

## CONFIDENTIALITY IN THE OFFICE

Oregon lawyers are bound by ethical rules which require them to preserve confidential client information. This is the cornerstone of the legal profession. If confidentiality is not observed, it not only results in injury to the client, but contributes to loss of trust and credibility in the legal profession.

Rule 5.3 of the Oregon Rules of Professional Conduct provides:

“With respect to a nonlawyer employed or retained, supervised or directed by a lawyer:

- (a) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer; and
- (b) ...a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer...”

Legal staff must understand that every piece of information about clients, whether written or unwritten, which comes to their attention in their job must be treated with utmost confidentiality. If this confidentiality is not observed strictly, the result will not only be injurious to the client, but it may also subject the lawyer to possible disciplinary action for breach of the Oregon Rules of Professional Conduct. A further consideration is that any leak of confidential information by legal staff regarding a client could lead to the destruction of a lawyer’s reputation so that no client would utilize the lawyer’s services. The lawyer could lose his or her livelihood.

Consider some circumstances in which legal staff could unconsciously or inadvertently violate this confidential attorney-client relationship:

1. Confidential client information could be disclosed to legal staff of Firm A by the legal staff of Firm B during lunch or some other social occasion. Firm A might represent a party adverse to the client of Firm B and the discussion may have revealed important information which could be harmful to the client of Firm B.
2. Carelessness in mailing, emailing, or faxing information of a confidential nature could inadvertently result in an important communication intended for a client being directed to an adverse party or to someone who could use this information against the client.
3. A poorly maintained desk and/or working area with open files and client documents on the desk, or confidential documents on the computer screen, could allow an unauthorized person to obtain confidential client information simply by sitting in the waiting room or going by the desk to pick up a magazine from a table.
4. Confidential client information can be released by answering telephone questions from a purported relative of a client, or responding to other official-sounding requests of a third party, without first consulting the lawyer.
5. Copies of client documents can be inadvertently released to third parties who walk in the office and request them without the lawyer’s explicit instructions to do so.
6. Discussions with friends, relatives, or spouses about work situations or cases can release confidential client information which may unknowingly be transmitted to other parties.

## CONFIDENTIALITY IN THE OFFICE

To emphasize the sensitive nature of working in a law office, legal staff should carefully read and sign this Confidentiality Pledge or Confidentiality Agreement acknowledging their understanding of the confidential nature of the legal profession.

### Confidentiality Pledge

I, [*name*], having accepted the position of [*legal secretary, legal assistant, receptionist, bookkeeper, etc.*] in the law offices of [*name*], acknowledge that I fully know of the confidential nature of my position and of my obligation to the clients of this law firm and to the lawyers of this law firm to safeguard such information with which I am entrusted, and to release such information only on the authorization of the lawyer handling the client's case. I understand that any breach of confidential would constitute a failure to fulfill my employment obligations and could be harmful to clients of this firm.

I pledge that I will strictly maintain the confidentiality of all client information which comes to my attention, and that upon the expiration or termination of my employment with this law firm I will reveal none of such confidential information unless specifically authorized and directed to do so by the appropriate lawyer or lawyers of this law firm.

---

(Date)

---

Employee's Signature

## CONFIDENTIALITY IN THE OFFICE

### Confidentiality Agreement

It is impossible to overstate the importance of the attorney-client privilege. So sacred is the relationship between lawyer and client that information given to the lawyer by the client is "privileged communication" -- the lawyer cannot be compelled to testify about it. This bedrock principle between attorney and client creates the trust and confidence required for proper representation. Our firm's clients are the most important people with whom we interact. Without them, the law practice cannot survive.

In your work with [firm name], you will undoubtedly have access to confidential client information. It is one of your most serious responsibilities you in no way reveal any such information and that you use it only in performing your duties. If you have doubts about what might be confidential information or violating trust, seek advice from the Managing Partner.

### Optional Additions (use as applicable)

- (a) Employees are responsible for the internal security and safekeeping of such information. You will read and follow the policies on protecting information.
- (b) Employees are prohibited from engaging in securities transactions based on information not available to the general public and that, if known to outsiders, might affect their investment decisions. The dissemination of such information to others who might make use of that knowledge to trade in securities is also prohibited.
- (c) Proprietary and confidential information can take many shapes, including, but not limited to the names of clients the firm represents or the fact of their visits to the office, documents, notes, overheard conversations, tapes, diskettes, personal observations, records, research, blueprints, financial statements, licensing agreements, trust funds, criminal records, strategic plans, product developments, emails, pending patents, research proposals, chemical or biologic formulae, or allegations made by others about our clients.
- (d) Employees will have to sign a statement of confidentiality at the time of hire and annually throughout their term of employment to acknowledge their awareness of, and to reaffirm their commitment to, this policy.
- (e) Employees are expected not to divulge, during their term of employment or after their employment is terminated, any information confidential or proprietary information acquired during their employment.
- (f) Information regarding the operations, activities, and business affairs of the firm are also to be kept confidential and not discussed with outsiders.
- (g) Employees found to violate the firm's confidentiality policies are subject to disciplinary action, including termination, and may also be subject to civil and/or criminal penalties for violations of applicable securities laws.
- (h) In preserving the security of files and information, the following are to be observed:
  - 1 Disclosing information -- Information in office files should never be disclosed, except upon express authorization of the lawyer handling the case. Sometimes, a written authorization from the client may be sufficient authority.

## CONFIDENTIALITY IN THE OFFICE

2 Delivery of documents -- Documents or files are to be turned over only to persons properly identified or vouched for and then only in return for a signed receipt and when authorized by the lawyer handling the matter.

3 Use of offices -- In a lawyer's absence, no client, visiting attorney or stranger may use a lawyer's office for any purpose unless a member of the office staff is present the entire time. Even if monitored, the desk should be kept so that files, papers, and correspondence are not exposed. Under no circumstances should a client, visiting attorney, or stranger place a telephone call from a lawyer's office, unless that lawyer gives permission.

4 Disposal of confidential papers -- All confidential papers should be destroyed when no longer needed. This includes rough drafts or interim copies. Paper shredders are available throughout the office for that purpose.

5 Revealing client's business -- One client's business is never to be discussed with another client. As a general policy, it is best not to mention one client's name to another. The temptation to brag about our important clients should be resisted.

6 Discussing firm matters -- Do not discuss client matters when clients or visitors are present, particularly in the reception or kitchen areas. A visitor or client who overhears information about another of our clients will feel that his or her personal affairs will receive the same lax treatment.

7 Exposure of documents -- Copies of correspondence, pleadings, interoffice memoranda, or any other documents should be placed either on a designated tray on the secretary's desk or on the lawyer's desk. Tray covers are provided by the firm.

I have read, understand, and agree to the provisions herein.

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
Employee's Signature

## IMPORTANT NOTICES

This material is provided for informational purposes only and does not establish, report, or create the standard of care for attorneys in Oregon, nor does it represent a complete analysis of the topics. Readers should conduct their own appropriate legal research. The information presented does not represent legal advice. This information may not be republished, sold, or used in any other form without the written consent of the Oregon State Bar Professional Liability Fund except that permission is granted for Oregon lawyers to use and modify these materials for their own practices. © 2019 OSB Professional Liability Fund