

# ETHICAL CONSIDERATIONS: INVESTIGATIONS THROUGH ELECTRONIC SOCIAL MEDIA

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Mark J. Fucile of Fucile & Reising LLP focuses on legal ethics and product liability defense. Mark has also represented property owners and government agencies in both direct and inverse condemnation litigation in Oregon state and federal courts. In his legal ethics practice, Mark handles professional responsibility, regulatory, attorney-client privilege and law firm risk management matters for lawyers, law firms and legal departments throughout the Northwest. Mark is a former member of the Oregon State Bar Legal Ethics Committee, is the current chair of the Washington State Bar Committee on Professional Ethics and is a member of the Idaho State Bar Professionalism & Ethics Section. He is a contributing editor-author for the Oregon State Bar's *Ethical Oregon Lawyer*, the Washington State Bar's *Legal Ethics Deskbook* and the Washington State Bar's *Law of Lawyering in Washington*. He is also the ethics columnist for the Multnomah Bar's *Multnomah Lawyer* and the Washington State Bar's *NWLawyer* (formerly *Bar News*) and is a contributor on law firm risk management to the Washington State Bar's *NWSidebar* blog. Before co-founding his own firm over a decade ago, Mark was a partner and in-house ethics counsel for a large Northwest regional firm. Mark teaches legal ethics as an adjunct for the University of Oregon School of Law at its Portland campus. Mark is a graduate of the UCLA School of Law.

## Resource Guide

### **A. Oregon Rules of Professional Conduct (Selected)**

- RPC 3.5(b)-(c)—Communication with Jurors
- RPC 4.1—Truthfulness in Statements to Others
- RPC 4.2—“No Contact” Rule
- RPC 8.4(a)(3)—“Dishonesty” Rule
- RPC 8.4(b)—Oregon’s “Gatti Rule”

### **B. Oregon State Bar Ethics Opinions (Selected)**

- Formal Opinion 2005-143—Communication with Jurors
- Formal Opinion 2005-164—Contact through Web Sites
- Formal Opinion 2005-173—Oregon’s “Gatti Rule”
- Formal Opinion 2013-189—Social Media

### **C. Oregon Court Rules**

- UTCR 3.120—Communication with Jurors
- USDC/Oregon LR 48.2—Communication with Jurors

### **D. ABA Materials**

- Corresponding ABA Model Rules and Comments
- ABA Formal Opinion 462 (2013)—Judges’ Use of Social Media
- ABA Formal Opinion 466 (2014)—Internet Juror Research

### **E. Regional Articles**

- Fucile, *Voir Dire: Ethically Investigating Potential Jurors*, February 2015 Multnomah Lawyer
- Fucile, *Digital Self-Portraits: Investigations through Electronic Social Media*, April-May 2015 WSBA NWLawyer