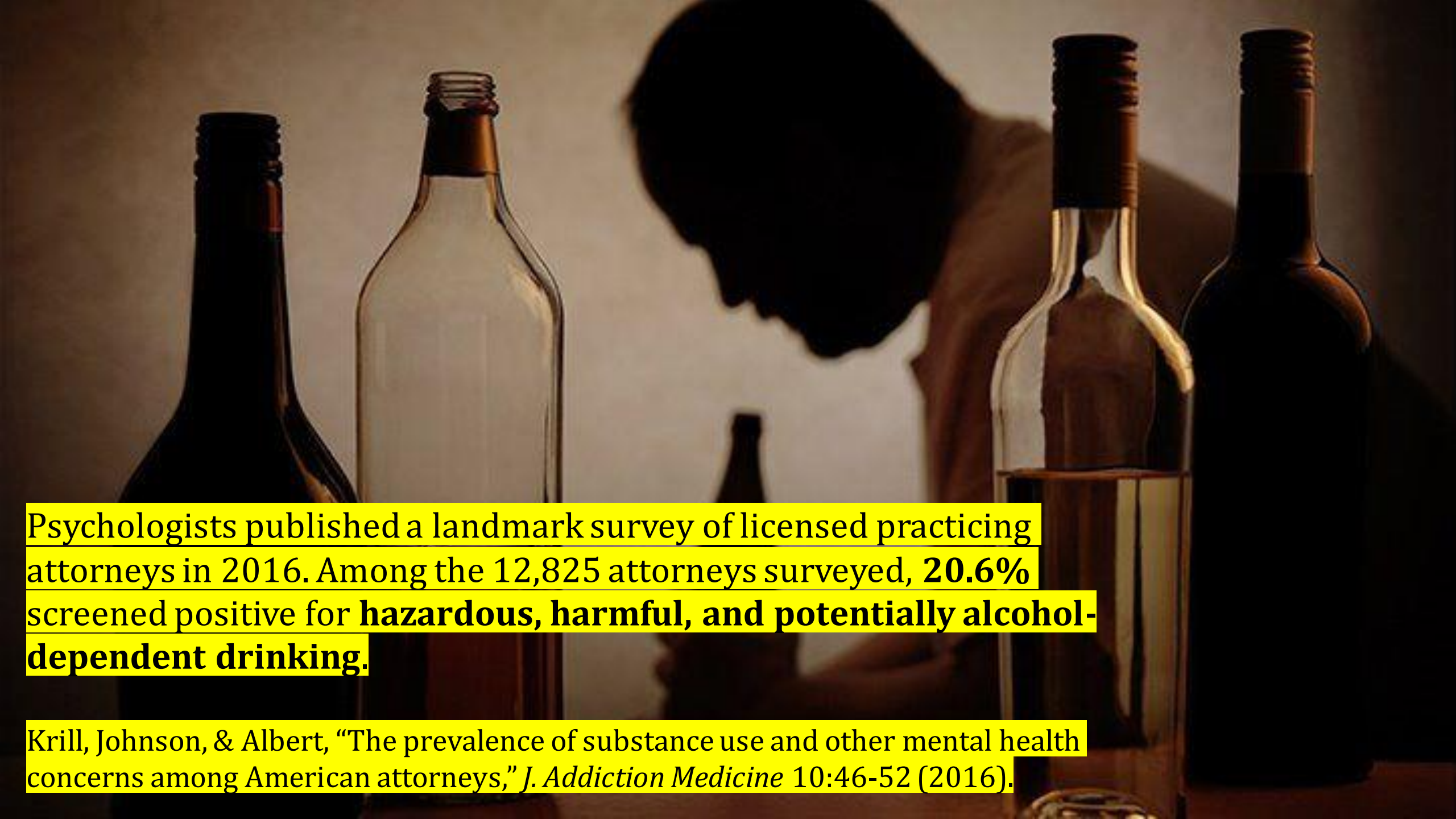




(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Rule 1.2 Scope of Representation And Allocation of Authority Between Client And Lawyer





Psychologists published a landmark survey of licensed practicing attorneys in 2016. Among the 12,825 attorneys surveyed, **20.6%** screened positive for **hazardous, harmful, and potentially alcohol-dependent drinking.**

Krill, Johnson, & Albert, "The prevalence of substance use and other mental health concerns among American attorneys," *J. Addiction Medicine* 10:46-52 (2016).

- **21% of participants self-reported problematic drinking.**
- **“Risky” and “hazardous” drinking were broken out by gender:**
 - **Risky**
 - **Women: more than 7 drinks per week or 3 per occasion**
 - **Men: more than 14 drinks per week or 4 per occasion**
 - **Hazardous:**
 - **Men: more than 21 drinks per week**
 - **Women: more than 14 drinks per week**

Anker & Krill, “Stress, drink, leave: an examination of gender-specific risk factors for mental health problems and attrition among licensed attorneys,” *PLOS One*, 16(5): e0250563 (2021).



Alcohol Myopia

► One of alcohol's primary effects is to narrow our emotional and mental fields of vision. Psychologists refer to this as alcohol myopia, "a state of shortsightedness in which superficially understood, immediate aspects of experience have a disproportionate influence on behavior and emotions."

► Steele & Josephs, "Alcohol myopia: its prized and dangerous effects," *Am. Psychologist*, 45(8): 921-33 (1990).



Complexity makes decisions harder. Alcohol can make decisions seem easier by overweighting immediate concerns at the expense of fuller context.

Legal knowledge and skill are detail dependent. “It depends” is more than a lawyerly verbal tic. Good counsel usually requires knowing more, not fewer, factors and conditions.



ORCP 5.1 (b)

- ▶ ORCP 5.1(b) creates responsibility for partners, managers, and supervisory lawyers.
- ▶ To be responsible for another's ethical violations, the otherwise guiltless lawyer must be:
 - A partner
 - Have comparable managerial authority
 - Have direct supervisory authority

Supervisory Liability

- ▶ The supervisory lawyer is responsible for the other lawyer's ethics violation if the supervisory lawyer:
 - Knows of the conduct at a time when its consequences can be avoided or mitigated, but
 - Fails to take reasonable remedial action.
- ▶ This responsibility is distinct from the duty to report misconduct, ORPC 8.3. It requires affirmative action to avoid or mitigate harms to the firm's clients or others foreseeably at risk due to another lawyer's conduct.

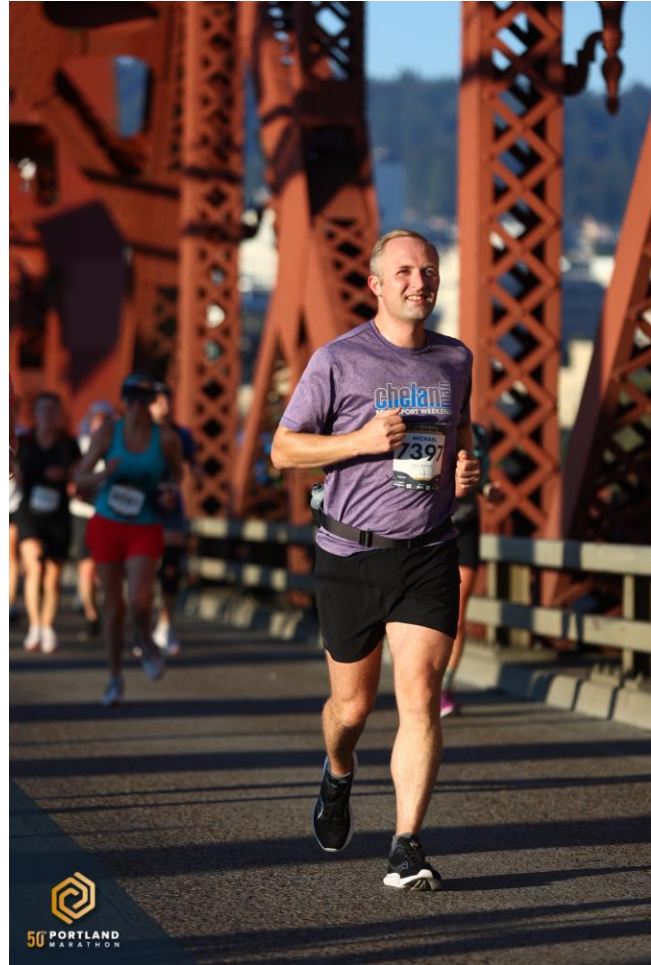
Supervisory Liability

▶ Can supervisory liability be avoided by willful ignorance? Probably not.

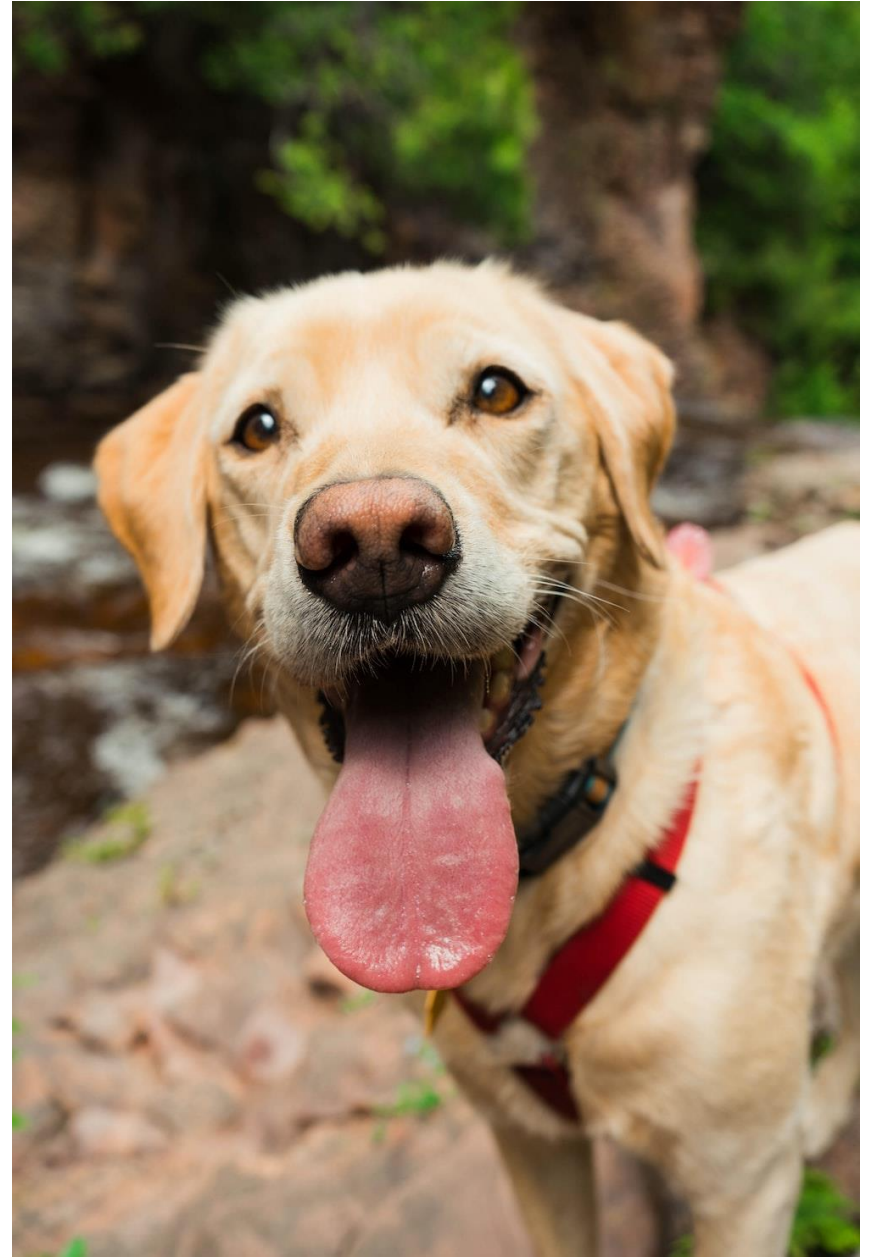
▶ Reasonable remedial action can be of two types:

- To protect the client's interests
- To assist the other lawyer

▶ If a lawyer has violated the competence rule, one goal should be restoring the capacity for competence.







ANIMALS AND WELL BEING



DOGS AT THE OFFICE



DIFFERENCE BETWEEN
SERVICE AND THERAPY




HOW DOGS ARE USED
IN THE LEGAL REALM



CONSIDERATIONS AND
OFFICE POLICIES

DIFFERENCES BETWEEN SERVICE AND “THERAPY” DOGS

- The America with Disabilities Act (ADA) defines **Service Animals** as dogs that are individually trained to do work or perform tasks for people with disabilities.
- The Fair Housing Act (FHA) defines **Assistance Animals** as an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or that provides emotional support that alleviates one or more identified effects of a person’s disability. An assistance animal is not a pet.
- The Air Carrier Access Act (ACAA) defines a **Service Animal** as a dog, regardless of breed or type, that is individually trained to work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals.
- American Humane Society (AHS) defines **emotional support** dogs as companion animals who help their owners cope with the challenges associates with emotional and mental health conditions by providing comfort with their presence.

	SERVICE ANIMALS	EMOTIONAL SUPPORT ANIMALS
PUBLIC ACCESS RIGHTS	✓	✗
AIR TRAVEL RIGHTS	✓	✗
HOUSING RIGHTS	✓	✓
TRAINED	✓	✗
REGISTERED/CERTIFIED	✗	✗

“Trained” refers to an animal being task-trained for a specific person’s disability characteristics.

WHAT NON – "SERVICE" CERTIFICATIONS CAN YOU GET IN OREGON?

- Canine Good Citizen through the American Kennel Club (AKC). It's a 10 skill test teaching good manners and responsible dog ownership. Skills include accepting a friendly stranger, loose leash walking, reaction to another dog, reaching to distraction, supervised separation.
- Therapy Dog through AKC, Alliance of Therapy Dogs, Bright and Beautiful Therapy Dogs, Love on a Leash, Therapy Dogs Incorporated





A background image showing two fluffy dogs, one light-colored and one dark-colored, standing in an office space with desks, chairs, and large windows.

OFFICE POLICY

Employees may not bring a dog (or any pet) into the office without express written permission by the partners. Approval will be given, at the sole discretion of the partners, based on the following criteria:

1. The employee is specifically working with a professional trainer to further their dog in a therapy or service role.
2. The dog has successfully completed appropriate therapy or service certification including a "Canine Good Citizen."
3. The dog is not currently sick or experiencing any health concerns.
4. The dog will not be disruptive to the regular course of business during the day.
5. The animal is allowed into the office under other law or statute.

Regarding our clients bringing an animal to the office, only number 5. would apply.

CHARON HUMAN ADVOCACY INTERVENTION SERVICES (CH AIS)



JAX, BLUE, THEIR HUMANS, AND AUGGIE





The End!

OREGON RULES OF PROFESSIONAL CONDUCT

- ▶ 1.1 Competence
- ▶ 1.3 Diligence
- ▶ 1.4 Communication
- ▶ 1.6 Confidentiality of Information
- ▶ 1.16 Declining or Terminating Representation
- ▶ 7.1 Communication Concerning a Lawyer's Services
- ▶ 8.3 Reporting Professional Misconduct
- ▶ 8.4 Misconduct

1.1 Competence

- ▶ A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

1.3 Diligence

- ▶ A lawyer shall not neglect a legal matter entrusted to the lawyer.

1.4 Communication

- ▶ (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information
- ▶ (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make

1.6 Confidentiality of Information

- ▶ (a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).
- ▶ (b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:
 - ▶ (1) to disclose the intention of the lawyer's client to commit a crime and the information necessary to prevent the crime;
 - ▶ (2) to prevent reasonably certain death or substantial bodily harm;
 - ▶ (3) to secure legal advice about the lawyer's compliance with these Rules;
 - ▶ (4) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
 - ▶ (5) to comply with other law, court order, or as permitted by these Rules; or
 - ▶ (6) in connection with the sale of a law practice under Rule 1.17 or to detect and resolve conflicts of interest arising from the lawyer's change of employment or from changes in the composition or ownership of a firm. In those circumstances, a lawyer may disclose with respect to each affected client the client's identity, the identities of any adverse parties, the nature and extent of the legal services involved, and fee and payment information, but only if the information revealed would not compromise the attorney-client privilege or otherwise prejudice any of the clients. The lawyer or lawyers receiving the information shall have the same responsibilities as the disclosing lawyer to preserve the information regardless of the outcome of the contemplated transaction.
 - ▶ (7) to comply with the terms of a diversion agreement, probation, conditional reinstatement or conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7 or Rule for Admission Rule 6.15. A lawyer serving as a monitor of another lawyer on diversion, probation, conditional reinstatement or conditional admission shall have the same responsibilities as the monitored lawyer to preserve information relating to the representation of the monitored lawyer's clients, except to the extent reasonably necessary to carry out the monitoring lawyer's responsibilities under the terms of the diversion, probation, conditional reinstatement or conditional admission and in any proceeding relating thereto.
- ▶ (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

1.16 Declining or Terminating Representation

- ▶ (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:
 - ▶ (1) the representation will result in violation of the Rules of Professional Conduct or other law;
 - ▶ (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or
 - ▶ (3) the lawyer is discharged.
- ▶ (b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
 - ▶ (1) withdrawal can be accomplished without material adverse effect on the interests of the client;
 - ▶ (2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
 - ▶ (3) the client has used the lawyer's services to perpetrate a crime or fraud;
 - ▶ (4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
 - ▶ (5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
 - ▶ (6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
 - ▶ (7) other good cause for withdrawal exists.
- ▶ (c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
- ▶ (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.

7.1 Communication Concerning a Lawyer's Services

- ▶ A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

8.3 Reporting Professional Misconduct

- ▶ (a) A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects shall inform the Oregon State Bar Client Assistance Office.
- ▶ (b) A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.
- ▶ (c) This rule does not require disclosure of information otherwise protected by Rule 1.6 or ORS 9.460(3), or apply to lawyers who obtain such knowledge or evidence while:
 - ▶ (1) acting as a member, investigator, agent, employee or as a designee of the State Lawyers Assistance Committee;
 - ▶ (2) acting as a board member, employee, investigator, agent or lawyer for or on behalf of the Professional Liability Fund or as a Board of Governors liaison to the Professional Liability Fund; or
 - ▶ (3) participating in the loss prevention programs of the Professional Liability Fund, including the Oregon Attorney Assistance Program.
- ▶ (d) This rule does not require disclosure of mediation communications otherwise protected by ORS 36.220.

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.
 - ▶ (7) in the course of representing a client, knowingly intimidate or harass a person because of that person's race, color, national origin, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability.
- ▶ (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.
- ▶ (c) Notwithstanding paragraph (a)(7), a lawyer shall not be prohibited from engaging in legitimate advocacy with respect to the bases set forth therein.