

OSB Public Comments on proposed changes to RCP 1.2(d)

Date	Support/ Oppose	Comment
9/26/2023	Oppose	I'm opposed to all three amendments. Unbelievable that we would sanction advise on illegal activities; we are supposed to uphold the law. The idea of giving money and gifts to clients is a short trip to the client not bring able to exercise independent judgment and becoming financially and emotionally dependent on their lawyer.
9/26/2023	Support	The amendments below seem sensible to me. •Amend ORPC 1.2(d) to allow for lawyers to provide legal advice on proposed conduct that is legal within Oregon, but may conflict with the laws of other jurisdictions, including federal law. This amendment would expand the scope of RPC 1.2(d) from marijuana to other conduct that is legal within Oregon. • Amend ORPC 1.8(e) to allow for lawyers to provide financial assistance to clients to whom they provide legal services for pro bono. The BOG seeks this amendment to allow attorneys who represent indigent clients to provide gifts and modest assistance at the option of the attorney. • Amend ORPC 8.4(a)(7) to provide clarity and include a protected class that was omitted from the original rule. The amendment would change its application to when an attorney practices law, to clarify when the provision would affect an attorney's actions. In addition, the amendment also adds ethnicity, as the original rule did not contain it. The exceptions to the rule remain in place.
9/26/2023	Support	Amend 1.2(d) - yes Amend 1.8(e) - No Amend 8.4(a)(7) - the information below is insufficient to form a judgment
9/27/2023	Support	Sounds good.

OSB Public Comments on proposed changes to RCP 1.8(e)

Date	Support/ Oppose	Comment
9/26/2023	Oppose	I'm opposed to all three amendments. Unbelievable that we would sanction advise on illegal activities; we are supposed to uphold the law. The idea of giving money and gifts to clients is a short trip to the client not bring able to exercise independent judgment and becoming financially and emotionally dependent on their lawyer.
9/26/2023	Support	I urge passage of this amendment as it often arises that a Legal clinic client needs a certified copy or other di minimus expense extended and seeking repayment, fee waiver, or obtaining advance payment incurs more wasted time and fees than I can justify. I cannot distinguish a charitable donation of advancing a small cost from making a donation of time or money.
9/26/2023	Support	I write in support of the proposed amendment to Rule 1.8(e) and to suggest an insertion. In partnership with St. Timothy Episcopal Church's outreach ministry, advocacy team, and Community Kitchen, I provide free legal services for people experiencing homelessness. My salary is paid for by grants and general donations to the church. Rule 1.8 as it currently is written creates a murky ethical conundrum for our legal advocacy program, as the church provides meals, showers, a clothes closet, and basic hygiene supplies to all who need them, as well as laundromat vouchers, bus tickets, payment for birth certificate and state identification card costs, and emergency financial assistance with utilities, rent, and gas or vehicle repair. Our current work-around is for me to find a church volunteer to provide these humanitarian services and charitable assistance, or to terminate representation before I directly provide humanitarian services or charitable assistance. It is my belief and understanding that Rule 1.8 was drafted to prevent solicitation or inducement to litigation through "perks" from a fee-based attorney; not that it was meant to limit the ability of a church or other nonprofit-based program to provide life-sustaining necessities to a person experiencing homelessness. The proposed amendments would exempt legal services provided on a pro bono basis to a person experiencing poverty from the prohibition on providing gifts. Because the legal clinic I created is not part of Legal Aid Service of Oregon (LASO) or Oregon Law Center (OLC), yet I charge no fees to clients and instead am paid a modest salary from the church, I propose an additional clarification (3) a lawyer representing an indigent client pro bono, a lawyer representing an indigent client through a nonprofit legal services or public interest organization, including a free clinic, and a lawyer representing an indigent client through a court appointment, or through a law school clinical or pro bono program, may provide modest gifts to the client for food, rent, transportation, medicine, and other basic living expenses. If, on the other hand, the Board of Governors interprets "public interest organization" to include a church ministry and homeless outreach clinic independent of our two statewide legal services organizations, then comment to that effect would be helpful. After all, the situation at hand is about an attorney giving a client a cup of coffee, not champagne; bus tickets, not a private jet ride; clean socks, not a designer handbag; a driving license, not a sports car; a shower, not a private tee time. Thank you for considering my experience and for approving these amendments.

OSB Public Comments on proposed changes to RCP 1.8(e)

9/26/2023	Suggestion in Comment	There needs to be a provision that ensures these costs do not become recoverable under ORCP 68A(2), ORS 656.386(2), or any other statute or rule that provides for an award of costs. Failure to exclude these “gifts” would almost certainly lead to abuse of the practice. Particularly in the workers’ compensation arena, as sure as the sun rises in the east, claimant attorneys will be working overtime to pass those costs along to employers and insurers.
9/26/2023	Support	The amendments below seem sensible to me. •Amend ORPC 1.2(d) to allow for lawyers to provide legal advice on proposed conduct that is legal within Oregon, but may conflict with the laws of other jurisdictions, including federal law. This amendment would expand the scope of RPC 1.2(d) from marijuana to other conduct that is legal within Oregon. • Amend ORPC 1.8(e) to allow for lawyers to provide financial assistance to clients to whom they provide legal services for pro bono. The BOG seeks this amendment to allow attorneys who represent indigent clients to provide gifts and modest assistance at the option of the attorney. • Amend ORPC 8.4(a)(7) to provide clarity and include a protected class that was omitted from the original rule. The amendment would change its application to when an attorney practices law, to clarify when the provision would affect an attorney’s actions. In addition, the amendment also adds ethnicity, as the original rule did not contain it. The exceptions to the rule remain in place.
9/26/2023	Oppose	I have practiced law in Oregon for 50 years. I strenuously oppose the proposed amendments to ORPC 1.8. Oregon lawyers should represent clients as attorneys, not as social service agencies. Involvement in loaning “modest” sums to clients should be discouraged as creating personal relationships, creating conflicts and exceeding boundaries.
9/26/2023	Oppose	Amend 1.2(d) - yes Amend 1.8(e) - No Amend 8.4(a)(7) - the information below is insufficient to form a judgment
9/27/2023	Support	Sounds good.
9/28/2023	Suggestion in Comment	Should include "socioeconomic status" as a category for which harassment or intimidation constitutes professional misconduct. This is in conformance with ABA MR 8.4 (g), and Oregon's professional legal culture as reflected in the new RPC 1.8 (e)(3) exception. It's also the right thing to do. My concern is for how the homeless population is treated by the legal community, but also low income people in general and seniors in particular. I think "discrimination" should also constitute professional misconduct, as in the model rules, although this may be difficult to define. My information on the revisions is taken from the article in the recent Bulletin by Dani Huck. I am an inactive member of the Oregon State Bar. Please confirm that you have received my submission.

OSB Public Comments on proposed changes to RCP 8.4(a)(7)

Date	Support/ Oppose	Comment
9/26/2023	Oppose	I'm opposed to all three amendments. Unbelievable that we would sanction advise on illegal activities; we are supposed to uphold the law. The idea of giving money and gifts to clients is a short trip to the client not bring able to exercise independent judgment and becoming financially and emotionally dependent on their lawyer.
9/26/2023	Oppose	<p>Most fervently, I disagree with the OSB Board of Governors' proposed change to ORPC 8.4(a)(7). If the only proposed change was to add "ethnicity" to the list of protected classes whom an Oregon lawyer was prohibited from "knowingly intimidat[ing] or harass[ing], I could support the amendment. My understanding is that the Oregon Rules of Professional Conduct apply to Oregon lawyers, whether or not they are practicing law-- as an Oregon lawyer, even if inactive or suspended, I may not, for example, make false statements to the tribunal. The proposed change to ORPC 8.4(a)(7) is a notable and unwelcome exception to that rule. I practice family law, and from time to time I am hired to oppose, people who are Oregon lawyers. Sometimes they wish to avoid responsibility for actions they take as litigants, that are contrary to the ORPCs, believing that their role as a litigant, rather than an advocate, shields them from responsibility. No lawyer, however, can avoid casting a negative light on the profession, when they act in an unprofessional manner. This is not about individual members, but about the Association as a whole. In my opinion, an Oregon lawyer should be held to the same ethical standards whether they are advising an organization, representing a client, or acting in their own personal capacity. Oregon lawyers are also spouses and parents; they also hold positions of influence and authority as elected officials, business owners, and landlords. Creating any category of rule, that need not be observed unless that lawyer is "practicing law," substantially weakens the entire framework. When the rule that need not be observed, is one of demonstrating respect for, and avoiding persecution against, any class the Bar Association recognizes as "protected," is anathema to the goals of the Bar Association. Doing so permits-- not tacitly but explicitly-- an Oregon lawyer to act contrary to the interests of a protected class, so long as they can claim they are not "practicing law" when they do so. This change issues a permission slip to every Oregon lawyer to "knowingly intimidate or harass a person because of the person's race, color, national origin, ethnicity, religion, age, sex, gender identity, gender expression, sexual orientation, marital status, or disability." Knowingly intimidate or harass. In my opinion no person should be permitted to do these things (these are not thought crimes). This proposed rule change allows-- and encourages, for it is a singular exception-- horrible behavior to one's fellow human beings. The ORPCs are standards for behavior, that reflect upon the profession as a whole. Let's none of us, accept intimidation or harassment, from anyone please. But certainly, let's not change the rule to allow an Oregon lawyer to knowingly intimidate or harass a person for any reason whatsoever, but in particular, let us not create permission (where none now exists) for knowing intimidation or harassment based on protected classes. Members of these protected classes, are the people we need to be protecting, as Oregon lawyers.</p>

OSB Public Comments on proposed changes to RCP 8.4(a)(7)

9/26/2023	Support	<p>The amendments below seem sensible to me. •Amend ORPC 1.2(d) to allow for lawyers to provide legal advice on proposed conduct that is legal within Oregon, but may conflict with the laws of other jurisdictions, including federal law. This amendment would expand the scope of RPC 1.2(d) from marijuana to other conduct that is legal within Oregon. • Amend ORPC 1.8(e) to allow for lawyers to provide financial assistance to clients to whom they provide legal services for pro bono. The BOG seeks this amendment to allow attorneys who represent indigent clients to provide gifts and modest assistance at the option of the attorney. • Amend ORPC 8.4(a)(7) to provide clarity and include a protected class that was omitted from the original rule. The amendment would change its application to when an attorney practices law, to clarify when the provision would affect an attorney’s actions. In addition, the amendment also adds ethnicity, as the original rule did not contain it. The exceptions to the rule remain in place.</p>
9/26/2023	N/A	<p>Amend 1.2(d) - yes Amend 1.8(e) - No Amend 8.4(a)(7) - the information below is insufficient to form a judgment</p>

OSB Public Comments on proposed changes to RCP 8.4(a)(7)

9/27/2023	Oppose	<p>I write to oppose the proposed change to ORPC 8.4(a)(7) that would broaden the prohibition on certain attorney speech from its current limitation of speech that occurs "in the course of representing a client" to speech occurring "in the practice of law." I was a member of the OSB committee charged by the Supreme Court in 2014-15 to develop a proposed ORPC 8.4(a)(7) that would avoid serious First Amendment concerns that it contained overly-broad prohibitions on protected speech. The current version of ORPC 8.4(a)(7) was drafted by that committee. Prior to that date, state bars of several states had changed their analogous rules of professional conduct to deal with perceived problems of harassment by lawyers. If memory serves, an initial draft of a proposed Rule 8.4(a)(7) was promulgated and sent for comment. The proposed rule was so sweeping in its prohibition of attorney speech that in response to criticism by Bar members, the Supreme Court referred the matter back to the Bar for further action, with instruction that the proposed rule should be drafted so as not to include infringements on protected speech. The committee on which I served as the result of that referral. The 2015 ad hoc committee discussed the proposed breadth of the rule at some length. One or more members proposed that the new rule should include any harassing or discriminatory speech made in the practice of law. I opposed that broad an application, primarily due to the historic inability of courts to agree on what is included within the definition of the practice of law. Given that problem, my concern was that using a vague, broad term to define the scope of the prohibition would lead to well-meaning persons with limited knowledge of the First Amendment making complaints against attorneys for speech that is actually protected by the Oregon and US constitutions. But I was also concerned with the reality that the mere fear of having to deal with the many hours of time and expense of defending a Bar complaint that alleges an attorney violated the rule in the course of some activity that was not part of representing of a client would have a chilling impact on attorneys' right to speak freely in fora where the expertise of an attorney is valued, even though no client interest was being represented. Comments to the currently-proposed changes to Rule 8.4(a)(7) provide an example of one kind of speech that could be chilled. I am not representing a client. Indeed, I would argue that I am not practicing law by sending you these comments. But I have no confidence that a trial panel of</p>
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OSB Public Comments on proposed changes to RCP 8.4(a)(7)

Continued from above	Oppose	<p>Oregon lawyers would agree with that conclusion. While there is nothing in these comments that could remotely be described as discrimination on the basis of any protected class, should I instead be speaking to oppose the inclusion of "ethnicity" as a protected class, again, I find it quite possible that a trial panel of Oregon lawyers could conclude that merely opposing inclusion of a new category of persons within protected class protection is itself discrimination that is banned by the rule. Thus, an attorney who has honestly held reasons for wishing to maintain the status quo or to make a change to the law that has the effect of reducing the scope of protected classes would carefully consider the possibility of facing professional discipline, including loss of practice privileges, merely for speaking up. Our rules should not increase that chance by relying on the vague, ill-defined "in the practice of law." Many more examples of potentially problematic public speech could be cited. Public information seminars, speeches to church groups, to community organizations, or to any private group or even a single person seeking out a lawyer's opinion just because the person is a lawyer, are all arguably activities that are "in the practice of law." Attorneys must be able to express their convictions and opinions in such fora without fear of losing the right to earn their income. The prohibition of ORPC 8.4(a)(7) should not be extended to these situations. These views I expressed to the ad hoc committee in 2014-15 prevailed at that time, so I am disappointed that the 2022 committee reached a different conclusion. Enacting this proposed change will inevitably lead to bar complaints where alleged violations of the rule are met with serious challenges under the First Amendment and Article I Section 8 of the Oregon Constitution. The possibility of having to mount a constitutional defense to a Bar complaint will surely lead to self censorship. That would be a sad day. Therefore, I urge the Board of Governors to reject the proposed change that would replace "in the course of representing a client" to "in the practice of law."</p>
9/27/2023	Support	Sounds good.
9/28/2023	Suggestion in Comment	<p>Should include "socioeconomic status" as a category for which harassment or intimidation constitutes professional misconduct. This is in conformance with ABA MR 8.4 (g), and Oregon's professional legal culture as reflected in the new RPC 1.8 (e)(3) exception. It's also the right thing to do. My concern is for how the homeless population is treated by the legal community, but also low income people in general and seniors in particular. I think "discrimination" should also constitute professional misconduct, as in the model rules, although this may be difficult to define. My information on the revisions is taken from the article in the recent Bulletin by Dani Huck. I am an inactive member of the Oregon State Bar. Please confirm that you have received my submission.</p>

OSB Public Comments on proposed changes to RPC 8.4(a)(7)

10/20/2023	Suggestion in Comment	<p>I write as a former member of the 2022 subcommittee to the Legal Ethics Committee that collectively recommended the changes to RPC 8.4(a)(7) awaiting an October 27, 2023 vote by the OSB House of Delegates. I also write as a practicing lawyer who has frequently represented unpopular high-profile clients involved in controversial cases of conscience and religious rights invoking constitutional protections. I write in qualified support of the proposed changes to RPC 8.4(a)(7), with a note of caution not to embrace the extremism of ABA Model Rule 8.4(g) and to distinguish “expression” from “conduct”. I was part of broad-based vocal opposition to the original form of the rule proposed in 2013, even before the advent of the ABA Model Rule 8.4(g). At that time, objections were largely constitutional ones, concerned about the chilling effects on lawyers’ expression. After the Oregon Supreme Court advised the bar to re-evaluate the constitutional implications of the rule as proposed, the OSB in 2015 wisely followed that advice and after further study adopted the current version of RPC 8.4(a)(7). At that time, the conviction of those behind adoption of the current rule was that the mens rea standard should be “knowingly” rather than “knows or should have known”, that the scope of the rule should be limited to “in the course of representing a client” and that “socioeconomic status” should not be included as a protected class. In large part, the 2022 subcommittee recommended retention of those 2015 standards, as well as choosing the language “intimidate or harass” instead of the Model Rule’s “harassment or discrimination” language because “discrimination” was already addressed by existing law. Those recommendations were based on the work of four smaller discussion groups, each of which thoroughly researched particular language in the rule and advised for or against changing that language. The notable exception to keeping the existing rule was choosing to expand “in the course of representing a client” to “in the practice of law”, largely out of recognition that objectionable and unethical conduct contemplated by the rule often occurred at bar or firm social functions. The subcommittee also agreed on inclusion of “ethnicity” as a protected class. That said, I do have continuing concerns about “in the practice of law” being extended beyond client representation and conduct at social functions for lawyers to include expression by OSB members speaking in MCLE programs or to community groups or private organizations about legitimate positions about contentious legal issues. Nor should attorneys serving on nonprofit boards or being members of certain religious or community organizations holding unpopular views or principles be subject to discipline. Moreover, this rule is no longer tethered to “conduct that is prejudicial to the administrations of justice” (See RPC8.4(a)(4)). While RPC 8.4(c) purports to protect “legitimate advocacy”, perceptions of “legitimate advocacy” will vary greatly, and lawyer speech (as opposed to conduct) should not be chilled by fear that those with opposing views will file a bar complaint. Similarly, OSB members should be entitled- if not encouraged- to participate in nonprofit organizations without fear of disciplinary peril. I believe there is room for generating official comments or other written interpretations to ensure these constitutional boundaries are preserved. Finally, it should be noted that the current RPC 8.4(a)(7) also protects “religion”, which in recent years has been under continuous attack as inconsistent with protections for other protected classes. Applications of the rule that are not equally protective of all protected classes and which pick “winners” and “losers” from those protected classes is inimical to the intent, purposes and plain language of the rule. Thank you for your consideration.</p>
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