

House Bill 3048

Response to questions regarding implications of violating a protective order under Oregon State Bar disciplinary rules

The “-1” amendments to HB 3048 would require that in a case where the state provides to the defense evidence against a defendant that consists of “a visual depiction or audio recording of a victim in a state of nudity or engaged in sexually explicit conduct”, the district attorney is required seek a protective order from the court to prohibit the defense from improperly disseminating that discovery.

The Oregon State Bar was asked what consequences would arise under OSB disciplinary rules for an attorney who violated such a protective order. The Oregon Rules of Professional Conduct cover this situation in two ways:

RPC 3.3(a)(5) prohibits a lawyer from *knowingly* engaging in "other illegal conduct" in connection with a matter pending before a tribunal. Our court has defined "illegal conduct" as any conduct in violation of a statute.

RPC 3.4(c) prohibits a lawyer from *knowingly* disobeying "an obligation under the rules of a tribunal." That language is commonly understood to include court rulings and orders and would apply to protective orders.

An attorney who knowingly violates a protective order in the situation contemplated in HB 3048-1 has run afoul of both these restrictions:

1. The attorney has violated a statute, and
2. The attorney has disobeyed a court order.

Although any decision by the Bar regarding disciplinary action would take into account the totality of the circumstances before determining the appropriate sanction, both of these violations can result in a variety of disciplinary actions up to and including suspension or disbarment.