

More Help With Oregon's RPCs Is At Hand

by Peter R. Jarvis, David J. Elkanich & Rene C. Holmes

Effective later this month, the Oregon State Bar will publish on the Bar's website, and subsequently for sale in paper form, a new set of formal ethics opinions based on Oregon's new Rules of Professional Conduct. These new opinions will replace the prior set based on the now-repealed Disciplinary Rules that began with 1991-1 and ended with 2004-175. The new opinions should shortly be available on Westlaw as well.

For the most part, the new opinions reach the same results as the old ones. This should come as no surprise since, for the most part, the new rules permit what the old rules permitted and prohibit what the old rules prohibited. The new opinions do, however, cite to the new rules and, in most if not all instances, identify subsequent authorities that were not available when the original opinions were published.

The Legal Ethics Committee has also taken care to use the same general numbering system in the new opinions that was used in the prior opinions. For example, prior opinion 1991-85 addressed "who is the client" questions in the context of close corporations and partnerships, and this same subject will be addressed in new opinion 2005-85. Similarly, prior opinion 2001-164 and new opinion 2005-164 both address issues relating to communications with represented parties that may arise through web-based communications.

There are some changes. For example, there are no references in the new opinions to the duty of "zealous representation within the bounds of the law" since that language is not a part of the RPCs. There are also some more specific changes including but not limited to changes with regard to ex parte communications with state law administrative decisionmakers (new opinion 2005-83), conflicts involving state and local governments (new opinion 2005-122), inadvertently received documents (new opinion 2005-150) and arguable former client conflicts that arise after a lawyer who works on a matter leaves a firm (2005-174).

These opinions are the result of over a year of work by the Oregon State Bar Legal Ethics Committee and Sylvia Stevens, Associate General Counsel to the Bar. We were pleased to participate in this effort through Peter's membership on the Committee as well as the efforts that all three of us made to assist in drafting the new opinions. We invite your comments about the new opinions. We also encourage all Oregon attorneys to contact Sylvia Stevens at the Bar if they wish the Legal Ethics Committee to consider additional opinions. Our base of formal ethics opinions will only be as good as we collectively cause them to be.